AGENCY FOR CONSUMER PROTECTION

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON

GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 6118

TO ESTABLISH AN AGENCY FOR CONSUMER PROTECTION IN ORDER TO SECURE WITHIN THE FEDERAL GOVERNMENT EFFECTIVE PROTECTION AND REPRESENTATION OF THE INTERESTS OF CONSUMERS, AND FOR OTHER PURPOSES

APRIL 20 AND 21, 1977

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APPENDIX

AGENCY FOR CONSUMER PROTECTION

WEDNESDAY, APRIL 20, 1977

HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2154, Rayburn House Office Building, Hon. Jack Brooks (chairman of the subcommittee) presiding.

Present: Representatives Jack Brooks, Benjamin S. Rosenthal, Don Fuqua, Michael Harrington, John Conyers, Jr., Frank Horton, John N. Erlenborn, and Joel Pritchard.

Also present: Elmer W. Henderson, staff director; William M. Jones, general counsel; Craig J. Gehring, professional staff member; Joy Chambers, professional staff member; Guadelupe R. Flores, professional staff member; Susan E. Phillips, secretary; Richard L. Thompson, minority staff director; J. P. Carlson, minority counsel; and James L. McInerney, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN BROOKS

Mr. BROOKS. The subcommittee will come to order.

These hearings have been called to consider H.R. 6118, a bill to establish an Agency for Consumer Protection.

We have been here before. Few pieces of legislation have been so thoroughly discussed, debated, voted on, and even passed by one House or the other in Congress without becoming law.

H.R. 6118 is a result of this long process of consideration. It has been refined over the years in an effort to make it more workable and more equitable to make sure it contains adequate safeguards to protect the rights of private industry. In its present form H.R. 6118, I believe, is a reasonable compromise, and I hope this year we can finally complete action on it.

[The bill, H.R. 6118, follows:]

95TH CONGRESS
1ST SESSION

H. R. 6118

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1977

Mr. BROOKS (for himself, Mr. ROSENTHAL, and Mr. HORTON) introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To establish an Agency for Consumer Protection in order to secure within the Federal Government effective protection and representation of the interests of consumers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Consumer Protection Act of 1977".

STATEMENT OF FINDINGS

SEC. 2. The Congress finds that the interests of consumers are inadequately represented and protected within

the Federal Government; and that vigorous representation and protection of the interests of consumers are essential to the fair and efficient functioning of a free market economy.

ESTABLISHMENT

SEC. 3. (a) There is hereby established as an independent agency within the executive branch of the Government an Agency for Consumer Protection. The Agency shall be directed and administered by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Administrator shall be a person who by reason of training, experience, and attainments is exceptionally qualified to represent the interests of consumers. There shall be in the Agency a Deputy Administrator who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions, powers, and duties as may be prescribed from time to time by the Administrator and shall act for, and exercise the powers of, the Administrator during the absence or disability of, or in the event of a vacancy in the office of, the Administrator.

(b) There shall be in the Agency a General Counsel and not to exceed five Assistant Administrators appointed by the Administrator.

(c) No employee of the Agency while serving in such position may engage in any business, vocation, or other em-

ployment or have other interests which are inconsistent with his official responsibilities.

(d) The Administrator, General Counsel, and Assistant Administrators after holding such office, shall neither represent nor advise in a professional capacity a regulated party or association representing a regulated party on any issue pending during the term of their employment by the Agency and concerning which they were involved in a decisionmaking capacity. The Administrator, General Counsel, and Assistant Administrators shall, for a period of two years following the termination of their employment by the Agency, neither represent nor advise in a professional capacity any regulated party or any association representing a regulated party with regard to any matter in which the Agency participated before a Federal agency or in the courts during their employment.

POWERS AND DUTIES OF THE ADMINISTRATOR

SEC. 4. (a) The Administrator shall be responsible for the exercise of the powers and the discharge of the duties of the Agency, and shall have the authority to direct and supervise all personnel and activities thereof.

(b) In addition to any other authority conferred upon him by this Act, the Administrator is authorized, in carrying out his functions under ths Act, to—

(1) subject to the civil service and classification

laws, select, appoint, employ, and fix the compensation of such officers and employees as are necessary to carry out the provisions of this Act and to prescribe their authority and duties;

(2) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including traveltime) at rates not in excess of the maximum rate of pay for grade GS–18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(3) appoint advisory committees composed of such private citizens, including consumer and business representatives, and officials of the Federal, State, and local governments as he deems desirable to advise him with respect to his functions under this Act, and pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees or otherwise serving at the request of the Administrator compensation and travel expenses at the

rate provided for in paragraph (2) of this subsection with respect to experts and consultants. Members of an advisory committee to be appointed as consumer representatives shall, whenever practicable, constitute the majority membership of any such advisory committee and shall be individuals who by reason of training, experience and attainments are exceptionally qualified to represent the interests of consumers;

(4) promulgate, in accordance with the applicable provisions of chapter 5 of title 5, United States Code, such rules, regulations, and procedures as may be necessary to carry out the provisions of this Act, and assure fairness to all persons affected by the Agency's actions, and to delegate authority for the performance of any function to any officer or employee under his direction and supervision;

(5) utilize, with their consent, the services, personnel, and facilities of other Federal agencies and of State and private agencies and instrumentalities;

(6) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Agency and on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory, or possession, or any

political subdivision thereof, or with any public or private person, firm, association, corporation, or institution;

(7) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));

(8) adopt an official seal, which shall be judicially noticed;

(9) encourage the development of informal dispute settlement procedures involving consumers;

(10) establish such regional offices as the Administrator determines to be necessary to carry out the purposes of this Act; and

(11) conduct conferences and hearings and otherwise secure data and public views necessary to carry out the purposes of this Act.

(c) Upon request made by the Administrator, each Federal agency is authorized and directed to make its services, personnel, and facilities available to the greatest practicable extent within its capability to the Agency in the performance of its functions.

(d) The Administrator shall transmit to the Congress and the President not later than February 1 of each year a report which shall include a comprehensive statement of the activities and accomplishments of the Agency during the preceding calendar year including a summary of consumer

complaints received and actions taken thereon and such recommendations for additional legislation as he may determine to be necessary or desirable to protect the interests of consumers within the United States. Each such report shall include a summary and evaluation of selected major consumer programs of each Federal agency, including, but not limited to, comment with respect to the effectiveness and efficiency of such programs as well as deficiencies noted in the coordination, administration, or enforcement of such programs.

FUNCTIONS OF THE AGENCY

SEC. 5. (a) The Agency shall, in the performance of its functions, advise the Congress and the President as to matters affecting the interests of consumers; and protect and promote the interests of the people of the United States as consumers of goods and services made available to them through the trade and commerce of the United States.

(b) The functions of the Agency shall be to—

(1) represent the interests of consumers before Federal agencies and courts to the extent authorized by this Act;

(2) encourage and support research, studies, and testing leading to a better understanding of consumer products and improved products, services, and consumer information, to the extent authorized in section 9 of this Act;

(3) submit recommendations annually to the Congress and the President on measures to improve the operation of the Federal Government in the protection and promotion of the interests of consumers;

(4) publish and distribute material developed pursuant to carrying out its responsibilities under this Act which will inform consumers of matters of interest to them, to the extent authorized in section 8 of this Act;

(5) conduct conferences, surveys, and investigations, including economic surveys, concerning the needs, interests, and problems of consumers which are not duplicative in significant degree of similar activities conducted by other Federal agencies;

(6) cooperate with State and local governments and private enterprise in the promotion and protection of the interests of consumers; and

(7) keep the appropriate committees of Congress fully and currently informed of all its activities.

REPRESENTATION OF CONSUMERS

SEC. 6. (a) Whenever the Administrator determines that the result of any Federal agency proceeding or activity may substantially affect an interest of consumers, he may as of right intervene as a party or otherwise participate for the purpose of representing the interests of consumers, as pro-

vided in paragraph (1) or (2) of this subsection. In any proceeding, the Administrator shall refrain from intervening as a party, unless he determines that such intervention is necessary to represent adequately the interest of consumers. The Administrator shall comply with Federal agency statutes and rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with Federal agency statutes and rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Administrator in any Federal agency proceeding or activity shall not affect the obligation of the Federal agency conducting such proceeding or activity to assure procedural fairness to all participants.

(1) Except as provided in subsection (c), the Administrator may intervene as a party or otherwise participate in any Federal agency proceeding which is subject to section 553, 554, 556, or 557 of title 5, United States Code, or to any other statute, regulation, or practice authorizing a hearing, or which is conducted on the record after opportunity for an agency hearing.

(2) Except as provided in subsection (c), in any Federal agency proceeding not covered by paragraph (1), or any other Federal agency activity, the Adminis-

trator may participate or communicate in any manner that any person may participate or communicate under Federal agency statutes, rules, or practices. The Federal agency shall give consideration to the written or oral submission of the Administrator. Such submission shall be presented in an orderly manner and without causing undue delay.

(b) At such time as the Administrator determines to intervene or participate in a Federal agency proceeding under subsection (a) (1) of this section, he shall issue publicly a written statement setting forth his findings under subsection (a), stating concisely the specific interests of consumers to be protected. Upon intervening or participating he shall file a copy of his statement in the proceeding.

(c) In any Federal agency proceeding seeking primarily to impose a fine or forfeiture which the agency may impose under its own authority for an alleged violation of a statute of the United States or of a rule, order, or decree promulgated thereunder and which in the opinion of the Administrator may substantially affect the interests of consumers, the Administrator upon his own motion, or upon written request made by the officer or employee who is charged with the duty of presenting the case of the United States or the Federal agency in the proceeding or action, may transmit to such officer or employee all evidence and information

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in the possession of the Administrator relevant to the proceeding or action and may, in the discretion of the Federal agency or court, appear as amicus curiae and present written or oral argument to such agency or court.

(d) To the extent that any person, if aggrieved, would have a right of judicial review by law, the Administrator may institute, or intervene as a party, in a proceeding in a court of the United States involving judicial review of any Federal agency action which the Administrator determines substantially affects the interests of consumers, except that where the Administrator did not intervene or participate in the Federal agency proceeding or activity involved, the court may determine whether the Administrator's institution of the judicial proceeding would impede the interests of justice. Before instituting a proceeding to obtain judicial review in a case where the Administrator did not intervene or participate in the Federal agency proceeding or activity, the Administrator shall petition the Federal agency for rehearing or reconsideration of its action if the Federal agency statutes or rules specifically authorize rehearing or reconsideration. The petition shall be filed within sixty days after the Federal agency action or within such longer time as may be allowed by Federal agency procedures. If the Federal agency does not act finally upon such petition within sixty days after filing thereof, or within any

shorter time, less five days, as may be provided by law for the initiation of judicial review, the Administrator may institute a proceeding for judicial review immediately. The participation of the Administrator in a proceeding for judicial review of a Federal agency action shall not alter or affect the scope of review otherwise applicable to such agency action.

(e) When the Administrator determines it to be in the interests of consumers, he may request the Federal agency concerned to initiate such proceeding or to take such other action as may be authorized by law with respect to such agency. If the Federal agency fails to take the action requested, it shall promptly notify the Administrator of the reasons for its failure and such notification shall be a matter of public record. To the extent that any person, if aggrieved, would have a right of judicial review by law, the Administrator may institute a proceeding in a court of the United States to secure review of the action of a Federal agency or its refusal to act.

(f) Appearances by the Agency under this section shall be in its own name and shall be made by qualified representatives designated by the Administrator.

(g) In any Federal agency proceeding in which the Agency is intervening or participating pursuant to subsection (a) (1) of this section, the Agency is authorized to request

the Federal agency to issue, and the Federal agency shall, on a statement or showing (if such statement or showing is required by the Federal agency's rules of procedure) of general relevance and reasonable scope of the evidence sought, issue such orders, as are authorized by the Federal agency's statutory powers, for the copying of documents, papers, and records, summoning of witnesses, production of books and papers, and submission of information in writing.

(h) The Administrator is not authorized to intervene in proceedings or actions before State or local agencies and courts.

(i) Nothing in this section shall be construed to prohibit the Administrator from communicating with or providing information or analysis to Federal, State, or local agencies or courts at times and in manners not inconsistent with law or agency rules.

CONSUMER COMPLAINTS

SEC. 7. (a) The Agency shall receive, evaluate, develop, act on, and transmit complaints to the appropriate Federal or non-Federal entities concerning actions or practices which may be detrimental to the interests of consumers.

(b) Whenever the Agency receives from any source, or develops on its own initiative, any complaint or other information affecting the interests of consumers and disclosing a probable violation of—

(1) a law of the United States,

(2) a rule or order of a Federal agency or officer, or

(3) a judgment, decree, or order of any court of the United States involving a matter of Federal law,

it shall take such action within its authority as may be desirable, including the proposal of legislation, and shall promptly transmit such complaint or other information to the Federal agency or officer charged with the duty of enforcing such law, rule, order, judgment, or decree, for appropriate action.

(c) The Agency shall ascertain the nature and extent of action taken with regard to respective complaints and other information transmitted under subsection (b) of this section.

(d) The Agency shall promptly notify producers, distributors, retailers or suppliers of goods and services of complaints of any significance concerning them received or developed under this section.

(e) The Agency shall maintain a public document room containing an up-to-date listing of all signed consumers complaints of any significance for public inspection and copying which the Agency has received, arranged in meaningful and useful categories, together with annotations of actions taken by it. Complaints shall be listed and made available for public inspection and copying only if—

(1) the complainant's identity is protected when he has requested confidentiality;

(2) the party complained against has had sixty days to comment on such complaint and such comment, when received, is displayed together with the complaint; and

(3) the entity to which the complaint has been referred has had sixty days to notify the Agency what action, if any, it intends to take with respect to the complaint.

CONSUMER INFORMATION AND SERVICES

SEC. 8. (a) The Agency shall develop on its own initiative, and, subject to the other provisions of this Act, gather from other Federal agencies and non-Federal sources, and disseminate to the public in such manner, at such times, and in such form as it determines to be most effective, information, statistics, and other data concerning—

(1) the functions and duties of the Agency;

(2) consumer products and services;

(3) problems encountered by consumers generally, including annual reports on interest rates and commercial and trade practices which adversely affect consumers; and

(4) notices of Federal hearings, proposed and final

rules and orders, and other pertinent activities of Federal agencies that affect consumers.

(b) All Federal agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate with the Agency in making such information available to the public.

TESTING AND RESEARCH

SEC. 9. (a) The Agency shall, in the exercise of its functions—

(1) encourage and support through, both public and private entities, the development and application of information on consumer products and services, by research and testing, including methods and techniques for testing materials, mechanisms, components, structures, and processes used in consumer products; and

(2) make recommendations to other Federal agencies with respect to research, studies, analyses, and other information within their authority which would be useful and beneficial to consumers.

(b) All Federal agencies which, in the judgment of the Administrator, possess testing facilities and staff relating to the performance of consumer products and services, are authorized and directed to perform promptly, to the greatest practicable extent within their capability, such tests as the

Administrator may request in the exercise of his functions under section 6 of this Act, regarding products, services, or any matter affecting the interests of consumers. Such tests shall, to the extent possible, be conducted in accordance with generally accepted methodologies and procedures, and in every case when test results are published, the methodologies and procedures used shall be available along with the test results. The results of such tests may be used or published only in connection with proceedings in which the Agency is participating or has intervened pursuant to section 6. In providing facilities and staff upon request made in writing by the Administrator, Federal agencies—

(1) may perform functions under this section without regard to section 3648 of the Revised Statutes (31 U.S.C. 529);

(2) may request any other Federal agency to supply such statistics, data, progress reports, and other information as the Administrator deems necessary to carry out his functions under this section and any such other agency is authorized and directed to cooperate to the extent permitted by law by furnishing such materials; and

(3) may, to the extent necessary and authorized, acquire or establish additional facilities and purchase

additional equipment for the purpose of carrying out the purposes of this section.

(c) Neither a Federal agency engaged in testing products under this Act nor the Administrator shall declare one product to be better, or a better buy, than any other product; however, the provisions of this subsection shall not prohibit the use or publication of test data as provided in subsection (b).

INFORMATION GATHERING

SEC. 10. (a) (1) To the extent required to protect the health or safety of consumers, or to discover consumer fraud or substantial economic injury to consumers, the Administrator is authorized, except as provided in subsection (d), to issue written interrogatories or requests for reports and other related information to any person engaged in a trade, business, or industry which substantially affects interstate commerce. Such interrogatories or requests shall set forth with particularity the consumer interest sought to be protected, and the purposes for which the information is sought.

(2) Nothing in this subsection shall be construed to authorize the inspection or copying of documents, papers, books, or records, or to compel the attendance of any person, or shall require the disclosure of information which would violate any relationship privileged according to law.

(3) The Administrator shall not exercise the authority

under paragraph (1) of this subsection if the information sought—

(A) is available as a matter of public record;

(B) can be obtained from another Federal agency pursuant to subsection (b) of this section; or

(C) is for use in connection with his intervention in any Federal agency proceeding against the person to whom the interrogatories are addressed, if the proceeding is pending at the time the interrogatory is requested.

(4) In the event of noncompliance with any interrogatories or requests submitted to any person by the Administrator pursuant to paragraph (1), any district court of the United States within the jurisdiction of which such person is found, or has his principal place of business, shall issue an order, on conditions and with such apportionment of costs as it deems just, requiring compliance with a valid order of the Administrator. The district court of the United States shall issue such an order upon petition by the Administrator or on a motion to quash, and upon the Administrator's carrying the burden of proving in court that such order is for information that may substantially affect the health or safety of consumers or may be necessary in the discovery of consumer fraud or substantial economic injury to consumers, and is relevant to the purposes for which the information is

sought, unless the person to whom the interrogatory or request is addressed shows that answering such interrogatory or request will be unnecessarily or excessively burdensome.

(b) Upon written request by the Administrator, each Federal agency is authorized and directed to furnish or allow access to all documents, papers, and records in its possession which the Administrator deems necessary for the performance of his functions and to furnish at cost copies of specified documents, papers, and records. Notwithstanding this subsection, a Federal agency may deny the Administrator access to and copies of—

(1) information classified in the interest of national defense or national security by an individual authorized to classify such information under applicable Executive order or statutes and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act (42 U.S.C. 2011 et seq.);

(2) policy recommendations by Federal agency personnel intended for internal agency use only;

(3) information concerning routine executive and administrative functions which is not otherwise a matter of public record;

(4) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(5) information which such Federal agency is expressly prohibited by law from disclosing to another Federal agency; and

(6) trade secrets and commercial or financial information described in section 552(b)(4) of title 5, United States Code—

(A) obtained prior to the effective date of this Act by a Federal agency, if the agency had agreed to treat and has treated such information as privileged or confidential and states in writing to the Administrator that, taking into account the nature of the assurances given, the character of the information requested, and the purpose, as stated by the Administrator, for which access is sought, to permit such access would constitute a breach of faith by the agency; or

(B) obtained subsequent to the effective date of this Act by a Federal agency, if the agency has agreed in writing as a condition of receipt to treat such information as privileged or confidential, on the basis of its determination set forth in writing that such information was not obtainable without such an agreement and that failure to obtain such information would seriously impair performance of the agency's function.

Before granting the Administrator access to trade secrets and commercial or financial information described in section 552 (b) (4) of title 5, United States Code, the agency shall notify the person who provided such information of its intention to do so and the reasons therefor, and shall afford him a reasonable opportunity to comment. Where access to information is dnied to the Administrator by a Federal agency pursuant to this subsection, the head of the agency and the Administrator shall seek to find a means of providing the information in such other form, or under such conditions, as will meet the agency's objections. The Administator may file a complaint in court to enforce its rights under this subsection in the same manner and subject to the same conditions as a complainant under section 552 (a) (3) of title 5, United States Code.

(c) Consistent with the provisions of section 7213 of the Internal Revenue Code of 1954 (26 U.S.C. 7213), nothing in this Act shall be construed as providing for or authorizing any Federal agency to divulge or to make known in any manner whatever to the Administrator, solely from an income tax return, the amount or source of income, profits, losses, expenditures, or any particular thereof, or to permit any Federal income tax return filed pursuant to the provisions of the Internal Revenue Code of 1954, or copy thereof or any book containing any abstracts or particulars

thereof to be seen or examined by the Administrator, except as provided by law.

(d) (1) The Administrator shall not have the power to issue written interrogatories or require the production or disclosure of any data or other information under subsection (a) of this section from any small business concern. For the purpose of this paragraph "small business concern" means any person that, together with such person's affiliates, including any other person with whom such person is associated by means of a franchise agreement, does not have assets exceeding $1,000,000; or does not have more than the equivalent of twenty-five full-time employees at the time of the proposed discovery by the Administrator. Nothing in this paragraph shall be construed to prohibit the Administrator from requesting the voluntary production of any such data.

(2) Notwithstanding paragraph (1) of this subsection, the Administrator shall have the power, pursuant to subsection (a) (1), to obtain information from a small business concern if necessary to prevent imminent and substantial danger to the health or safety of consumers, and the Administrator has no other effective means of action.

(3) The Administrator shall, not later than twenty-four months after the date on which this Act becomes effective, submit to Congress a detailed report with respect to the effect of the limitations contained in this subsection on the purposes

of the Act, for such action as the Congress may deem appropriate.

(4) For the purposes of this subsection, "small business concerns" are affiliates of each other when either directly or indirectly (A) one concern controls or has the power to control the other, or (B) a third party or parties controls or has the power to control both. In determining whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

(e) The Administrator shall keep the appropriate committees of the Congress fully and currently informed with respect to the nature and status of interrogatories or requests issued pursuant to the authority under paragraph (1), and shall, upon request, transmit to such committees copies of any communication alleging abuse of that authority or stating reasons for noncompliance with an interrogatory or request.

LIMITATIONS ON DISCLOSURES

SEC. 11. (a) Except as provided in this section, section 552 of title 5, United States Code, shall govern the release of information by any officer or employee of the Agency.

(b) No officer or employee of the Agency shall disclose to the public or to any State or local agency any information which was received solely from a Federal

agency if such agency has notified the Administrator that the information is within the exceptions stated in section 552(b) of title 5, United States Code, and the Federal agency has determined that the information should not be made available to the public, except that, if such Federal agency has specified that such information may be disclosed in a particular form or manner, such information may be disclosed in such form or manner.

(c) The following additional provisions shall govern the release of information by the Administrator pursuant to any authority conferred by this Act, except information released through the presentation of evidence in a Federal agency or court proceeding pursuant to section 6:

(1) The Administrator, in releasing information concerning consumer products and services, shall determine that (A) such information, so far as practicable, is accurate, and (B) no part of such information is prohibited from disclosure by law. The Administrator shall comply with any notice by a Federal agency pursuant to subsection (b) of this section that the information should not be made available to the public or should be disclosed only in a particular form or manner.

(2) In the dissemination of any test results or other information which directly or indirectly disclose product names, it shall be made clear that (A) not all

products of a competitive nature have been tested, if such is the case, and (B) there is no intent or purpose to rate products tested over those not tested or to imply that those tested are superior or preferable in quality over those not tested.

(3) Notice of all changes in, or any additional information which would affect the fairness of, information previously disseminated to the public shall be promptly disseminated in a similar manner.

PROTECTION OF THE CONSUMER INTEREST IN ADMINISTRATIVE PROCEEDINGS

SEC. 12. Every Federal agency in considering any Federal agency action which may substantially affect an interest of consumers including, but not limited to, the issuance or adoption of rules, regulations, guidelines, orders, standards, or formal policy decisions, shall—

(1) notify the Agency at such time as notice of the action is given to the public, or at such times and in such manner as may be fixed by agreement between the Administrator and each agency with respect to the consideration of specific actions, or when notification of a specific action or proceeding is requested in writing by the Agency; and

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(2) consistent with its statutory responsibilities take such action with due consideration to the interest of consumers.

In taking any action under paragraph (2), upon request of the Agency or in those cases where a public announcement would normally be made, the Federal agency concerned shall indicate concisely in a public announcement of such action the consideration given to the interests of consumers. This section shall be enforceable in a court of the United States only upon petition of the Agency.

SAVING PROVISIONS

SEC. 13. (a) Nothing contained in this Act shall be construed to alter, modify, or impair the statutory responsibility and authority contained in section 201 (a) (4) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481 (a) (4)), or of any provision of the antitrust laws, or of any Act providing for the regulation of the trade or commerce of the United States, or to prevent or impair the administration or enforcement of any such provision of law.

(b) Nothing contained in this Act shall be construed as relieving any Federal agency of any authority or responsibility to protect and promote the interests of the consumer.

TRANSFER OF PROGRAMS, OPERATIONS, AND ACTIVITIES

SEC. 14. (a) No later than one hundred and eighty days after the date of enactment of this Act, the President shall submit a reorganization plan to the Congress pursuant to chapter 9 of title 5, United States Code, which provides for the transfer to the Agency of those programs, operations, and activities of Federal agencies which are duplicative of and can be performed more appropriately by the Administrator under the authority contained in this Act.

(b) The Administrator, pursuant to section 4 of this Act, shall be responsible for incorporating such programs, operations, and activities as may ultimately be transferred in such manner and to the extent he deems consistent with the Agency's responsibilities under section 5 of this Act, and for issuing such organizational directives as he deems appropriate to carry out the purposes of this section.

TRANSFER OF CONSUMER PRODUCT INFORMATION COORDINATING CENTER

SEC. 15. (a) All officers, employees, assets, liabilities, contracts, property, and records as are determined by the Director of the Office of Management and Budget to be employed, held, or used primarily in connection with the functions of the Consumer Product Information Coordinating Center in the General Services Administration are transferred to the Agency and all functions of the Administrator

of General Services administered through the Consumer Product Information Coordinating Center are transferred to the Agency.

(b) (1) Except as provided in paragraph (2) of this subsection, personnel engaged in functions transferred under this section shall be transferred in accordance with applicable laws and regulations relating to transfer of functions.

(2) The transfer of personnel pursuant to this section shall be without reduction in classification or compensation for one year after such transfer.

DEFINITIONS

SEC. 16. As used in this Act—

(1) The term "Agency" means the Agency for Consumer Protection.

(2) The words "agency", "agency action", "party", "person", "rulemaking", "adjudication", and "agency proceeding" shall have the same meaning as set forth in section 551 of title 5, United States Code.

(3) The term "consumer" means any person who uses for personal, family, or household purposes, goods and services offered or furnished for a consideration.

(4) The term "interests of consumers" means any concerns of consumers involving the cost, quality, purity, safety, durability, performance, effectiveness, dependability, and availability and adequacy of choice of goods and services

offered or furnished to consumers; and the adequacy and accuracy of information relating to consumer goods and services (including labeling, packaging, and advertising of contents, qualities, and terms of sale).

(5) The term "State" includes any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

CONFORMING AMENDMENT

SEC. 17. (a) Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

"(66) Administrator, Agency for Consumer Protection.".

(b) Section 5315 of such title is amended by adding at the end thereof the following:

"(114) Deputy Administrator, Agency for Consumer Protection.".

(c) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(141) General Counsel, Agency for Consumer Protection.

"(142) Assistant Administrators, Agency for Consumer Protection (5).".

EXEMPTIONS

SEC. 18. This Act shall not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, or the National Security Agency, or the national security or intelligence functions (including related procurement) of the Departments of State and Defense (including the Departments of the Army, Navy, and Air Force) and the Energy Research and Development Administration, or to a labor dispute within the meaning of section 13 of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 113) or of section 2 of the Labor Management Relations Act (29 U.S.C. 152), or to a labor agreement within the meaning of section 201 of the Labor Management Relations Act, 1947 (29 U.S.C. 171): *Provided*, That nothing in this Act shall be construed to authorize the Administrator to intervene as a party or otherwise participate: (1) in any proceeding of the United States Department of Agriculture directly affecting or directly concerning (a) the market price of or loans, price supports, or payments for raw agricultural commodities, including crops (including, but not limited to, wheat, feed grains, soybeans, cotton, wool, rice, peanuts, tobacco, sugar, fruits, and vegetables), livestock, poultry, eggs, and dairy products, and (b) programs administered by the Soil Con-

servation Service, the Farmers Home Administration, the Rural Electrification Administration, or the Federal Crop Insurance Corporation, or (2) in any proceeding concerning Public Law 480 programs, or to the Nuclear Regulatory Commission.

SEX DISCRIMINATION

SEC. 19. No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity carried on or receiving Federal assistance under this Act. This provision will be enforced through agency provisions and rules similar to those already established, with respect to racial and other discrimination, under title VI of the Civil Rights Act of 1964. However, this remedy is not exclusive and will not prejudice or deny any other legal remedies available to a discriminatee.

APPROPRIATIONS

SEC. 20. There are hereby authorized to be appropriated to carry out the provisions of this Act: $15,000,000 for the fiscal year ending September 30, 1978; and $17,000,000 for the fiscal year ending September 30, 1979.

EFFECTIVE DATE

SEC. 21. (a) This Act shall take effect ninety calendar days following the date on which this Act is approved, or

on such earlier date as the President shall prescribe and publish in the Federal Register.

(b) Any of the officers provided for in this Act may (notwithstanding subsection (a)) be appointed in the manner provided for in this Act at any time after the date of the enactment of this Act. Such officers shall be compensated from the date they first take office at the rates provided for in this Act.

SEPARABILITY

SEC. 22. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality and effectiveness of the remainder of this Act and the applicability thereof to any persons and circumstances shall not be affected thereby.

TERMINATION

SEC. 23. (a) This Act shall terminate on September 30, 1985, and the Agency for Consumer Protection shall be abolished as of such date.

(b) The President shall—

(1) commencing two years prior to the date of termination specified in subsection (a), conduct an investigation of the Agency's overall performance including, but not limited to, a study of the Agency's effectiveness

in accomplishing its general purposes and promoting the general welfare;

(2) not later than twelve months prior to the termination date specified in subsection (a), make public and submit to each House of Congress a report on the finding of the investigation conducted pursuant to paragraph (1), such report to include a recommendation that the authority of this Act be extended, that the Agency be reorganized, or that the authority of this Act be allowed to lapse.

(c) The committees of the House and of the Senate having primary oversight responsibility with respect to the Agency shall, not later than six months prior to the termination date specified in subsection (a), conduct an inquiry into the performance and effectiveness of the Agency and make public a report of their findings, conclusions, and recommendations, including proposed legislation for such extension or reorganization of the Agency as they deem appropriate.

Mr. BROOKS. As these hearings should make clear, the Agency for Consumer Protection that would be established by H.R. 6118 is not going to be "a vast new bureaucracy," as its opponents like to call it. It is not going to become another regulatory agency tying up businesses in redtape or forcing them to respond to every complaint by a consumer. The proposed consumer agency would have no power to regulate business activity. It could not dictate how other agencies or the courts should rule on consumer views.

What is being proposed in this legislation is basically a fact-finding, information-gathering agency that can use the facts and information it gathers to present the case for the consumer in proceedings before other Federal agencies and Federal courts. It is hard to understand why this proposal has met with such opposition.

We have Government agencies now to protect the interests of business and industry, not that they would be voiceless without such friends in Government. Private industry commits enormous resources in getting its side of the story before the Government agencies whose decisions affect it. And from what I can tell, the money is not wasted. It is time the Government spoke up for the consumer, as well.

An encouraging development this year as we take up this legislation again is the support of President Carter for an Agency for Consumer Protection. After years of opposition and threats of vetoes from the White House, it is a refreshing change to have this kind of support.

We have as our first witness today a person who has never wavered in her support for an agency that will provide a strong voice for the consumer in Government affairs. I am pleased that President Carter has chosen Esther Peterson to be his Consumer Affairs Adviser, and, on behalf of the committee, I welcome her here to present her testimony on H.R. 6118.

Prior to that, Ms. Peterson, I would like to recognize the very able ranking minority member, Mr. Frank Horton, for a statement.

Mr. Horton.

Mr. HORTON. Thank you, Mr. Chairman.

In this age of Federal protection for practically every living thing, it is increasingly difficult for the American people to understand why their U.S. Congress has for 16 years debated, but never actually brought into existence, an agency whose sole function would be to protect the interests and rights of the American consumer. It is not enough to explain how close we have come in the past. The time has come for affirmative action all the way down the line: from the House of Representatives, from the Senate, and from the President.

Mr. Chairman, I am more hopeful than ever that this is the year for affirmative action on an Agency for Consumer Protection. When it does become law, we will begin to see a renewed public confidence not only in Government, but in business as well—and that can be nothing but healthy for this country and our economy.

If we have a better bill today than when we first started many years ago—and I believe we do—it is because we have had the time to go through it with a fine-tooth comb, amending it and removing the flaws.

For those who feared, for example, that creation of a Consumer Protection Agency would mean more regulation than we already have, let me put those fears to rest. The Consumer Protection Agency created by this bill would have no regulatory authority—none whatsoever. If anything, it would produce less—not more—Federal regulation. Its

sole function, in fact, would be to look out for and represent the interests of the American consumer before Federal agencies. It is that pure and simple.

Every piece of literature I have seen in the last year and in this year opposing this legislation makes the point that this is another regulatory agency. I just saw a piece of literature the other day in which they listed all of the regulatory agencies and then made it appear as though this would be another one. It is not. It is not a regulatory agency by any construction of the language or of the idea or concept of what it would do.

Another of the myths that has plagued this bill in the past is the notion that a Consumer Protection Agency would be an antibusiness agency. That just simply is not true. Rather than presenting a threat to business, a Consumer Protection Agency would provide for a constant check against some of the unreasonable Federal regulations of business, the kind that adversely affects consumers. That kind of check is good for business, Government, and the consumer. We are all winners when anticonsumer practices are curtailed.

While I am at it, let me put to rest another misconception, the one that suggests that we are adding another layer of bureaucracy when we create this new agency. That is wrong, false, totally inaccurate. The same is true for the suggestion that this Consumer Protection Agency would be duplicating consumer advocacy efforts in existing Federal agencies. This is one Federal agency that will not strangle the consumer with redtape. This is an advocacy agency, one that can and will go to bat for the consumer before the various Federal agencies. It will take the place of, not duplicate, the efforts of consumer affairs offices currently lodged in many Federal agencies.

When all is said and done, the Agency for Consumer Protection will not always produce decisions favorable to the consumer. But at least we will know that, when the consumer's voice is heard, a necessary ingredient of democracy will have been added to the decisionmaking process at the highest levels of Government. That voice of the consumer is not always heard—or heeded—as things now stand. In short, consumers too frequently have little or no opportunity to voice their concerns. H.R. 6118 will relieve that deficiency.

Mr. Chairman, I am proud and honored to have my name listed next to yours and Mr. Rosenthal's as a sponsor of H.R. 6118.

I also want to welcome Esther Peterson to the committee. I have known Esther Peterson ever since I have been in the Congress. I knew her when she served in the previous administrations. She was really the leader or the voice for the consumer in the Federal agencies. She served in the Labor Department. Subsequent to that, I had the privilege of recommending and then seeing her appointed as a Commissioner of the Paperwork Commission, on which I serve as the Chairman. She is now a Commissioner on the Federal Paperwork Commission. I have worked alongside of her in that effort and I know of her great interest in cutting back on paperwork and redtape.

I also know personally of the great effort that she has exerted in this community and the leadership she has given not only in this community, but throughout the country as the consumers affairs person for the Giant Food stores.

Esther, welcome to this committee and to the hearing today. We are very happy that you are back again as the voice for the consumer at the very high level of advising the President.

Mr. BROOKS. Thank you very much, Mr. Horton, for a fine statement.

Ms. Peterson has given outstanding service to her country and Government. In 1961, she was appointed Director of the Women's Bureau in the Department of Labor by President Kennedy. She was elevated to Assistant Secretary of Labor and served under both Presidents Kennedy and Johnson. In 1964, she was appointed by President Johnson to be his Special Assistant for Consumer Affairs and Chairman of the President's Committee on Consumer Interests. She left the Government and joined Giant Food stores as a special adviser to the president of that company on consumer problems.

Ms. Peterson has received much recognition and many honors for her work in the consumer field, and we were all very pleased when President Carter announced her appointment as his Special Assistant. Ms. Peterson will present the administration's views on H.R. 6118, the legislation before us to create an Agency for Consumer Protection.

Ms. Peterson, we are delighted to have you here.

By whom are you accompanied?

Ms. PETERSON. I am accompanied by Frank McLaughlin, who is the Acting Director of the Office of Consumer Affairs, and Nancy Chasen, who is Special Counsel to me in my office in the White House.

Mr. BROOKS. Please proceed.

STATEMENT OF ESTHER PETERSON, ASSISTANT TO THE PRESIDENT FOR CONSUMER AFFAIRS; ACCOMPANIED BY FRANK E. McLAUGHLIN, ACTING DIRECTOR, OFFICE OF CONSUMER AFFAIRS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; AND NANCY CHASEN, SPECIAL COUNSEL

Ms. PETERSON. I want to thank you very much for your generous words and both of you for your statements about the bill. I want to bring to you the special appreciation of the President for the work that you people have done. He has said that the work through these years, refining and honing, has brought this legislation to a point where it is possible to go ahead with his support. I do bring his voice of very strong support and also his appreciation to you for what you are doing.

I want to thank the Subcommittee on Legislation and National Security for this opportunity to testify on behalf of the President concerning the need for an Agency for Consumer Protection.

Your efforts give new meaning to the phrase, "in the interest of consumers," found throughout the United States Code and the Code of Federal Regulations.

We have used the word "consumer" a great deal throughout our legislative history. I think that is evidenced in much of the legislation that we have.

President Carter has said that this important legislation "will enhance the consumer's influence within the Government without creating another unwieldy bureaucracy" and "will increase confidence in the Government by demonstrating that Government is considering the people's needs in a sensitive and responsive way."

The idea of a separate entity to represent the interests of consumers has been around for some time. It has persisted because the need for consumer representation in government has persisted.

Some of you may remember that in 1959 Senator Estes Kefauver introduced legislation for the creation of a Department of Consumer Affairs. When introducing this bill, Senator Kefauver stated that:

> Government abounds with departments, agencies, and bureaus set up by the Congress to represent producer interests of virtually every conceivable type. There is no such representation of the consumer interest. Such consumer representation as does exist is limited, fragmented, and relatively ineffectual.

The Senator's words are even more appropriate today.

In 1962, President Kennedy recognized that consumers needed to be represented in the Government process. In his consumer message to Congress, he articulated the now famous consumer bill of rights: The right to safety, the right to be heard, the right to choose, and the right to be informed. He established the Consumer Advisory Council under the Council of Economic Advisers to promote these goals. That was a great start.

President Johnson also recognized the need for representation by consumers. He set up the President's Committee on Consumer Interests and appointed a Special Assistant for Consumer Affairs.

These efforts were steps toward answering the need for consumer representation in Government processes. I was privileged to be in Government service when many of these steps were taken.

In 1966, the House held hearings on a Cabinet-level Department of Consumer Affairs. In 1969, both Houses held hearings on a variety of proposals for improving consumer representation. For the next 6 years the debate revolved around the structure of such an agency.

In 1975, both Houses of Congress passed legislation to establish an independent agency to represent consumers before Federal agencies and courts where consumers' interests are substantially affected.

This year I hope we can work together and pass this legislation again. I tell you very honestly there will be no need for doubt about the reception it will receive in the White House this time. It will be signed. President Carter strongly supports enactment of this bill. I look forward to the time when we have a bill signing ceremony with all of the people who have worked on this for so many years with such diligence.

Why do consumers need representation? The rationale for H.R. 6118 is as follows: Federal agencies often make decisions affecting both business and consumer interests. Business has the resources to make its views known, but consumers are typically underfinanced and inadequately organized; they cannot participate on an equal basis with industry. This inequality has often resulted in inadequate recognition by Government agencies of the problems of consumers.

I want to say this concerning your comment, Congressman Horton, about this legislation not being antibusiness. My experience of 7 years working within the corporate structure has proven to me that there are many times when the business interest and the consumer interest do coincide and where this Agency can be helpful along the lines that we have worked on: the removal of redtape, being sure that paperwork is not burdensome and is not something that has to be. I think we must look at it in that fullness, as you explained.

Although there are programs within some agencies to provide consumer input in the decisionmaking process, the success of the in-house

advocate depends upon the freedom and the authority he or she is given by agency heads to express consumer views. Even if the consumer advocate is relatively unrestricted in presenting these views, his or her effectiveness still depends upon the availability of resources and information. Hence, agency consumer advisers have found it difficult to represent consumers effectively in agency decisions.

What we need to do is to consolidate some of the consumer advocacy functions, so that a focused and independent assessment can be made of the consumer's need for representation in Federal decisionmaking and so that the resources will be available to make the consumer's case effectively heard.

H.R. 6118, section 14, provides that the President shall, within 180 days following passage of the bill, submit to Congress a reorganization plan transferring appropriate existing consumer-related functions to the ACP. We support this provision but recommend that it be modified to assure that completion of this particular reorganization plan does not interfere with consideration by Congress and the President of the broad task of reorganization of the executive branch which we have set for ourselves. The Office of Management and Budget wishes to confer with the committee to design language to accomplish this goal.

Individual consumers and groups of consumers have been able on occasion to apply needed stimulus to wasteful, unresponsive, and reluctant administration of consumer protection laws and regulations. Realistically, however, consumers cannot provide even a modest amount of coverage of agency activities or monitor the progress of the multitude of consumer programs in government. To monitor even the most important of the hundreds of rules, orders, and decisions that issue or fail to issue from the hands of thousands of regulatory technicians each month, an agency advocate for the consumer is needed.

While congressional oversight is important, it is not the whole answer. I believe day-to-day urging of the consumer point of view complements congressional scrutiny. One thing is certain: "Out of sight, out of mind" can too often apply to the relationship between the consumer and the regulatory technician.

H.R. 6118 furthers the consumer's "right to be heard" by providing for representation of consumer interests before Federal agencies and courts. In formal hearings, the ACP is authorized to intervene as a party if necessary to adequately represent the interest of consumers. As a party, the new agency would be bound by the same procedural rules and time limits as representatives of industry.

However, under section 6(c), ACP is prohibited from intervening as a party where the Federal agency proceeding seeks primarily to impose a fine or forfeiture under the host agency's own authority. The President and I believe that there is no justification for this limitation which restricts ACP participation to that of an amicus curiae, or friend of the court.

Even though these are enforcement proceedings brought by a Federal agency, there will be times when full consumer participation is appropriate. For example, the ACP should be able to participate as a party in negotiations which lead to consent decrees or other settlement agreements to insure that these negotiations take account of the consumer's interests. This legislation would also permit ACP to take

part in informal rulemaking and other agency activities, as many decisions which affect consumers are made in this less formal context.

The new Agency would also have the power to request, but not require, a Federal agency to initiate a proceeding or other necessary action authorized by law to protect consumer interests.

Perhaps a petition by a Consumer Protection Agency could have shortened the 2-year delay in FTC's promulgation of essential warrantee standards that will improve competition between warrantors.

Perhaps a Consumer Protection Agency could have speeded up the tire quality grade labeling which already has taken 10 years to develop and still is not available to consumers.

And perhaps a Consumer Protection Agency could encourage more effective implementation of the Fair Packaging and Labeling Act.

The ACP would also have the authority to represent consumers in Federal civil proceedings involving review or enforcement of Federal agency actions which substantially affect a consumer interest. Besides participating in suits brought by others, the new Agency would be able to initiate lawsuits to review agency decisions if a substantial consumer interest is involved.

The Agency's ability to effectively represent consumer interests will be furthered by its authority to obtain information. This information will enable the ACP to identify problem areas and to encourage appropriate remedial measures by industry, by consumers, and, where necessary, by government.

The ACP will be greatly aided in determining its priorities by consumer complaint letters. H.R. 6118 provides for a complaint clearinghouse which will notify industry and Federal agencies of complaints which involve them. After a reasonable opportunity for response, 60 days, the complaint will be placed in a document room open to public inspection.

Under appropriate restrictions, the Agency may obtain information from other Federal agencies. However, the ACP properly does not have access to important categories of material in the possession of other agencies. Moreover, before the ACP secures trade secrets or confidential commercial information from another agency, affected persons must be notified and given an opportunity to comment.

Finally, the ACP may submit written interrogatories to business when necessary to protect consumer health and safety or to discover consumer fraud or substantial economic injury to consumers. However, these interrogatories may not be used to obtain information which is a matter of public record, information which ACP can obtain from another Federal source, or information which ACP wishes to use in an agency proceeding which is already underway.

Further, the recipients of these written questions can object if they view them as irrelevant or unduly burdensome; the burden is then placed on the ACP to persuade a Federal judge that the interrogatories are appropriate.

We note the provision of section 10 of the bill calling for close scrutiny by the appropriate congressional committees of the operation and status of information requests, including consideration of claimed abuses.

In addition to these safeguards, the President believes that the legislation should provide that the Office of Management and Budget re-

view proposed interrogatories before they are issued by the ACP. To assure that this review process does not unnecessarily complicate ACP's work, the administration would not oppose reasonable safeguards, such as a time limit.

It is important to note that once ACP has obtained information, there are detailed safeguards to assure that the confidentiality of such information is protected.

The President believes that it is important for the Agency to have this independent information-gathering authority, as the bill provides. He also believes that the use of this authority should be subject to adequate check.

The cost of the representation and protection provided by this bill is modest—only about 25 cents a year for the average family. Costs will be kept to a minimum by consolidating many existing consumer functions into one agency.

We are pleased that the House bill, unlike the Senate bill, provides that the Administrator is to serve at the President's pleasure after confirmation by the Senate. President Carter stressed in his consumer message that this kind of accountability is necessary to insure a vigorous and effective Consumer Protection Agency.

The President is concerned, however, about the possibility that the language in section 4(d) requiring the Agency to provide in its annual report "recommendations for additional legislation as he may determine to be necessary or desirable" may be used as a backdoor for bypassing the usual executive process for preparing a legislative program.

Although the House does not have a cost/benefit analysis section, you are no doubt aware that the Senate bill does contain this provision. In the event members of the subcommittee are considering adding a similar provision to H.R. 6118, I would like to take this opportunity to make the President's view known.

President Carter is in full agreement with the objectives of this section. He strongly believes that the mass of regulations pouring out of Federal regulatory agencies these days must be stringently analyzed to assure that they impose minimal costs on industry and the public, and that they achieve statutory goals in the most efficient and convenient way possible.

At this moment, the Economic Policy Group within the Cabinet is developing a new system for subjecting major regulations to economic analysis and review before they are published in the Federal Register. But we strongly believe that these hearings and this legislation are not the proper context in which to develop sensible Government-wide regulation review standards and procedures. This is a very complex problem which should be considered on its own.

I believe that to be fearful—as some are—of this legislation is to misunderstand it. The Agency will have no authority to make laws, as you have said, or to set standards, issue licenses, or otherwise regulate business. Its purpose is to improve the way in which other agencies make rules, regulations, and decisions by providing an advocate for consumer interests in the decisionmaking process.

Moreover, ACP can aid in the fight against inflation, monitoring agency activities and, where appropriate, discouraging regulations which, in the viewpoint of consumers, are unnecessary or excessively costly.

My experience in the last 15 years, especially since 1970, has convinced me that there is nothing in this legislation that business should fear. In fact, promotion of consumer interests is entirely consistent with our economic system.

The father of our system, Adam Smith, stated 200 years ago in "The Wealth of Nations" that:

> Consumption is the sole end and purpose of all production; and the interests of the producer ought to be attended to only insofar as it may be necessary for promoting the interest of the consumer.

I would like to tell you at this point that I used that quote the other day in a speech before some marketing students in a school of marketing. I asked them, "Who do you think said that?" Do you know what they said? Ralph Nader or Kenneth Galbraith. It was only the professor who knew it was Adam Smith, the father of the free enterprise system, who said that the consumer interest was the end and object of production.

To promote the interest of the consumer requires that the consumer be a party to the decisionmaking process in Government. That is all that we are asking; not that it win everyone, but that it be heard and that that consumer voice be measured.

This legislation presents an opportunity to rebuild faith in the institutions of business and Government.

As Mr. Peter E. Haas, president of Levi Strauss & Co., stated in his recent letter to President Carter concerning the ACP legislation:

> We believe that having a separate consumer agency with the authority to represent consumer interests in proceedings of other agencies will improve the prospects of such interests being consistently and fully considered. This will give consumers additional grounds for confidence in the fairness and soundness of our Government's procedures and decisions which affect the pocketbook, health, and safety of all of us.

The President's message recognized the long evolution as well as the careful, bipartisan honing of this bill by the Congress. We now look forward to speedy enactment of this important legislation. The finest thing of all, as you have said, is that this time we have the backing of the President, of the White House, to see that we get it through.

Thank you very much.

Mr. BROOKS. Thank you very much, Ms. Peterson.

Do you view the creation of an independent consumer agency as a prerequisite to any reorganization of Government consumer functions?

Ms. PETERSON. Definitely. Definitely.

I think as it is now this procedure is scattered throughout the Government. There is too much duplication and very little coordination. I feel very strongly about that.

Mr. BROOKS. Would you review for the subcommittee the administration's plans for creating a strong voice in Government to speak for the consumer? An executive communication of April 6, 1977, recommended passage of four bills to expand the consumer's voice in Government.

Ms. PETERSON. Yes. Those four bills that the President recommended are the four major positions that he is putting forth at this time.

All of these, you know, are designed to give consumers access to the Government. They are access bills. I think that is what is important.

There is first, the Consumer Advocacy Agency. There is the legislation to provide reimbursement for citizen participation. Those are two areas that he has asked us to work on. He has also directed me to help develop legislation giving citizens broader standing to initiate suits against the Government and legislation to enable consumers to initiate class action suits. These are the areas where he feels, we can work and achieve a definite step forward.

Mr. BROOKS. Thank you very much.

Mr. Horton?

Mr. HORTON. Ms. Peterson, I think that was an excellent statement reviewing the provisions of the bill and trying to set aside some of the fear of those who opposed the bill in the past, particularly the concern of the business people and those who have tried to indicate that the bill is somewhat regulatory in form, which, of course, we both know it is not.

On pages 4 and 5 of your statement regarding the requirement for a reorganization plan to be submitted within 180 days, you have indicated that the Office of Management and Budget would like to confer with the committee to design language to accomplish this goal.

How is that to be modified to meet OMB's concern?

Ms. PETERSON. How is that to be what?

Mr. HORTON. Modified to meet OMB's concern, the language in section 14. Look at the bottom of page 4 of your statement.

Ms. PETERSON. I will have to get the language there.

Mr. HORTON. I am referring to your language. What is it that OMB wants to modify in regard to section 14? You said that they would be willing to confer with us to design language to accomplish their goal.

Ms. PETERSON. Yes. I think it is a timing question. I would like to ask Nancy Chasen, who has helped us to draft this in technical areas, to answer that.

Ms. CHASEN. Apparently their concerns are with the timing as there is apparently a legal requirement that the Executive may submit only a certain number of reorganization plans at a particular time. I am not certain what that is specifically.

Mr. HORTON. That just says that we can only have three plans before us at one time.

We would require by the language here, so that would not be the same.

Ms. CHASEN. That may satisfy half of the problem.

Mr. HORTON. In other words, you are concerned about the timing and not the substance; is that right?

Ms. CHASEN. Yes.

Mr. HORTON. Just the timing, not the substance?

Ms. CHASEN. They are considering a whole reorganization.

Mr. HORTON. I understand that. We are very familar with that.

Your principal concern is timing, not the substance: is that right?

Mr. MCLAUGHLIN. It is a timing and procedural question. There is no substantive objection.

Mr. HORTON. On page 6 of your statement you request that section 6(c) be removed. What is the nature of the intervention that the ACP would have if this section is removed?

Ms. PETERSON. Again, I would really like to have the attorney answer this.

Ms. CHASEN. Our hope is that in adjudications where the Agency can impose a fine on its own the ACP would be able to participate with full party rights. It is particularly important because of the possibility of negotiated settlement in which an amicus can merely present views. At the time of negotiating settlement the door is closed and it is just, "Thank you very much. Goodbye."

Mr. HORTON. It should be limited to the substance and not to the fine.

Ms. CHASEN. To the amount of the fine?

Mr. HORTON. To the substance rather than——

Ms. CHASEN. Than the level of the penalty?

Mr. HORTON. Yes.

Ms. CHASEN. The level of the penalty presumably would be part of the settlement. We would hope that the ACP would also have something to say about the nature of the fine since that is likely to be a substantial item in the settlement.

Mr. HORTON. There is another area I wanted to ask you about.

On page 9 of your statement you recommended that OMB review the interrogatories. Would this slow down or impede the ACP from responding in a timely fashion?

Ms. PETERSON. I would certainly hope that it would not. I think for that we would have to set some standards, some time limitations in it.

I have been in Government enough to know the frustrations of clearances. I would certainly welcome safeguards being put on that.

Mr. HORTON. I agree with the section in the Senate bill requiring a cost-benefit analysis to be prepared when the ACP intervenes in an agency's rulemaking proceeding.

If we could do anything to cut down on paperwork in the language of this bill, I would say that would be helpful.

Ms. PETERSON. There is no disagreement with the principle. The President feels strongly that we do have to move ahead in cost analysis. I think his big concern is when we are moving in really influencing all of these functions whether this bill is the particular vehicle for doing it. It is not a disagreement in what we are trying to accomplish.

Mr. HORTON. I want to ask you this again: Does this Agency have any regulatory functions?

Ms. PETERSON. No; it does not.

Mr. HORTON. It has been referred to by a lot of the opposition as being a regulatory agency. I would just like to have you indicate whether or not it has any regulatory functions.

Ms. PETERSON. Obviously, as you know, I am not a lawyer. I have read it, and I have read it with lawyers. I have asked people who say that to tell me where this is. I do not find it.

"Super agency," big agency, regulatory agency—these are words to help defeat the bill.

In my book it does not have regulatory functions.

Ms. CHASEN. There is no regulatory authority here. There is no license issuing power. ACP cannot impose fines or penalties. It cannot mandate standards for industry. There simply is no regulatory power.

Mr. HORTON. It is purely and simply an advocate, is it not?

Ms. CHASEN. It is an advocate.

Mr. HORTON. It can just appear before Federal agencies or one of the regulatory agencies as any other party could appear; is that not right?

Ms. CHASEN. Yes.

Mr. HORTON. Also, I would like to have you state your views in regard to whether or not we are creating another bureaucracy.

Ms. PETERSON. Congressman, this is one of the reasons that I feel so strongly in support of this bill. I have been in Government and I have been around a long time. We develop bureaucracies. We have a lot that needs to be streamlined. We have a lot of deadwood that ought to be put out. You have to move in for efficiency.

The thing I like about this and what we are doing on the Paperwork Commission is being able to honestly look up at what is performing and what is efficient. This will bring efficiency to it. If anything, it will make the bureaucracy responsible.

One reason that we have a lot of bureaucracy is because we have not been hearing the consumer and we have all of the frustrations on the outside because of it. I think this is an antibureaucracy bill.

Mr. HORTON. Thank you.

Mr. BROOKS. Thank you, Mr. Horton.

The Chair recognizes the gentleman from New York, Mr. Rosenthal.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

I do not have any questions. I do want to commend Ms. Peterson for her past work, her present activities, and for what we anticipate in the future. She certainly has been a leader in the consumer movement and has rendered an extraordinarily useful, important, significant service to the Government not only in the consumer field, but in related fields.

I want to congratulate you, Nancy, and Frank for being here. We appreciate your testimony.

Ms. PETERSON. Thank you.

Mr. BROOKS. Mr. Pritchard?

Mr. PRITCHARD. Thank you, Mr. Chairman.

Ms. Peterson, it is nice to see who is behind the voice that has been coming through the radio while I drive home at night.

[Laughter.]

Mr. PRITCHARD. Are you concerned about the Office of Management and Budget being able to review interrogatories.

When they review proposed interrogatories issued by the ACP, I guess you have to look at the man who is head of the OMB. How comfortable do you feel about this?

Ms. PETERSON. I am a believer in legitimate and workable checks and balances. I think that is one of the principles that we try to do. We try to make them not burdensome. We have to keep them efficient.

I know my own frustrations when I was in the Labor Department working to get information when one could not move it fast and the difficulty of that.

This is why I am anxious to consider what guidelines are necessary to move it. I think it can be done. However, I do like modest checks and balances along the way. I think it improves the efficiency, but we must see that they are not burdensome.

Ms. CHASEN. Mr. Pritchard, the bill also states that the ACP should not go directly to business through interrogatories when the information is available from another agency. There is a possibility, at least, that OMB will be familiar enough with the information gathering that is going on throughout the Government that they can perform a check in that area.

Mr. PRITCHARD. Ms. Peterson, you said the cost would be kept to a minimum by consolidating many existing consumer functions that are in other agencies.

Will people who have consumer functions in other agencies be either pulled into this Agency or no longer be needed?

Ms. PETERSON. I would visualize that we will look at those functions very carefully. We are beginning to do that. I personally feel strongly that it is good to have a consumer person within the various agencies. The difficulty with it is that that person very frequently is frustrated because they are blocked when the organization or the department chooses not to hear the consumer part.

Therefore, I do think it is necessary to leave efficient people and to have it tight what their responsibilities are in representing the consumer. But the advocacy, most of it, has to be moved to the ACP where there is independence from the various host agencies.

I have been around with this and I know the frustrations. When I was in the White House during the Johnson years, trying to work with the President's Committee on Consumer Interests, there would be agencies that would say, "This is the consumer interest but we cannot do it because it conflicts with the basic interests of the agency."

Again, ACP will make it so that there is not the frustration of not being able to hear the consumer voice. I think with reasonableness we can work out a good balance there.

Mr. PRITCHARD. I understand what you are saying. It is just that it is hard for me to see that there will be much cutting down.

Ms. PETERSON. There will be transfers and regroupings, as well as cutting back budgets of consumer-related programs that do not justify their costs. That is what we want to look at.

I know as a former administrator how much you can do if you have authority to move programs around. That is what we want to do. We want to use existing authority to streamline and to make consumer programs more efficient.

That is one reason I support the bill. I see this as a part of reorganization and reform.

Mr. MCLAUGHLIN. I would only add to that, Congressman, that, as you know, the Office of Management and Budget will conduct this review and will look at these positions very carefully. If the Office of Management and Budget decides that an advocate or complaint handler or some other function belongs in the Consumer Protection Agency and moves that function in position there, I think it is unlikely that OMB will listen very sympathetically to an agency's subsequent request to put that position back.

Mr. PRITCHARD. I have no further questions.

Mr. BROOKS. Thank you, Mr. Pritchard.

Mr. Conyers?

Mr. CONYERS. I join in welcoming Ms. Esther Peterson, friend of not only consumers, but of those who believe that citizens should have a greater involvement in the Government. Her return to Government circles has been widely hailed. No more appropriate person than yourself, Ms. Peterson, would be the proper party to begin the discussions on a Consumer Protection Act, the subject of which you and some of us have been working on for a number of years.

I am hopeful, as one member of this subcommittee, that this is one part of the reorganization plan of the President that can move ex-

peditiously through the various stages in the congressional process.

It seems to me that this is a very modest beginning. It certainly has been reworked to satisfy even the most alert Members of Congress who feared that consumers might somehow get too big a grip on Government, a notion with which I have always had some trouble.

In the city of Detroit consumers begin to wonder whether the Government will ever honestly address their needs. In the midst of all of these cautionary remarks about inflation, prices continue to go up. In the midst of all the warnings about the new kind of era of shortages that we are in, the consumer is apparently the last one considered.

I think your presence here today and the proposal as we are prepared to move it through this committee—and I shall work with the chairman thoroughly in this regard—is very reassuring.

I am hoping that we will not have to give up too much so that we have another nominal agency that is not going to function and that might ultimately disappoint many of the citizens who are hoping we would have an effective voice in Government at the very top level. I am hoping it will not be too weak. I will be watching as carefully as I can to make sure we do not give too much away.

Mr. Chairman, those are all of the comments I have to make. Thank you.

Mr. BROOKS. Thank you, Mr. Conyers.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Esther, let me welcome you here before our committee. We are very pleased to have you serving our President and one as able as you advising him. We appreciate your coming here this morning to present the administration's position.

Ms. PETERSON. Thank you.

Mr. ERLENBORN. I apologize for being late. I ran into the problem so many Congressmen do these days. I went to another committee that was holding important hearings. When I got there, one of the other members left and I found that my presence made the quorum. I could not get away until another member showed up and I could leave to come here.

Mr. BROOKS. We regret the delay because we missed your presence. [Laughter.]

Mr. ERLENBORN. I thought you seemed disappointed when I showed up, Mr. Chairman.

[Laughter.]

Ms. PETERSON. I have been around enough to know the facts of life around the Hill.

Mr. ERLENBORN. It is becoming difficult. As a matter of fact, my friend John Dent, chairman of the other committee, had to leave his own hearing. He announced he was not going to conduct any hearings any more because he could not get members to attend. They had so many conflicts.

I will admit not having had an opportunity to read your testimony because I was late. Also, I admit not having read the bill. I think the bill in printed form was not available until sometime during the district work period, sometimes also known as the Easter recess. [Laughter.]

Mr. ERLENBORN. I can only go by some of the general descriptions that have been given to me.

I understand, for instance, that this bill, as other bills that have been before this committee in the past, has an exemption for labor-related matters. In other words, something before the National Labor Relations Board would not be within the purview of the Agency for Consumer Protection—or is it advocacy?

Ms. PETERSON. It is protection in this bill.

Mr. ERLENBORN. It depends on whether you are in the Senate or the House; does it not? It must be difficult to keep track of that.

Ms. PETERSON. I am sure you will work that out in conference. It is negotiable.

Mr. ERLENBORN. I have observed the difficulty with this name, by the way. It used to be the Consumer Protection Agency, but CPA conflicted with certified public accountants. We changed it to Agency for Consumer Advocacy. I understand the Americans for Constitutional Action are unhappy about that. Now if we do use the Agency for Consumer Protection, it sounds OK until the American Communist Party finds out about it; then we will have trouble.

Ms. PETERSON. Then we would be outlawed, wouldn't we? [Laughter.]

Mr. ERLENBORN. Do you feel personally, or speaking for the administration, that it is justified to leave labor-management relationship matters out of the jurisdiction of the Consumer Agency?

Ms. PETERSON. I must say that I was not around nor was the President when those decisions were made. I look at it this way: It is a political decision that has been made. The President has not spoken on that with me. My general feeling is that it is something we will have to leave to the Congress to work out.

I want to look at it more closely and talk to some of the labor people. I know from my Department of Labor background that interference in the negotiating process by a third party before the NLRB is not permitted by the law, even in the absence of the exemption. The whole basis of that law was to see that the collective bargaining process could be carried out between labor and management without outside interference. The decision to include an explicit exemption issue was made by the drafters, as you know. We can talk with each other frankly about that.

Mr. ERLENBORN. I was reminded of this when, within the last couple of weeks in preparation for the Democratic mayoral primary in Chicago, there were negotiations by the meatcutters union relative to selling meat after 6 o'clock in the Chicago area. By chance, the night before the primary the decision was announced that we were going to be able to buy meat after 6 o'clock. Now this was the result of labor-management relations. I think it definitely impinged on the interest of the consumer; would you not agree?

Ms. PETERSON. Of course I agree. In fact, that case was around when I was in the White House, so I am familiar with it.

This is why again I say that, realistically, you and I know that a lot of these decisions are made on political considerations.

Mr. ERLENBORN. This also brings to mind the fact that there are many such decisions as the meatcutters' decision in Chicago that are not affected immediately by any Federal agency or Federal law. It is a matter which may be a State or local matter.

In the bill would it be possible for the Administrator of the Consumer Agency to, upon request of State or local officials, involve him-

self in some of these State and local matters that do impinge on the consumer but are not of direct Federal consequence?

Ms. PETERSON. ACP does not have the authority to move except where interstate commerce is involved, so there are constitutional requirements there. Whether they could do it upon request or not, I would have to ask the attorney about that.

Mr. MCLAUGHLIN. The bill that is before the House would preclude the Agency from being involved in a proceeding at the State level; but, as I read it, it would not preclude the Agency from making recommendations of a legislative nature.

I think you are talking about the city or the State or the county hearing. As I read the bill, the Administrator would be precluded from doing that.

Mr. ERLENBORN. What about the State legislature or the city council in considering legislative matters affecting the consumer? Could they request——

Ms. PETERSON. I think they can. I have had that experience during the time when I was previously in the White House for President Johnson. I was called by a State legislature asking if I would come to testify.

Mr. ERLENBORN. I could see a substantial number of matters that would be before State legislatures and city councils that would affect the consumer. Many of those local decisions will have an effect nationally.

For example, minimum wage determinations by State legislatures may affect the cost of goods that are sold in interstate commerce or services provided in interstate commerce. We find that State and local decisions may affect the question as to where things are produced.

We are also aware of the drain to the sunbelt States occasioned by right-to-work laws that make it more attractive for business to move into those areas where they may be more free of collective bargaining situations than they are in the non-right-to-work States.

If questions such as these come up and local officials ask for the advice or intervention or support of the Administrator, under the legislation he would be empowered to render that advice, would he not?

Ms. PETERSON. I think he could give information if he is asked to do so.

Ms. CHASEN. Congressman, in an earlier year on this legislation there was a section in the bill that authorized intervention in State and local proceedings, upon request. The consumer lobby worked very hard to keep it in. There was a lot of opposition to it, and it has since been dropped.

Under the present provisions of the bill, there is a prohibition against such intervention but that prohibition is not to be interpreted to mean that there can be no communication. A State or local official could ask the ACP for information or data. I do not know whether you put advice in that category or not. ACP could not, however, intervene or participate actively in a State or local proceeding.

Ms. PETERSON. It says in the bill that the Agency is restrained from intervening in State or local agencies or courts but is permitted to communicate with and provide them with information in accordance with the law.

You gave some examples. I also know from my experience within industry how many of the industry people have said, "Esther, when we have this regulation in Maryland and we have this regulation in Virginia and we have another regulation here"—I would hope that an agency could advise in some of these areas. I would hope there that we would have an opportunity for industry and consumers to go together where we find that these regulations really work to the detriment of both industry and the consumer.

It depends on the priorities that are set by the Agency. One has to be careful that you have priorities that are carefully set.

Mr. ERLENBORN. I have just one other question I would like to ask.

What role will you in the Office of Consumer Affairs be playing, as far as the legislation before us is concerned, as it moves through the subcommittee, the committee, and the House?

I am prompted to ask this question by the criticism of Secretary of Labor Ray Marshall in the activities that he undertook relative to the situs picketing legislation, which of course was highly controversial. In the Secretary's confirmation hearings in the Senate he was asked if he would take an active role. He said that he would not. In subsequent hearings after situs picketing was defeated on the floor, Mr. Ashbrook brought out in questioning Secretary Marshall that he did initiate phone calls to Members to advise them concerning the legislation. It would appear that he was playing the role of a lobbyist.

I have always understood that the law prohibited the use of appropriated funds and people who work for Federal agencies being paid by those funds from lobbying the Congress.

Is it your intention to avoid that sort of a conflict and to only respond, rather than initiate contacts and lobby?

Ms. PETERSON. Mr. McLaughlin says a lawyer should answer; but I may disagree with him, so let's hear what he says.

[Laughter.]

Mr. MCLAUGHLIN. Congressman, Ms. Peterson has been on full duty as of last Monday.

We will certainly scrupulously avoid involvement of Federal personnel or Federal funds.

Ms. PETERSON. But you asked me personally. Was your question directed to me as a person?

Mr. ERLENBORN. The Office of Consumer Affairs. Maybe we have the same kind of interpretation there that we have in Congress, that our employees on their own private time can do what they cannot do when they are working on our time. I do not know how you interpret that over at the White House.

Do you have any private time over at the White House?

[Laughter.]

Ms. PETERSON. Of course. Didn't you know that the President says he wants us to have private time? We hope to.

Let me just say this: This is Esther speaking from my own feeling. I feel strongly about this bill. It is an administration-supported bill, although it is not an administration-drafted bill.

The President wants this bill. I am part of his top team to work on this legislation. I would assume I would be just as active as I am now. I want to call on you. I personally want to call on Congressmen. I think this is part of my responsibility under our political system

as a representative of the President to present that point of view for the administration.

Of course, I will watch carefully, but I have been around a long time. This has happened in every administration, Republican and Democratic, where the people who are carrying out the policies for which they were elected make their views known on the Hill. It is up to you people whether you vote us up or down, but that is part of our wonderful system, it seems to me.

Mr. ERLENBORN. I know how strongly you feel because you have chided me in the past for my lack of support for this sort of legislation.

Ms. PETERSON. Maybe we will convince you this time.

Mr. ERLENBORN. Keep trying.

[Laughter.]

Mr. BROOKS. Thank you, Mr. Erlenborn.

Mr. Rosenthal?

Mr. ROSENTHAL. Thank you, Mr. Chairman.

There was one point that I wanted to comment upon.

Ms. Peterson, you said that the labor exemption was the result of a political decision. I do not think that that is accurate.

Those who have drafted this legislation—you, and I, and others included—recognize the fact that during the past 40 years that labor-management bargaining could not work effectively unless the parties were left to negotiate without generally outside interference. The role of the National Labor Relations Board—and I speak as someone who has some modest experience in this area—was created to protect employees' rights to select bargaining representatives without management interference to bargain collectively.

Beyond that, the NLRB does not have the authority to affect the actual outcome of the bargaining process.

Historically the Congress has studiously followed a course of noninterference with the free give-and-take collective bargaining between organized labor and business management. I just want that to stand on the record, that the decision to do this was based on recognition of 40 years of nongovernmental interference or involvement in the free give-and-take of the collective bargaining.

The role of the NLRB was designed to appoint by way of vote and otherwise the collective bargaining representatives. Similarly, the exclusion given to the Federal Mediation and Conciliation Service was designed that way because they are essentially a referee invited voluntarily by the parties to a collective bargaining dispute. This finely honed mechanism should not be disruptive or disturbed by the Agency's responsibility for consumer representation.

That has always been my view and the view of those who have been involved in the designing of this legislation. It was, to be very honest with you, not a political decision. There may well be political forces that agree or disagree with that decision, but the basis for the decision was what I just said.

Ms. PETERSON. I think maybe it is semantics a little bit on the use of the word "political." I will accept that if that is the case.

No one agrees more than I do that I want no interference in that collective bargaining area. I see that already written into the law as it exists.

Mr. HORTON. Would the gentleman yield?

Mr. ROSENTHAL. Yes.

Mr. HORTON. It is also my recollection that when this exemption was put in that it was put in at the request of industry.

Mr. ROSENTHAL. It was put in at the request of anybody who had any experience in the collective bargaining——

Mr. HORTON. This was not a labor exemption as such. It is a labor-industry exemption, so that Government does not become involved in the free collective bargaining between labor and industry.

Ms. PETERSON. I agree with that. I agree that we would want to keep that clear as the law is written.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you, Mr. Rosenthal.

Thank you, Ms. Peterson, for a very fine statement.

I want to thank your associates, Ms. Chasen and Mr. McLaughlin. We appreciate your being here.

I would ask you to submit specific language to carry out your recommendations that you made as to changes in the legislation.

Ms. PETERSON. Yes; we will.

Thank you all very much.

Mr. BROOKS. The Chair now recognizes Mr. John T. Miller, Jr., who is a distinguished member of the District of Columbia Bar and is past chairman of the administrative law section of the ABA. He represents President Justin Stanley of the American Bar Association at these hearings.

Mr. Miller, we are pleased to have you here. We appreciate your being here.

Without objection, we will accept your entire statement for the record. We would appreciate it if you would summarize.

We anticipate that we have another witness before noon and we have about 17 this afternoon.

STATEMENT OF JOHN T. MILLER, JR., PAST CHAIRMAN, SECTION ON ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION

Mr. MILLER. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you on behalf of the president of the American Bar Association.

I appeared before this committee some 4 years ago in support of similar legislation.

We are very much interested in this effort to improve the representation of consumer interests in administrative proceedings. Apart from supporting the general principles of the legislation, we would like to take a strong position on two matters.

First, we believe that the Administrator should not be left in the status similar to that of an amicus curiae. In order to participate where the rules and regulations permit as a party, he should be allowed full intervention and be allowed to control the course of his actions as any other party would.

The second area where we have expressed an interest actually involves a proposal that you change the legislation. This is a position we took last time. We believe that the right to judicial review on the part of the Administrator is one of this most important rights. As a consequence, we believe that his right to appeal to the courts should not depend on whether or not he participated at the agency level.

The legislation as we read it would require the court or permit the court to determine that an appeal under such circumstances would impede the interest of justice. This, we think, would burden the courts with a standard which is without meaningful criteria, which would burden the courts further. We think the courts can adequately protect themselves where the Administrator would appeal a matter which he should not have appealed. We think it is far better that he have a strong and clear right to appeal than this ambiguity that is in the legislation.

We believe the adoption of H.R. 6118 would materially improve the administrative process by facilitating agency and court consideration——

Mr. BROOKS. Mr. Miller, on that point, would you submit some language on that for us?

Mr. MILLER. Sir, it does not require any language. It simply, I think, requires a deletion of the role the court would play under section 6(d).

Mr. BROOKS. Do you think to eliminate that language would allow people to participate in the review without having been in the original proceeding?

Mr. MILLER. We support the notion that if he did not participate and the regulations require one to apply for rehearing before going to court, he should be required to take that step so that the Agency has an opportunity to correct errors before the court is confronted with the challenge. In the absence of that situation, he should be allowed to appeal without having to run a hurdle in persuading the court that he has a right to be in court, apart from the normal right of anyone seeking review of administrative action.

Mr. BROOKS. All right. Thank you. Go ahead and proceed with your summary.

Mr. MILLER. That, I think, concludes the statement, Mr. Chairman.

We think that the legislation would improve the administrative process. We believe that the consumer interests warrant this kind of protection and representation and that the administrative process will work better for it.

Thank you.

Mr. BROOKS. Thank you very much, Mr. Miller, for a helpful and informative statement.

Is it the position of the ABA that the Consumer Agency should be accorded full party status whenever others enjoy that role?

Mr. MILLER. Yes, sir.

Mr. BROOKS. Does this bill contain, in your judgment, adequate safeguards to prevent the Consumer Agency from becoming unduly burdensome on the business interest?

Mr. MILLER. We think so, Mr. Chairman, we do not think it would add burdens that are not already there. This does not create a role where there is not now a role of intervention on the part of some people who might be representing consumer interests. It would simply provide a more effective representation of those interests.

Mr. BROOKS. Thank you very much.

Mr. Horton?

Mr. HORTON. I have just one question, Mr. Miller. I do thank you for your statement. I know you have followed this legislation for a great number of years. I remember your testifying before us before.

How do you answer the question: Is this a regulatory agency?

Mr. MILLER. I think the person who poses the question has never appeared before a regulatory agency. This bears no relationship to any in my experience. It has no power to regulate. If one says that the enforcement of the laws and regulations that exist and anyone who participates in that is participating in a regulatory function, we are dealing with semantics.

Mr. HORTON. Thank you very much.

Mr. BROOKS. Mr. Rosenthal?

Mr. ROSENTHAL. I have just one or two questions.

I want to thank you, Mr. Miller, for a very, very lucid, important, and significant statement.

This position that you have enunciated here today, as I understand it, is the position of the American Bar Association, is that correct?

Mr. MILLER. Yes, sir.

Mr. ROSENTHAL. Thank you very much.

Mr. BROOKS. I want to thank you again for your participation and particularly thank you for being willing to go back and forth. They are having this same hearing in the Senate. You are getting a lot of exercise standing by there and then coming back over here. We appreciate your cooperation and so does Senator Ribicoff.

Mr. MILLER. This is the first time I have wished there was a subway between the buildings. [Laughter.]

[Mr. Miller's prepared statement follows:]

PREPARED STATEMENT OF JOHN T. MILLER, JR., PAST CHAIRMAN, SECTION ON ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION

My name is John T. Miller, Jr. I am a practicing attorney in Washington, D.C. and a past chairman of the Section of Administrative Law of the American Bar Association.

Three and one-half years ago I appeared before the predecessor of this Committee in the 93d Congress to express the American Bar Association's support for legislation establishing an Agency for Consumer Advocacy, or a Consumer Protection Agency as it was then called.[1/] My successor as Administrative Law Section Chairman (Acting) reiterated the ABA position in correspondence with the Committee the following year.[2/] I am pleased to return once again, at the request of President Justin Stanley of the ABA, to assure the Committee of our continued support for the principles which underlie the relevant provisions of H.R. 6118, the Consumer Protection Act of 1977.

H.R. 6118 would establish an independent Agency for Consumer Advocacy to participate on behalf of consumer interests in proceedings before other administrative agencies and on judicial review of other agencies' actions. At the 1972 Annual

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1/ Hearings on H.R. 14 et al. Before a Subcomm. of the House Government Operations Comm., 93d Cong., 1st Sess. 544-59 (1973).

2/ Letters from Marion Edwyn Harrison, Acting Chairman, ABA Section of Administrative Law, to Hon. Chet Holifield and Hon. Frank Horton, Committee on Government Operations, House of Representatives, March 14, 1974.

Meeting of the American Bar Association, the Association's House of Delegates endorsed in principle the enactment of comparable provisions in a Consumer Protection Agency bill then pending in the 92d Congress (H.R. 10835, 92d Cong., 1st Sess., as passed by the House of Representatives on October 14, 1971). The basis for our endorsement was our belief that such legislation would materially improve the administrative process by facilitating agency consideration of important interests -- those of the consumer as defined in the bill. We further applauded the bill's utilization of the scheme of the Administrative Procedure Act as the frame of reference for defining the role of the Consumer Protection Agency.

By creating an Agency For Consumer Advocacy with authority to intervene or otherwise participate in administrative proceedings before other agencies, and to seek judicial review of other agencies' actions, H.R. 6118 would similarly facilitate the consideration of consumer interests in administrative agency proceedings and thus, in our view, would materially improve the fairness of the administrative process. We are aware that H.R. 6118 differs in some respects from H.R. 10835 as passed by the House in the 92d Congress, as well as from the bills on which we testified in 1973, and we express no position on their relative merits. What we endorse is the fundamental principle of all these bills -- that an independent consumer

advocate should be established with authority to participate in proceedings before other agencies, including the right to intervene in appropriate cases, and with authority to seek judicial review of administrative agency action when necessary to vindicate the interests of consumers.

Participation in Agency Proceedings

There can be no dispute with the basic proposition that every administrative agency should be fully cognizant of the effect of its actions on the interests of consumers. Every agency is explicitly or implicitly required by law to act in the "public interest". Regardless of the particular aspect of public interest committed to its jurisdiction, an agency must also be concerned with the broader impact of its actions on consumers if it is to act in a sound and responsible manner. The American Bar Association believes that the Agency for Consumer Advocacy which would be created by H.R. 6118 would be an important aid to many agencies in considering consumer interests, and would be a vital source of protection for such interests wherever they might otherwise go disregarded or misunderstood.

We do not mean to suggest that the administrative agencies are presently insensitive to consumer interests, and our support of the principles underlying H.R. 6118 is not based on any lack of confidence in the abilities or dedication of existing agencies in carrying out their assigned responsibilities.

Rather, we believe that for many kinds of agency proceedings and activities, the growing complexity of the task of defining consumer interests, and of reconciling consumer interests with the over-all "public interest", requires new safeguards against actions based on inadequate information or superficial analysis.

The increasing (and increasingly accepted) efforts of consumer organizations to participate in a wide range of agency activities reflect a growing belief that administrative agencies are not performing adequately their assigned role of promoting the "public interest" insofar as consumer interests are concerned. We can well understand a reluctance of some agencies to permit the kind of participation in agency activities which has been sought, and their concern with possible loss of control over their own proceedings and with additional burdens on agency resources. We suggest, however, that the felt need for additional consumer representation can to a great extent be satisfied, without the adverse effects envisioned by some agencies, by means of a measure such as H.R. 6118.

There is an important role for an Agency for Consumer Advocacy even where another agency is charged with the protection of some specific consumer interest. Many administrative activities which are designed to promote a single consumer interest may at the same time impinge upon or conflict with other important consumer interests. Actions designed to increase product

safety may necessarily increase product price; actions intended to maintain low transportation rates may result in eventual deterioration of service; actions designed to relieve the energy crisis may directly reduce competition or harm the environment. Beyond such obvious conflicts and dilemmas are more complex and subtle interactions of discrete consumer interests which must be examined and weighed in order to ensure a sound resolution. Wherever such conflicting or overlapping interests are affected by a proposed agency action, the best way to assure that the action finally taken will serve the over-all interest of consumers is to provide an opportunity for effective independent advocacy on behalf of each of the interests affected.

The proposed Agency for Consumer Advocacy would provide such an opportunity. In formulating a position, the Administrator would consider all aspects of the consumer's viewpoint, and, in presenting the position to other agencies or on judicial review, his would be an independent voice on behalf of important consumer interests which might otherwise go unrepresented.

We stress that adoption of a measure such as H.R. 6118 will not and should not eliminate efforts by private organizations to play a constructive role in agency activities. Indeed, as recently as two months ago the ABA House of Delegates endorsed the enactment of legislation encouraging the participation of non-

governmental representatives in agency proceedings in areas of the law which Congress finds would benefit from increased citizen participation. Rather, we suggest that appropriate participation by an Agency for Consumer Advocacy in other agencies' activities will complement the need for private intervention of interests which would otherwise go unrepresented.

In earlier stages of the development of this legislation, there was substantial debate as to whether the Agency for Consumer Advocacy should be authorized to intervene as a full party in administrative agency proceedings, or whether it should be confined to the role of an amicus curiae. The American Bar Association believes that particular circumstances may well necessitate full intervention by the Administrator as a party if consumer interests are effectively to be represented. We therefore endorse the grant of statutory authority to the Administrator to intervene as a party in appropriate cases.

The central purpose of H.R. 6118 is to assure opportunity for effective representation of consumer interests where they are presently lacking. The procedural rights of parties to administrative proceedings, as spelled out in the Administrative Procedure Act, are those rights which Congress has deemed essential to enable a party adequately to develop and present his case. An amicus curiae, by contrast, has no such rights except as may

be conferred by the agency before which the proceeding is pending. If the Administrator of the Agency for Consumer Advocacy determines in a particular case that the effective representation of consumer interests requires him to act as a party rather than merely as amicus, he should be given the procedural tools to do his job.

In fact, many agencies are presently empowered to allow other governmental agencies to intervene as parties in proceedings before them, in the exercise of the host agency's discretion, and in some instances these agencies are required by statute to allow such intervention. Legislation such as H.R. 6118 would simply guarantee to the consumer's advocate the benefits of this well-established practice. The agency before which a proceeding is pending should plainly have the same power to regulate the Administrator's exercise of procedural rights which it has when a representative of some other recognized interest is concerned, and H.R. 6118 expressly so provides.[3/] But surely no greater power over the consumer's representative would be warranted.

Judicial Review

The American Bar Association also endorses the grant of authority to the Agency for Consumer Advocacy to initiate and participate in proceedings for judicial review of administrative

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3/ Section 6(a). See also Section 6(a)(2).

action affecting consumer interests. The right of participation in an agency proceeding, to ensure that consumer interests are properly considered, would be of little value without the complementary right of judicial review of the final agency action. Wherever conflicting interests must be reconciled in accordance with a statutory mandate, judicial review is essential to guard against arbitrary or unreasoned administrative decisions. This is no less so in matters involving agency resolution of conflicting consumer interests, such as where the agency itself is the proponent of one interest and the Agency for Consumer Advocacy intervenes to ensure consideration of another interest important to consumers.

The right to seek judicial review so as to protect interests within the safekeeping of the Agency for Consumer Advocacy may well be implicit in its authority in any event. As with intervention as a party at the agency level, there are ample statutory precedents for explicit recognition of that right, and in this regard H.R. 6118 is well within the mainstream of federal administrative law.

We also note the requirement in Section 6(d) of the bill that, where the filing of a petition for rehearing or reconsideration at the administrative level is specifically authorized by the host agency's statutes or rules, the Agency for Consumer Advocacy must file such a petition before seeking judicial

review if there was no previous participation in the proceedings. This ensures that every agency will have the same opportunity to correct its own errors as when private parties are aggrieved by agency action, and that the power of the Agency for Consumer Advocacy to seek judicial review will be exercised only where necessary.

The American Bar Association, believes, however, that the judicial review provisions of H.R. 6118 should be strengthened in an important respect. The Administrator's right to secure judicial review of agency action should in no way depend upon whether or not he participated at the agency level. As presently written, Section 6(d) would grant an unqualified right to judicial review of any final action that the Administrator of the Agency for Consumer Advocacy determines substantially to affect the interests of consumers, but only if he intervened or participated in the agency proceeding or activity out of which the agency action arose. The right to review in any other case (i.e., where the Administrator did not participate at the agency level) could be denied, under this section of the bill, whenever a court chooses to determine that the institution of a review proceeding by the Administrator "would impede the interests of justice."

While we do not believe that the Administrator should institute any judicial review proceeding that would in fact "impede the interests of justice", we believe that the incorporation of such a vague and confusing phrase as a statutory standard

is undesirable. This language provides no meaningful criteria for the courts to apply in deciding whether to allow the Administrator to institute a judicial review proceeding, and would be susceptible of the most capricious and rigidly exclusionary application. Moreover, the likely desire of the Administrator to avoid this potential barrier, of uncertain dimensions, to his opportunity for judicial review might lead him to file pro forma papers and appearances in all agency proceedings which look toward final actions he may subsequently wish to challenge in court.

The courts have ample authority to prevent abuses of the judicial review process, through such means as a remand for further administrative consideration, without the necessity for an "impede the interests of justice" clause such as in Section 6(d) of the bill. We therefore urge the deletion of this open-ended and potentially troublesome language.

Conclusion

The American Bar Association is convinced that H.R. 6118, as modified in accordance with our suggestions, would materially improve the administrative process by facilitating agency and court consideration of important consumer interests. We urge the prompt amendment and enactment of H.R. 6118 or other legislation embodying the same statutory principles.

Mr. BROOKS. The Chair now calls Mr. Richard Hatcher and Mr. John Krout.

Mr. Hatcher is an attorney in private life. He graduated from Valparaiso University Law School with honors. He practiced in East Chicago, Ind.

He was appointed deputy prosecuting attorney in Lake County and later was elected to the city council in Gary, Ind., the steelmaking center of the world; is that correct, mayor?

Mr. HATCHER. Yes, sir.

Mr. BROOKS. Mayor Krout operated an insurance agency in private life and has served as a member of the city council in York, Pa., prior to being elected mayor.

It is a beautiful city where they have a wide variety of antique American clocks. I have been there looking at them and your countryside, which is unique in this Nation.

You have had an outstanding record in civic affairs.

He is an active member of the U.S. Conference of Mayors.

Gentlemen, you both have statements. I think it would be appropriate to accept both your statements for the record and proceed to testify. If you both would like to summarize the main thrust of your feeling in this matter it would be helpful. We will have questions for you concluding that.

Mayor Hatcher?

STATEMENT OF RICHARD G. HATCHER, MAYOR, GARY, IND.; ACCOMPANIED BY BARBARA GOLDMAN, WASHINGTON REPRESENTATIVE, U.S. CONFERENCE OF MAYORS

Mr. HATCHER. Thank you very much, Mr. Chairman.

On behalf of the U.S. Conference of Mayors, I want to express my appreciation to the committee for the opportunity for myself and Mayor Krout to appear.

Each and every one of us is a consumer—spending a portion of our time purchasing in one form or another. Ironically, however, those of us who can least afford to do the buying end up paying higher prices for the identical goods, services, and credit enjoyed by our more affluent friends.

For too long these people have been without an advocate agency. Historically, they have watched the businessmen go to the Commerce Department, the banker to the Treasury Department, the farmer to the Agriculture Department, and the doctors to the National Institutes of Health.

Moreover, these and other special interest groups have powerful trade associations and business lobbyists to represent their views in Washington, D.C.

While this list could continue, nowhere would we see an agency expressly designed to respond to consumer concerns. Consumers have no agency, and only a handful of small, underfinanced consumer interest groups to represent their views.

Our Declaration of Independence calls for a government "of the people, for the people, and by the people." The Consumer Protection Act of 1977 is a conscientious attempt to bring truth to that phrase by creating an agency with a foundation, in large part, consisting of citizen participation and influence. This agency is sorely needed by

many of the citizens of my community, Gary, Ind., whose lifestyles are urban and whose incomes are marginal. And I know about the citizens of Gary. They are hardworking, proud people who for too long have viewed Washington, D.C., as the spokesman for the corporate interests while ignoring their interests.

As you may know, many studies throughout the last decade have shown that higher food prices are sometimes passed on disproportionately to the inner-city consumer who, oftentimes, could not even afford to pay the average food costs. Consequently, the basic nutritional needs and, therefore, the overall health of many of these people are often sacrificed.

In fact, Representative Benjamin Rosenthal, a member of this subcommittee, and one of the original authors of this bill, held hearings several years ago where it was demonstrated that the poor do pay higher prices for food.

In the past where have these complaints gone? Who listened to them? And what has been done to correct them? These questions, gentlemen, are left inadequately answered.

But basic consumer concerns are not limited to food prices as many traditionally believe. Two nights ago President Carter spoke of the increased costs for energy that will have to be borne by most Americans in the years ahead. We all consume energy, but the citizens of Gary can ill afford to pay more for such basic services. If these people are to pay higher costs for electricity, heating oil, and auto gasoline, they will want to make sure that others are making equally stringent sacrifices. If created, the Consumer Advocate Agency will be there to protect their interest before President Carter's new energy department.

Residents of Gary are affected by other actions of Federal regulatory agencies which impact upon a broad spectrum of their lives. For example, actions taken by the Interstate Commerce Commission in approving fare increases for interstate buses, or increasing railroad freight rates which, in turn, force up the prices for commodities shipped by rail.

Gary residents are concerned about decisions made by the Environmental Protection Agency. We all want clean air. But can poor people afford to pay for a catalytic converter that may cost more than the present value of their used cars? The Consumer Protection Agency will address such interests.

Who will speak for the children who live in dilapidated inner-city housing where the use of lead-based paint is prevalent? The Consumer Protection Agency certainly will have a key role here.

It is a fact that marginal income residents are victimized by lending institutions. Often they cannot buy a home because the banks will not approve their mortgage loans. And when they do get loans from finance companies, the interest rates are astronomical. These lending institutions are regulated by Government banking agencies, HUD, and the Federal Reserve Board. In the past these agencies have not dealt sufficiently with the needs of the poor. The Consumer Protection Agency can be the voice speaking out and letting these agencies hear the consumers' needs in addition to those of the traditional industry lobbyists.

In the past 8 years, these people have been our "forgotten majority": our senior citizens, our minorities, our women, and our youth. To them, Washington, D.C., is the "emerald city" in which policy is set and laws are made completely apart from their lives. Once the Consumer Protection Act of 1977 is enacted, such attitudes, hopefully, will begin to diminish. We will have an agency created and designed especially for their needs, interests, and concerns.

Gentlemen, I did not come here today to talk about an issue with which you are all too familiar—the plight of the cities' poor, aged, minorities, and youth. Rather, I came to express my endorsement of a bill which is a giant step in the direction toward helping to correct such plights.

As I see it, the Consumer Protection Act of 1977 sets out to accomplish several significant things:

First, it provides a more efficient and responsive Government by bringing under one umbrella those consumer-related activities now assumed by an inordinate number of Federal agencies. Hopefully, it will slice right through the redtape which in the past has slowed us down to less than a snail's pace when trying to work with our Government.

Second, it provides a mechanism for citizen participation. For too long citizens have been excluded, if not neglected, from actively participating in areas that directly affect and impact upon them.

Third, it provides the vehicle for informal dispute settlements which will invariably lead to satisfied merchants and consumers working out conducive arrangements for all parties involved.

Fourth, it provides a better climate for the honest businessmen. I notice that there are many business corporations here supporting this bill. Obviously, these people believe that their business practices will thrive and operate in a forthright manner once the harmful fraudulent companies' practices are driven out.

Fifth, it provides a central clearinghouse for consumer complaints and will see to it that other Federal agencies will properly and efficiently respond to them.

Finally, the consumers will be able to relate to Washington in a way which in the past has been alien to them. They will be able to look at their Capital and know that, in addition to their elected representatives, they have an advocate agency with the express purposes of protecting their inalienable rights.

In short, dozens of Federal agencies have major responsibilities which impact on low income urban consumers. These agencies are carrying out these responsibilities in an ineffective and low priority fashion. I would like to see a significant portion of the Consumer Protection Agency devoted to focusing in on the acute problems of the elderly, underprivileged, minorities, women, and youth who spend a disproportionate amount of their incomes on basic and essential consumer goods and services.

I cannot emphasize enough the need for expeditious action on this vital piece of legislation. This bill has led a tortuous path in Congress over the last 7 years. I urge the Congress to look favorably upon it and make the Consumer Protection Agency a reality instead of an annual discussion piece. Perhaps then we will be well on our way to making that familiar phrase "caveat emptor" a meaningless slogan.

Thank you very much.

Mr. BROOKS. Thank you very much, Mayor.

Before asking you a few questions, I would like to ask Mayor Krout to make his statement.

STATEMENT OF JOHN D. KROUT, MAYOR, YORK, PA.

Mr. KROUT. May I have that courtesy, please?

Mr. Chairman and subcommittee members, on behalf of the U.S. Conference of Mayors, I would like to take this occasion to personally thank you for the opportunity to publicly voice our endorsement for the Consumer Protection Act of 1977.

As the mayor of York, I represent approximately 51,000 people. I am particularly pleased that we at the local level have been asked to express our views about a bill which affects us directly as both local government officials and consumers.

According to a recent New York Times article, legislative bodies in the United States are passing approximately 600 new laws every day, and regulators are promulgating a plethora of administrative edicts. I would not even try to estimate the cost of Government regulation to the American consumer. The figure must be staggering.

To a great extent we have reduced the vitality of the system by excessive regulation. The Consumer Protection Act of 1977 is designed to breathe new life into our regulatory decisionmaking process. It will combat the stifling effect of regulation by bringing to bear the views of those who eventually must pay the price of regulation—the consumer, the small merchant, and local governments. In the past, these are voices which have not played a role in shaping Federal regulations. It is about time that they do.

This bill falls neatly in line with several Government reform programs about which we have heard recently. This new agency holds out the promise of genuine regulatory reform. It will allow the consumer's interest to be expressed equally with those who have traditionally been keeping high-priced lawyers and lobbyists in Washington. The Federal agencies that have long been captive of these industries will, at long last, be returned to the people.

The need for Government reorganization is also addressed by this Agency. Consumer advocacy functions are found piecemeal throughout Government with no real central focus, and no one set of priorities. The new Agency gathers these components together and places them under one roof.

And finally, the Consumer Protection Act of 1977 makes Government more responsive to the needs of its constituency—a familiar and noble refrain which has too long gone unheeded.

The Consumer Protection Act of 1977 establishes an advocate agency which will make our Federal regulatory agencies function more closely to the public interest. And yet, I have heard some opponents of the bill say that it creates just another bureaucracy. But in reality, I do not believe this has to be the case. Rather, it will be our voice—and by "our," I mean local government, small businessmen, and the consumer.

It is heartening to see our Congress making serious attempts to give consumers and small businessmen equal representation alongside big business, big labor, the AMA, and the agribusiness interests before their Government.

One of the major complaints we often hear about our federal system is the fact that there is an inordinate amount of redtape and duplication within our agencies in Washington.

Because the Consumer Protection Agency will have overview jurisdiction of consumer-oriented functions, much of the overlapping operations and activities will be eliminated. A coordinating and centralizing consumer complaint entity will cut through the duplication and redtape.

At the local level we are continuously falling victim to such duplication; thus making our intergovernmental network confusing, if not discouraging. At long last Congress is making concerted efforts to arrive at efficiency through centralization and through an Agency that will give us a say in shaping regulations before they are handed down by Washington.

Small businessmen are a crucial segment of our free enterprise economy. As our Founding Fathers had envisioned them, they are valued in our society as the link with our Nation of farmers, craftsmen, and entrepreneurs. They are our link with the past and they offer hope for the future.

The Consumer Protection Act of 1977 acknowledges and respects their valuable contribution to our economy by exempting small business from any compulsory data production requirements.

I would fully expect and encourage the small businessmen of our country to utilize the services of the CPA for the purpose of eliminating inflationary and inefficient decisionmaking in much the same way as individual consumers will.

Quite often, the term "consumer protection" frightens away our local merchants. By encouraging the development of informal dispute settlement procedures involving consumers, by giving the party complained against 60 days in which to comment, and by not "requiring" the production of information by any small business concern, the Consumer Protection Act of 1977 sets out to alleviate such fears.

Earlier this year, the U.S. Conference of Mayors completed its preliminary study of examining local initiatives in the area of consumer education. The recommendations in that study are indeed timely. The conference noted that at the present time there exists no central or single agency to which mayors and their cities have easy access. The Consumer Protection Agency is a step in the direction for providing such a service.

I need not tell you about the desperate fiscal straits facing cities today. The Conference of Mayors determined that if mayors are to implement workable consumer-oriented programs on the local level, adequate funding must be made available—at least in the form of seed money. Again, the CPA is one step in the right direction for meeting this need.

The study also noted that a mayor's consumer program must reach the entire citizenry in each city. This act clearly addressed a diversified constituency.

As a locally elected official, I am accountable to each and every resident in the city of York, Pa. As adults, you and I have a dual responsibility: One, we must help prepare young adults for assuming roles of leadership and responsibility; and, two, we must protect our senior citizens who once prepared us for our present roles.

If enacted into law, the Consumer Protection Act of 1977 will greatly assist in achieving these tasks by protecting and promoting all of our interests. I sincerely hope that the Congress recognizes this need by establishing the Consumer Protection Agency. There can be no more important goal to achieve than a national policy on consumer rights. This is, indeed, an area "whose time has come," and where government at all levels must respond.

Thank you.

Mr. BROOKS. Thank you, Mayor Krout.

Both of you mayors do an exceptionally fine job of delineating a sincere interest in legislation that will help the public. The public that needs help in the worst way.

Mayor Hatcher, I have a question for you. Do you believe the creation of a Consumer Protection Agency will help to restore the confidence of the people of your city in their Federal Government?

Mr. HATCHER. I think, Mr. Chairman, it will go a long way in accomplishing that.

We have established a local consumer protection agency in Gary that is not a regulatory agency, has no regulatory authority, but it does act as an advocate for consumers. It has gone a long way, I think, in reestablishing some confidence in the local government. Our problem, of course, is that it has been a stepchild in terms of finding the money to fund it.

I believe a Federal agency such as the one under consideration here certainly will help considerably in reestablishing greater confidence on the part of the people of Gary, Ind., in the Federal Government.

Mr. BROOKS. Thank you.

Mayor Krout, do you feel that the creation of an Agency for Consumer Protection is perhaps the best way to insure that the regulatory agencies consider the interests of consumers before reaching their decisions which affect consumers?

Mr. KROUT. I would hope that it would, Mr. Chairman, yes.

Mr. BROOKS. Thank you.

Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

I, too, want to thank both of you mayors for taking the time to come and testify on this important legislation. I think it is important to have your testimony.

I assume from the statements that you have made that you are speaking not only on your own personal behalf as mayors of the cities you represent, but you are also speaking on behalf of the National Conference of Mayors; is that correct?

Mr. KROUT. Yes.

Mr. HORTON. In other words, the National Conference of Mayors is supporting this legislation?

Mr. HATCHER. I think that is a safe assumption to make, Mr. Congressman.

As you know, the U.S. Conference of Mayors represents cities of 30,000 or more, and there are some 500 cities in the Nation that fall into that category. We are here as representatives of that organization.

Mr. HORTON. I saw the effect of the support of the National Conference of Mayors in the last Congress when they supported revenue sharing. They put forth a tremendous effort. I want to commend them

again for that type of support. I hope the same support will be forthcoming for this legislation.

As a matter of fact, without telling you what to do, I would hope that the Conference of Mayors would pass along to the other mayors, members of the conference, the statements that the two of you have made because I think they are excellent statements.

In the one instance, Mayor Hatcher, you have indicated a number of instances in which the Consumer Protection Agency could be of great help to your city, and that is true of other cities.

The city I come from, Rochester, N.Y., is a member of the Conference of Mayors. My mayor, Tom Ryan, has been very active in it, as have other members of the Rochester City Council. I know that they are very interested in Federal legislation.

I am sure if the members of the conference received a copy of your statement and a copy of the statement of Mayor Krout that they would look it over very carefully and it would cause them to get in touch with their Congressmen, and that is what we are going to need to get this bill through. A lot of Members of Congress are not aware of one fact that both of you have stated today. Both of you have said that this is not a regulatory agency.

Here is an article by James Kilpatrick in which he talks about it being another layer of bureaucracy. One of the opponents lists it along with other Federal alphabet soup and then they talk about regulatory agencies—the CAB, the Consumer Products Safety Commission, the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Federal Energy Administration, the Federal Trade Commission, and the Occupational Safety and Health Administration.

It is not that type of an agency, but they are using the unpopularity, if you want to call it that, of those regulatory agencies to create the impression that this is going to be a regulatory agency and therefore you should oppose it. A lot of Members of Congress will buy that argument, so it is very helpful, I think, for the purposes of this bill for your statements to be made available to the mayors around the country; then the members of the conference can get in touch with their Congressmen to tell them just what this bill is because I do not think I have seen it summarized any better than the statements that the two of you have presented to us here.

Whatever you can do personally and whatever the Conference of Mayors can do to get across the information that you have presented to us today, I think will be very helpful to the final result. You have got to get in touch with the Congressmen and let them know what you think about this bill. That would be the most important thing you can do.

Mr. KROUT. Mr. Congressman, we appreciate your bit of direction there. I guess, more importantly, it is encouraging to Mayor Hatcher and I to know that a Congressman knows what is happening in his city of Rochester. That is extremely important to us as mayors. Sometimes we get the feeling that we are left there all by ourselves. It is encouraging that the members of this subcommittee do know what is happening in the cities that they represent in their districts regarding consumer affairs and many other crucial issues that face us.

Mr. HORTON. Thank you very much.

Mr. BROOKS. I do want to point out that this is a very fine indication of bipartisan support for this legislation.

Mayor Hatcher is a brass-collar Democrat, as they say, and well known throughout the United States as a Democrat.

You, Mr. Krout, seem to be a very decent and perceptive Republican. [Laughter.]

Mr. KROUT. There are a great number of us, Mr. Congressman.

Mr. BROOKS. You know, I like Republicans more the further they are away from my district. [Laughter.]

Mr. KROUT. I said that same thing in my town only I used a different phrase.

Mr. HORTON. I like Democrats to vote for me. I get a lot of support from Democrats. I tell them I do not care what party they belong to as long as they vote for me.

Mr. BROOKS. I would suggest that you might want to talk with Mr. Erlenborn. You may not have heard his comments, and he might benefit from some input you might have for him.

Mr. Rosenthal?

Mr. ROSENTHAL. I have no questions, Mr. Chairman.

I want to commend both of you for very perceptive and very thoughtful statements. We are grateful to you for appearing before the subcommittee and for endorsing the bill.

Mr. KROUT. Thank you.

Mr. HATCHER. Thank you.

Mr. BROOKS. We thank you and appreciate your participation here.

Mr. KROUT. Thank you.

Mr. HATCHER. Thank you, Mr. Chairman.

Mr. BROOKS. Our next witness will be Ralph Nader, who is known as a champion of consumers who has worked and published in that field for many years. He believes in fighting for them but does not believe in consuming very much.

[Laughter.]

Mr. BROOKS. He has taken on giants of industry and of Government and has lived to tell his story.

He has advocated a Consumer Protection Agency for many years and has appeared before this committee a number of times in behalf of that cause.

He began as a consumer advocate for food, and he thought he was going to be defending the consumer interest in walking canes and wheelchairs before he got it passed.

We are pleased to have you with us. It is good to see you again, Mr. Nader.

I yield to Mr. Rosenthal.

Mr. ROSENTHAL. Thank you very much, Mr. Chairman.

One of the things you left out in that very short biography of Mr. Nader is his very poor performance on "Saturday Night Live." [Laughter.]

Mr. BROOKS. I would not have said that.

Mr. Nader, we are glad to have you here. Do we have a copy of your statement?

Mr. NADER. It is orally delivered.

Mr. BROOKS. It is just all spontaneous right straight from the heart, is that right? Straight from the heart.

You are recognized and may proceed.

STATEMENT OF RALPH NADER

Mr. NADER. Thank you, Mr. Chairman and members of the committee.

I was very interested in observing the opposition by the usual trade associations to this legislation again this year. It sounds as if they are going to rev up their constituency once again, even though the likelihood of this legislation finally being enacted in its eighth year of deliberations by the U.S. Congress is virtually certain, not only because there is a congressional majority behind it, but, of course, because President Carter has strongly endorsed the concept most recently in his consumer message to Congress.

I have some material I would like to submit for the record reviewing the evidence for the Agency for Consumer Advocacy which has been made over the years. I do not want to take the committee's time in going through all of the examples of agency and departmental derelictions——

Mr. BROOKS. Without objection, we will accept those for the committee.

Mr. NADER. Thank you.

These derelictions have demonstrably harmed the health, safety, and economic interests of consumers.

Mr. Chairman, your experience with the Federal Aviation Administration illustrates just one institution that could benefit from the intervention and appeal powers of the Consumer Protection Agency.

For several years the FAA has had pending and has been deliberating on the questions dealing with fuel tank explosions and fires on commercial aircraft and the problems dealing with the release of cyanide and carbon monoxide gases from the artificial fabrics in the seat cushions and carpetry which have affixiated passengers in survivable airplane crashes——

Mr. BROOKS. Their packaging requirements are rather loose.

Mr. NADER. And, of course, their packaging requirements such as the very poor anchorage strength of the seats, which are less than half as strong in aircraft as they are in your automobile.

Some of these proceedings have been pending now since 1969. Even if there are disasters such as the Canary Island disaster where about three-quarters of the people could have been saved if they had not been burned to death or gassed to death in a collision on the ground—those people who otherwise would have survived—still the FAA sits around.

What it needs is a Consumer Advocacy Agency with scientists, engineers, and lawyers who can challenge formally these delays, contribute technical expertise, and take the FAA to court.

Your oversight of the FAA is a perfect example of how the Agency for Consumer Advocacy would complement congressional efforts at oversight. You have hearings; they come and testify; you interrogate them; their miserable record is on the record; and then they go back to the agency knowing that there is not anybody that is going to jump on them day after day and haul them into court.

Mr. BROOKS. Mr. Nader, I want to say that we have changed that policy. I now operate on the theory that investigative committees like Government Operations should have hearings, investigate agencies,

reflect what the sorry facts are, and then, instead of just announcing it and getting some publicity and bringing it to the attention of people, I now have a policy of bringing that information on a bipartisan basis to the Appropriations Committee and to the legislative committee. There is a strong effort made to cut their appropriations and to harass them on their appropriations—either cut them, eliminate them, or earmark them, restrict them—and also enact legislation that will change or alter their lifestyle.

I think this has been a much more effective way. Otherwise, as you say, they come down and testify on their sorry record, and it is sorry in many instances, and then really nothing is done about it. Everybody knows about it and they keep right on doing it.

Mr. NADER. That is a very significant advance, one which I hope the Senate will emulate because the Senate has not been very vigorous in extending the findings of the investigative committee over into the Appropriations Committee.

I would hope in the interest of a full record that Congressman Rosenthal would assemble many of the findings that he has brought together over the years about the way consumer interests are being harmed or run roughshod over by regulatory agencies that are indentured to the regulatees.

I would hope that the record reflects many examples and many case studies to make a formidable and irresistible document in the final report to the floor of the House. I say this because there is a tendency, after 8 years of deliberating this bill, for the supporters to come forward with it as if it were revealed truth. It is about as close to revealed truth as one can expect of congressional legislation, but it would help for the doubters and the pendulum swingers in the House of Representatives to have an impregnably concrete case of fact, fact, fact, whether it is drugs, cosmetics, flammable fabrics, pesticides, aviation, auto defects, or any of a whole host of other subjects that beg for prudent and just consideration by the departments and agencies of Government but did not receive such prudent and just consideration.

H.R. 6118 is a bill which reflects a good deal of honing and a good deal of deliberation and refinement by Members of Congress, members of this committee, and staff. I do have some comments, however, to make about some sections that I think need to be altered or deleted.

First, I think that on page 31 and page 32, under "Exemptions," that the exemptions for agricultural proceedings affecting the market price of loans, et cetera, for raw agricultural commodities and programs administered by the Soil Conservation Service, the Farmers Home Administration, et cetera, or any Public Law 480 programs, or the Nuclear Regulatory Commission, need reconsideration.

Perhaps there can be some case made for raw agricultural commodities, although I would not agree with it, but there can be some case made for that. I do not think, however, a case can be made for the Soil Conservation Service, the Farmers Home Administration, Rural Electrification Administration, or the Federal Crop Insurance Corporation. Particularly and no case can be made for the Nuclear Regulatory Commission.

The Nuclear Regulatory Commission regulates a service. It is called the production of electricity from nuclear powerplants. That service is fraught with peril, waste, and subsidy and should not be exempt from the purview of the consumer advocacy legislation.

Second, the committee might want to consider whether if on request by State and local agencies the Federal Consumer Protection Agency should be able to participate in their proceedings in addition to submitting statements. This still leaves it up to the Federal agency to say no and to say that they are willing to submit written statements; but I have spoken with many State and local officials who say that not only would some of the already assembled technical expertise of the Federal agency be helpful to them, but also that it would bring to the grassroots the model at the Federal level for an emulation at the State and local level.

Already the New Jersey Department of the Public Advocate has a consumer advocate wing to it. It would certainly help the spread of this concept at the State and local levels if there was an occasional presence at the local and State levels by the representatives of the Federal Consumer Agency on request by these same State and local officials.

Perhaps the committee might want to deliberate loosening that up a bit from its present state.

I notice also that there is in section 23(a) of the bill a termination. I guess this is the so-called sunset provision. There is a termination provision by 1985, "and the Agency for Consumer Protection shall be abolished."

I have trouble with sunset provisions for a number of reasons, but principally because the agencies that are likely to be abolished or curtailed in a sunset proceeding before the Congress are the agencies that do not have organized and well-financed constituencies. You can put a sunset provision for the Maritime Administration in, and no way is the Congress going to abolish the Maritime Administration, given the force of maritime industry and maritime labor; but the Consumer Agency will be vulnerable to that kind of counterattack. If it does not get abolished outright, it might get severely weakened precisely because it was effective and efficient in fulfilling the mandate of Congress between now and 1985.

I would suggest that that provision be deleted. I would suggest that the reauthorization periods are sufficient to review whether this Agency is worth keeping or not.

I think also the House bill needs to be commended for not including the broadcast license renewal exemption that the Senate bill includes. There is no reason why the Consumer Advocacy Agency should be prohibited from participating in FCC proceedings regarding broadcast licensing for radio and TV stations. The only reason for that provision in the Senate is the power of the radio and TV industry. There is no other reason. It cannot withstand critical scrutiny at all.

Once you start the exemption list, then there will be amendments on the floor from various special interest groups saying, "You exempted agriculture; why not exempt us?" It is very hard to withstand that, particularly when there is not a strong concern against further exemptions on the floor in contrast to the strong advocacy by special interest representatives for these exemptions.

Senator Stevens from Alaska, for example, in the last few seconds of deliberations of the bill on the Senate floor in 1975 exempted fisheries. He was concerned about Alaska fisheries so he just put in an amendment. It was passed by voice vote, like a roar, and a great deal

of protein in this country was exempted from the Consumer Advocacy Agency.

I think we should be very cautious about exemptions. It also generates cynicism toward the bill, which the corporations are quick to take advantage of.

The President has indicated that, through Esther Peterson, his Special Assistant, the proposed interrogatories which would be issued to companies by the Consumer Agency would be cleared through the Office of Management and Budget. I do not think this is wise.

I do not know the reason for that sudden change by the White House; but, given the OMB's record in clearing questionnaires sent by other agencies over the years to corporations, it does not inspire confidence that there is going to be anything other than a heavy industry tilt to the clearance process by OMB.

Of course, Burt Lance is not known to be a vigorous consumer advocate, although we always raise the hope of redeeming him to the cause.

Mr. BROOKS. Don't you think you ought to have a little more faith in their advocacy of consumer protection by the administration and give President Carter the benefit of the doubt? President Carter and his administration appointed Esther Peterson. They have said they are for it. They sent a message for it. I think we ought to be a little more tolerant and charitable about their attitude and not be quite that suspicious. You are being a little hard on them, don't you think?

Mr. NADER. I cannot believe that is you talking, Chairman Brooks.

[Laughter.]

Mr. NADER. Unless it is an attempt at subtle humor.

[Laughter.]

Mr. BROOKS. No, no, no, no. I mean give them a shot at it. Give them a shot. Have a little faith, Ralph.

Mr. NADER. First of all, the legislation is being drafted for not only the Carter administration, but for the post-Carter administration, so we do not know what is coming afterwards. Imagine if another Nixon or Ford came in, it would be fairly hostile to consumer interests.

Second, the OMB has a sort of life of its own. At the top may be Burt Lance, an ex-banker; but at the lower levels of the bureaucracy they have a long tradition of knocking out important questions that regulatory agencies send to any more than 9 or 10 respondent companies.

Of course, you must know the work that some Members of Congress have done in this area, particularly Senator Metcalf in pointing out how OMB's Advisory Committee on Questionnaires was staffed by the very company and industry representatives who were to receive these questionnaires.

I would be quite cautious and draft legislation for the ages rather than for the admittedly optimistic horizon that the new Carter administration has etched for consumer justice in this country.

The President apparently would like to remove the Administrator of the Consumer Agency at will, similar to his right to remove a Cabinet Secretary at will. The present legislation has, I believe, a fixed term of office. Am I correct in that?

Mr. ROSENTHAL. No.

Mr. NADER. You have removal at will?

Mr. ROSENTHAL. It is at the pleasure of the President.

Mr. NADER. At the will of the President.

The Senate has a fixed term of office, removal-for-cause provision.

Again, if you are just worrying about the Carter administration, maybe you would have removal at the will of the President; but if you have someone who is not very consumer sensitive at the helm in the future, you may think it very desirable to have that insulation of a coterminus term removal only for cause.

I wonder how many good chairmen of the regulatory agencies would have survived the past administration if you had removal that could be so easily installed. As a matter of fact, in some of the agencies the good people at the top are removed the minute the new President comes on; while in some others, like the Federal Reserve, of course, there is no possibility of removing the chairman at will.

There are a number of other quick points I would like to make. Maybe there should be a little more emphasis in the hearing record on how farm consumers and small businessmen would be benefited from this bill.

I know the Federation of Small Business came out against the bill this morning at the Senate, but I still maintain that in many cases the small businesses are subjected to deceptive practices and antitrust violations by big business, but this Agency is not only going to defend consumers, but small business interests.

Concerning many of the intolerable one-sided franchise contracts, which have led to such dealer day-in-court acts, the Consumer Agency would want to redress the balance between the small business franchisee and the large business franchiser.

As far as farmers are concerned, there is a tendency to pit farmers against consumers on many of these issues, but we know that farmers would be protected by this agency in the sense that they also consume harmful pesticides, high interest rates, defective farm machinery, price-fixed fertilizer, and other ingredients that go into their business which consumers in a nonbusiness household way would also be consuming.

So we should emphasize the help that those two interests would receive on many occasions from the Consumer Agency activity.

The traditional objections to this legislation by industry and commerce, of course, have been dealt with repeatedly in statements by Congressman Rosenthal over the years, detailed statements, as well as by Congressman Brooks and other members of the committee. There is no need to repeat them. There is a mimeographed quality to these assertions that display not only tired, but hopefully defeated, positions that have for so long delayed this legislation.

Perhaps Members of the House may be interested in knowing that the consumer advocacy bill in the Senate has been subjected to more filibuster votes than the Treaty of Versailles. It holds the all-time historic record, thanks to Senator Allen, who unfortunately was not at the hearing today. I missed him. Perhaps he is preparing for his next filibuster against the bill.

There is also an example I would like to give that illustrates perhaps one of the most important points as to why this Agency is needed. In Washington there are two concentric circles of advocacy, promotion, and subsidy for business and industrial interests. On the one hand we have the trade associations and the corporal law firms fully equipped and financed with tax-deductible expenditures to advance in Govern-

ment the interests of the steel industry, the auto industry, the drug industry, the food industry, the apparel industry, and other industries in lines of commerce.

Second, we have the inner concentric circle which consists of the departments and agencies of Government whose stated mission is to advance, promote, and subsidize the interests of special corporate bodies or industries.

The maritime industry does it with over $1 billion a year. The Department of Commerce does it with over $2 billion a year. The Department of Agriculture does it with large amounts of money. The regulatory agencies have dual safety and promotional functions, promotional functions, for example, by the FAA. So they have their internal advocates.

Let me illustrate that it is not only a unilateral advocacy by the Department of Commerce, but it is also a lateral advocacy. On March 21, 1977, the "Wall Street Journal" noted that the Commerce Department had intervened before the Federal Trade Commission on behalf of Borden, Inc., concerning a case that would require Borden to license other companies to make and sell Borden's "Real Lemon" under the "Real Lemon" name. The Government, in effect, insured through the Commerce Department that the business interest was developed and considered by the Federal Trade Commission because of the intervention by the Department of Commerce. That is an illustration of a lateral intervention which points home again, and in a recent fashion, how many billions of dollars of the taxpayers' money are spent in these Federal agencies and departments to subsidize, promote, and advance the interests of business interests.

Yet business is opposing a $15-million-a-year agency that will not subsidize, but only advocate, the interest of 200-million-plus consumers in this county. Never has there been a greater act of presumptive arrogance. I use those two words with the full redundancy that they entail. It is presumptive arrogance of big business that says, "Billions for us in Washington to subsidize our inefficiencies and greed, but not 10 cents per American consumer to defend the rights of consumers in their health, safety, and economic justice."

This is not to increase the profits of consumers as the Department of Commerce is designed to increase the profits of industry, but to defend the rights to live in safety, health, and a reasonable amount of economic justice.

Those of us who are able to step back and look at this phenomena concerning the struggle over this consumer bill for 8 years with some historic perspective can conclude that historians will record this struggle as one of the most outrageous misuses of business power that has ever confronted the Congress. This opposition is also full vindication of the wisdom of Congressman Rosenthal in fusing the advocacy approach in first framing this legislation over 8 years ago instead of choosing a composite Department of Consumer Protection regulatory approach.

I do want to take a moment to commend the Representative from New York for doing such a persistent job in upholding this legislation without in any way detracting from the supportive efforts of the Representative from Beaumont, Tex., whose chairmanship and supervision of this legislation has been unfaltering, even though he kids a lot about it.

[Laughter.]

Mr. BROOKS. You want to include the dedicated support of our ranking minority member, Mr. Frank Horton.

Mr. NADER. I was just getting to that.

I believe one of the last times I was here testifying, and this is like a reunion for this bill, I had a rather sharp exchange with Congressman Horton; but since that time he has become not only an outstanding supporter of this consumer advocacy bill, but a person who has tried to persuade other members of his party to support this bill. It is one thing to support Democrats and try to persuade Democrats, but it is another thing to try to persuade Congressman Erlenborn, and I do not think anyone has succeeded in doing that.

Mr. HORTON. If you would yield, I might also say I did try to persuade President Ford, too.

Mr. NADER. Exactly. I was just going to say that both of us know that last minute attempt in 1974 when the bill had passed both Houses of Congress—let me correct that. I do not think it had passed the Senate, but it would have passed the Senate and broken the filibuster if President Ford had spoken out.

President Ford, when he was a Congressman, supported the consumer advocacy bill when it passed the House in 1971 with these memorable words—

> . . . it is a sound, workable bill. . . . I think we will be well on the road to good legislation in the consumer area.

Mr. BROOKS. They are not memorable now.

[Laughter.]

Mr. NADER. I do not seem to have the words right here. The words were in effect that this is sound, workable legislation and it is going to help the consumer.

Mr. HORTON. We have improved it since then.

Mr. NADER. It has been improved since then, and he did not come out with it in 1974 and then became even more hostile in 1975–76.

Mr. BROOKS. We have a couple of questions that I want to ask you before we adjourn at 12:15.

Mr. NADER. Please start now, Mr. Chairman. I am finished.

Mr. BROOKS. Why cannot the private groups, such as Congress Watch, the Consumer Federal of America, and the National Consumer League, just to name a few, or your own organization—why cannot they adequately protect the interest of the consumers?

Mr. NADER. Well, one is that their resources are very limited. Second, they do not have governmental powers. Third, they do not have the access to other agencies' information and subpena power that the Consumer Advocacy Agency has.

Mr. BROOKS. Would you comment on the labor-management relations exclusion provision of H.R. 6118?

Mr. NADER. That is a red herring. It really is hardly needed, except to assure some members of the labor union community that some future administration would not misuse the absence of a clear-cut deletion of labor activities involving the NLRB and the Federal Mediation Service from the purview of the Consumer Agency.

The Consumer Agency can only act as an attachment force to existing regulatory authority. There is no regulatory authority in our Government decreeing the substance of management-labor agreements.

The NLRB and the Federal Mediation Service provide mediating service and procedural requirements for fairness. They do not say to the steel unions or the auto unions, "You have to settle for less." They have no authority.

That pulls out the ground from any jurisdictional touchstone for the Consumer Agency. So the Consumer Agency simply could not act even if it had these two agencies listed under its jurisdiction, simply because the two agencies themselves cannot affect the substance of labor-management agreements.

I must mention that basically business itself supports this provision. I think in a testimony before this committee Congressman Horton elicited support for it from some of the business representatives; but then they turn around and make it into a red herring to try to put some Members of the Congress on the defensive.

By the way, the reason why business likes this provision privately is because it does not get the Consumer Agency on its back because labor-management involves management as well as labor in terms of negotiations.

It is a red herring. It is a harmless provision. I think it should stay in there.

Mr. BROOKS. The gentleman from Florida, Mr. Fuqua.

Mr. FUQUA. Thank you, Mr. Chairman.

Mr. Nader addressed himself to one of the questions that I had because I think this bill is similar to the one that we had last time that is a piece of Swiss cheese. I think if we are going to have a consumer advocate, then it should include everybody. We exempt agriculture or agribusiness. We exempt labor. I think those things very directly affect consumer advocates, whether it be a milk marketing order or whether it be an NLRB decision or arbitration where the Mediation Service is working. That could very well affect the consumer.

The President had a question the other day about whether to impose import quotas on shoes. How would you think an advocate should work in an area like that category if it is, for example, before the Tariff Commission?

MR. NADER. There are clear-cut issues for the Consumer Agency that are pretty easy when there is, for example, business fraud. No consumers have interest in business fraud.

The international trade issue is more complex because you have on the one hand workers who may lose their jobs; on the other hand you have consumers who may have to pay higher prices.

As I would envision the Consumer Agency, they would balance these out and they would come in with their recommendations. For example, they might recommend minimal quotas rather than very high tariffs. They might recommend a transition period. They might recommend just the facts of the matter without coming to any conclusion. They might say, look, here is all of our data concerning consumer interests here. We do not think we can come to a conclusion one way or the other but we would like to have you consider the consumer perspective.

It depends. It depends on the subject. It depends on the rate of increase of imports.

For example, the Consumer Agency might say something that no one has pointed out. They might say that the imported shoes, let's say, are much shoddier.

Let's just take something hypothetical. For instance, imported toys tend to be more dangerous in some respects than domestic toys.

It is a deliberative process. Some of these issues are not clear cut and they have to be subjected to judgmental gradations. Others, of course, are. No one really has an interest in not trying to get 3 million cars recalled that have demonstrably defective brakes.

Mr. FUQUA. The other day the gentleman was testifying—I think he was from the Sierra Club—on energy reorganization. He mentioned the fact that he thought environmental and consumer issues could very much be diametrically opposed to each other. How do you arrive at what is the public interest if there is a case involving an environmental issue that might cause consumers to pay, say, more for their electricity?

Mr. NADER. I do not share the intensity that some environmental groups describe as to conflicts between environmental and consumer interests. It is often a conflict between a consumer economic interest up against a very serious consumer safety interest. Between the two, I think that the consumer safety interest is paramount.

We are dealing, for example, with the contamination of drinking water in this country. It is going to cost the consumer more to clean up the drinking water. To me, cleaning up the drinking water is far more important. If there is anything the consumer should spend money on, it is to advance health and safety.

Second, many times the alleged cost of environmental controls are nowhere near as high as they are made out to be by industry. The cost to industry, that is.

First of all, they do not often tax out their expenditures. There are a lot of tax credits and accelerated depreciation, et cetera. Second of all, they include in the environmental cost replacement of old equipment that only partially has an environmental component to it.

Mr. FUQUA. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you very much.

Thank you, Mr. Nader.

[Additional material submitted for the record follows:]

APRIL 25, 1977.

Hon. JACK BROOKS,
Chairman, Government Operations Committee, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN BROOKS: Enclosed are the materials which I would like to have inserted in the record to complete the testimony I presented to your committee on April 20, 1977, in support of the Agency for Consumer Protection.

In the interest of time I had summarized much of the enclosed material, and I appreciate the opportunity to include the materials in their entirety You will find the following attachments:

1. Examples of the need for a consumer protection agency.
2. Precedents for such an agency.
3. General background materials.
4. Lists of organizational and business supporters of the legislation.

Thank you for your attention to this matter.

Sincerely,

RALPH NADER.

EXAMPLES OF THE NEED FOR A CONSUMER PROTECTION AGENCY

One area of agencies' decisionmaking where the consumer voice could be most effective is that of health and safety. The following examples are cases where ACP intervention will mean greater agency and industry accountability for consumer health and safety.

NURSING HOME FIRE HAZARDS

About 7,000 skilled nursing homes receive federal funds through Medicare and Medicaid, programs administered by the Department of Health, Education, and Welfare. HEW requires that nursing homes receiving such benefits be inspected to determine that they comply with federal requirements, including fire safety regulations. As part of an audit, the GAO accompanied HEW inspectors to 32 nursing homes that were exempted from water sprinkler requirements on the basis of their construction, in order to determine whether these homes were violating fire provisions or if they were properly classified as not requiring automatic sprinklers. Twenty-three of the homes (72 percent) had one or more deficiencies, and nine (28 percent) should have been required to have sprinklers. Upon visiting 26 other homes granted special waivers from the sprinkler requirements, the GAO found that 22 of these homes did not satisfy all four factors established by HEW indicating that an equivalent level of safety has been achieved as would be provided by sprinklers. Finally, in late 1973 HEW regional offices submitted data on 7,318 skilled nursing homes certified for participation in Medicare and/or Medicaid. Over 4,300 of these homes had deficiencies.

This data indicates that HEW has been lax in administering and enforcing Federal fire safety requirements and monitoring state inspection and certification activities. Furthermore, GAO found that HEW and the States have not taken sufficient action to force nursing home administrators to correct fire safety and other deficiencies.

Because the GAO has no authority to challenge an agency's failure to enforce its own laws, a consumer advocate is needed to see that positive corrective steps are taken when such a situation is uncovered.

EXPLODING WHEELS

In 1968, the National Highway Traffic Safety Administration (NHTSA) held meetings with General Motors to investigate alleged defects in certain ¾ ton, 1960–65 model trucks with wheels which unexpectedly exploded while in use. When GM and the agency agreed that the only wheels which were defective were those on trucks with camper bodies (50,000 trucks), not the entire 200,000 in question, the Center for Auto Safety in Washington filed suit (1970). The judge in the Kelsey-Hayes/GM case ruled that this distinction could not be made and that the investigation had to be reopened to consider the hazards of the remaining 150,000 trucks. A mere two months later, all 200,000 trucks were found to be defective. Nevertheless, notice to the owners didn't go out until 1974 when court battles finally resolved. And, until the NHTSA makes a formal finding of a defect (or no defect), its investigations are not open to the public, the party with the greatest stake in the outcome. The ACP could, however, represent consumers right from the start.

CHILDREN'S ASPIRIN

The FDA has frequently failed to regulate products unless they have been proven to cause human deaths, and has relied instead upon voluntary compliance from the industry it is charged to oversee. For example, the aspirin order of February 16, 1972 was the first regulation under the Poison Prevention Packaging Act of 1970, an act which allows FDA to prescribe childproof safety packaging for hazardous household substances. The regulation took over two years to promulgate and the FDA took the unprecedented step of soliciting exemption petitions from manufacturers. Thereafter, FDA granted permission for non-compliance for three categories of aspirin products and extended the deadline for compliance by other categories until July 1, 1973. According to FDA figures, approximately 800 children under five years of age were suffering accidental poisoning each month and 90 percent of these accidents would be prevented by special packaging. During the delay, over 25,000 aspirin poisonings could have been avoided.

DRUG DEVIATIONS

In 1973, the GAO found, upon reviewing the inspection records of 73 drug producers, that 48 percent of the producers critically deviated from good manufacturing practices on successive inspections. A critical deviation is one which creates the greatest probability of the manufacture of adulterated products. The investigation by GAO found that FDA has taken relatively few legal actions to

ensure good manufacturing practices. During fiscal year 1971, FDA made a total of 7,124 inspections of drug producers, 4,000 of which were follow-ups where deviations from good manufacturing practices had been reported previously. Of these followup inspections, 2,174 showed that producers still were not complying with good manufacturing practice. GAO suggests that producers chronically deviating from good manufacturing practices do not have sufficient incentive to correct their practices because FDA has not used available legal enforcement measures. Such cases of non-enforcement of federal law persist because the users of these products have no representative like an ACP pressing the FDA to fulfill its responsibilities.

COCKROACHES, FLIES, AND RODENTS

The GAO in 1972 found that about 40 percent of food manufacturing plants which are regulated by the FDA under the Food, Drug and Cosmetic Act, were operating under conditions that were unsanitary or worse. The report documented such conditions as cockroaches and other insects, rodent excreta, and non-edible materials in and around products and equipment; improper use of pesticides in close proximity to food-processing areas; use of unsanitary equipment. The GAO report, together with FDA's own inspecting records showing a general decline in food industry sanitation practices, indicates that the consumer expectation of clean food has been seriously undermined by the food industry, and that the Food, Drug and Cosmetic Act has been flagrantly disobeyed. The need for a consumer advocate is especially clear when revolting situations like this are exposed and little is done about them. The ACP could have carefully kept track of Agriculture's and FDA's responses to the GAO reports and insisted that necessary measures were undertaken to clean up the meat and food processing plants.

THE DEADLY CARGO DOOR

On March 3, 1974, an airline crash occurred just after a McDonnell-Douglas DC–10 took off from a Paris airport. All 346 persons aboard were killed because of negligent regulatory action by CAB. The accident resulted from an inadvertent opening of the aft cargo door during flight, causing the plane to lose pressure and the floor to collapse. The possibility of this cargo door danger was brought to the attention of both McDonnell-Douglas, the manufacturer, and the FAA on at least two occasions during the prior four years—first when ground pressure tests conducted in 1970 revealed the problem and then again on June 12, 1972 when another in-flight incident occurred over Windsor, Ontario. In the Windsor accident, fortunately, the plane was able to land safely despite the crisis. In dealing with the problem after the Windsor incident, the FAA chose, on the strength of a "gentleman's agreement" with an official of McDonnell-Douglas, not to issue a mandatory Airworthiness Directive (which would have involved FAA oversight in the correction of the defect) as recommended by the National Transportation Safety Board, but instead to allow the manufacturer to handle the problem through its own service bulletins. These are usually issued for non-essential matters, and they are not mandatory and are not sent to government officials or airplane operators. A Senate Committee investigating the incident harshly criticized the FAA for this approach to the problem, noting that the public interest in safety requires strong regulatory action. The ACP could have protested FAA's minimal involvement, petitioned it to issue an Airworthiness Directive after the Windsor incident, and perhaps corrected the cargo door defect and averted one of the deadliest plane crashes in history.

TOXICITY OF HCP IN BABY POWDER

In September 1972, the FDA classified all products containing hexachlorophene (HCP) as prescription drugs, ending profligate use of the untested substance and hundreds of over-the-counter remedies and cosmetics, after 30 to 40 French children died from exposure to HCP in baby powder. Animal evidence on the toxicity of HCP has been available to the FDA from its own scientists for several years and FDA admitted at the time of the action that the central nervous system lesions in these infants were identical to those that had been produced in experimental animals. A consumer advocate could have forced action far earlier.

WARNING DEVICE ORDERED INSTALLED AFTER CRASH

Over 50 percent of all airline crashes worldwide are caused by what is referred to as "controlled flight into terrain" (CFIT). A Boeing study revealed that CFIT

accidents in 1972 and 1973 resulted in the loss of 1,120 lives and 20 aircraft in the western world. The FAA is aware of these facts. The FAA also is and was aware that a device called a "ground proximity warning system" (GPWS) warns pilots with lights and taped loud voices to "pull up" should the plane be in danger of a crash due to inadvertent proximity to the ground. The device continues to signal until the pilot pulls up to a safe altitude.

The cost of installing the warning system is about $11,000 per plane—an insignificant amount considering the $5 to $25 million price for each airliner.

Finally, in December, 1974, the crash of a TWA 727 into a mountainside near Dulles International Airport in Washington in which 92 persons were killed, led to an FAA ruling that a limited version of this device be required on all airliners by December, 1976.

An Agency for Consumer Protection could have worked for installation of an adequate device several years earlier and perhaps hundreds of lives would have been saved.

FDA IGNORES TOXICITY OF HCP

In September 1972, the FDA classified all products containing hexachlorophene (HCP) as prescription drugs, ending profligate use of the untested substance and hundreds of over-the-counter remedies and cosmetics, after 30 to 40 French children died from exposure to HCP in baby powder. Animal evidence on the toxicity of HCP has been available to the FDA from its own scientists for several years and FDA admitted at the time of the action that the central nervous system lesions in these infants were identical to those that had been produced in experimental animals.

An Agency for Consumer Protection could have urged the FDA to act earlier saving countless lives.

DEFECTIVE HEART PACERS

A 1975 Report by the Comptroller General of the United States found that the Food and Drug Administration did not comply with its own procedure in a "life threatening situation." Apparently, the FDA failed even to follow its own procedures to independently investigate the cause of a recall of cardiac pacemakers by manufacturers. The common defect in the pacemakers was a leakage of body fluids through the plastic seal of the pacemakers causing short circuiting which led to sudden speeding up or slowing down of the electronic heart pacing. To date, no standard has been issued by the FDA to deal with this problem.

The FDA has not independently established how many deaths and injuries have been caused by this defect, and the number could be substantial. What we do know is that the FDA did not give adequate consideration to possible adoption of a standard developed by the Navy for hermetic sealing of electronic components to prevent short-circuiting caused by moisture. Had there been an ACP, the Agency could have urged the FDA to consider the advantages of hermetically sealing, perhaps saving many lives.

"TIRED BLOOD" ADVERTISING

When the Federal Trade Commission ruled that "tired blood" advertising for Geritol was deceptive and ordered it stopped, the Company was able to continue the ad campaign for 9 years while it ran the case through the appeals process. The consumer advocate could have recommended to Congress at an early date that the Trade Commission authority be adjusted to avoid such an abuse

RADIATION EXPOSURE

On August, 15, 1972, the FDA promulgated performance standards for diagnostic X-ray equipment, which would significantly reduce the major source of man-made radiation exposure. The FDA subsequently extended the deadline for compliance to 1974. These performance standards, which apply only to new equipment, came four years after passage of the 1968 Radiation Control Act. While the FDA was dragging its feet on standards for the new equipment, millions of people were exposed to unnecessary radiation. And old equipment is still radiating thousands of people daily. A consumer advocate would assert the consumer's interest in safe diagnostic techniques, minimizing the unnecessary risks of excessive radiation.

CONTINUED

1 OF 6

SAFER PRODUCTS AND BETTER WARNINGS

The Food and Drug Administration routinely makes decisions affecting the public health and safety. Most of these decisions are made behind closed doors, with little or no opportunity for consumer participation. FDA has approved the use of DES as a "morning-after" birth control pill, despite evidence linking DES to vaginal cancer in offspring of women taking DES during pregnancy. FDA does not require that women be warned of this risk, even though the "morning-after" pill is not 100% effective. FDA refuses to ban or more strictly regulate "feminine hygience" sprays, although injury complaints about these products run several times higher than FDA's own "acceptable" complaint level. The agency finally proposed weak warning labeled requirements but even these have not been put into effect. FDA has also refused to ban red dye #2 from use in foods, drugs, and cosmetics, although evidence has linked this substance to cancer in animals. Because of deficiencies in the law, consumers do not know which products contain this color additive. A consumer advocate would argue for safer products and better warnings.

FAA AND RADIOACTIVE MATERIALS

On April 6, 1974 a Delta airlines passenger flight from Washington, D.C. to Baton Rouge, Louisiana carried some radioactive materials which were improperly packaged, resulting in the uncontrolled radiation exposure of hundreds of passengers. The Federal Highway Administration representative in Louisiana who also single-handedly covers the entire state for the Federal Aviation Administration testified that he did not consider enforcement of the hazardous materials packaging regulations to be part of his responsibility, nor did he have enforcement capability. In practice, the FAA relies on the sender to self-enforce the federal regulations, and under the doctrine of federal preemption, the state's power to issue regulations governing shipments of hazardous cargoes in commerce is severely restricted. The state of Louisiana found it was unable to protect passengers traveling into or out of the state. An active ACP could have assisted Louisiana in its fact-finding efforts, and pressed FAA to enforce the federal radiation regulations.

SCHOOL BUS SAFETY

The Department of Transportation failed for seven years to issue standards to improve the crash survivability of school buses despite numerous Congressional requests. This failure finally necessitated Congressional enactment of statutory deadlines requiring DOT action. A consumer advocate could have pressured DOT to follow the will of Congress.

The consumer voice in agency proceedings will demand that the federal bureaucracy be more accountable. The following examples are cases where ACP intervention could have saved consumers money.

ICC LIMITS COMPETITION OF NEW TRUCKERS

The ICC has recently been criticized for restricting the formation of new trucking companies—limiting competition that would hold shipping rates down. According to the New York Times (April 11, 1977) a small number of trucking companies have paid more than $80 million for Federal licenses in the last four years that theoretically they could have obtained for less than $150,000 in license fees. Consequently, consumers and businessmen are overcharged for what they buy. ACP could intervene in the ICC licensing procedure and demand more competition between shipping companies, hence bringing prices down for consumers and businesses.

FEA REGULATION COSTS CONSUMERS $20 MILLION

On May 29, 1974, the Federal Energy Administration (FEA) promulgated a price regulation on unleaded gas which set the unleaded gas price equal to the cost of premium gas. The regulation was issued without the usual notice provisions required by law except in emergencies. Worse yet, the regulation was issued despite evidence that the refining cost of unleaded gasoline was about the same as regular grade gasoline, not higher priced premium. On July 10, the FEA agreed that the earlier price rule was wrong and withdrew it. During the six week period, however, consumers paid the unnecessary higher prices for gas which were estimated at 20 million dollars. Later, Consumer's Union sued the FEA and sought restitution. In a decision that is being appealed, the D.C. District Court ruled that FEA had acted illegally but did not order restitution.

FEA LETS GAS PRICES RISE AGAIN IN 1977

After issuance in July 1974 of the rule limiting the price increase of lead free gasoline to a penny per gallon, the oil industry complied for the next two years, saving the consumer about $1 billion. But beginning in the summer of 1976, the oil industry gradually raised the price of lead-free gas to the point where the price difference between lead-free and leaded gas was about 3 cents per gallon.

The reason for the price increase was the tax enforcement by FEA. In December 1976, FEA proposed and then adopted by February 1977 a complex new set of gas price regulations that effectively permitted a price difference of up to 7 or 8 cents per gallon for lead free gasoline.

Clearly the price increase was not justified and reflects no consumer input. The ACP could demand a higher standard of consumer protection from the FEA.

EMPTY TRUCKS COST BILLIONS

Interstate Commerce Commission regulations which require trucks to return empty from delivery, to make mandatory often out of the way stops, and which allow companies to cooperate in rate-setting have been estimated to cost consumers several billion dollars yearly. The trucking industry has little incentive to argue with the ICC because it passes these costs on to consumers who have no representation in ICC rate-setting activities.

RATE HIKE $300 MILLION

The Civil Aeronautics Board (CAB) seems regularly to take action detrimental to the consumer after inadequate consumer participation in the decision-making process. The Board staff routinely puts airline tariffs into effect without special board action. One especially notable increase was the increase of 4 percent effective November 15, 1974. The CAB was involved in a conspiracy under which all the airlines were persuaded to file identical rate increase applications, thus obviating the requirement of a hearing at which citizens' groups could protest the hike. This plot was an attempt to avoid the rule announced by the U.S. Court of Appeals in *Moss* v. *CAB*, which required hearings for CAB-directed rate changes, and was in addition seemingly in violation of laws against price-fixing. The rise in prices cost the public $300 million, at a time when prior increases and elimination of most discounts had already raised the average per-mile passenger revenues for such major airlines as United and TWA by about 18 per cent in the previous 12 months (New York Times, November 1, 1974). The bottom line in this unwarranted rate hike was that air travel dropped off so markedly in the months following that the airlines had to scramble to reinstitute the discounts they had been so anxious to elimiuate only months before. Citizen groups were without the resources needed to appeal this apparently illegal ratemaking action and there was no help forthcoming from the Justice Department, despite requests from many Members of Congress. The Board's internal consumer advocate strongly protested but was without power to initiate a court challenge. The role of the ACP in such a case is obvious.

INCREASE OF 300 PERCENT IN PROPANE GAS PRICES

In 1973, the Cost of Living Council issued a rule which segregated petroleum products into two categories for pricing purposes. For a category of "special products" refiners were allowed to include in the price only the actual cost of the crude oil used in those products plus their historic profit margins. For other refined products, refiners were allowed to load the cost of crude oil price increases on the refined products of their choice. Propane was one such product in this latter category, so the result of that rule was that refiners allocated a disproportionate share of their costs onto the price of propane. Refiners chose propane to carry the burdens of price increases because it has the most inelastic demand of all petroleum products: i.e., consumers are more likely to consistently buy a certain amount of propane regardless how high the price gets. This is because propane is relied on very heavily by the broiler chicken industry, for grain drying, and for heating and cooking by poor families, especially in the South. Crude oil cost increases were tilted onto the price of propane so much that between mid-1973 and early 1974 the price rose 300 percent. When the FEA came into existence in 1973, it could have changed the special products rule. Instead, gradual changes were belatedly instituted by August 1974, and then

largely due to legislation rather than FEA rulemaking. An active ACP could have petitioned the FEA to act more swiftly to alleviate this unjust pricing system.

OIL REFINERS AND "DOUBLE DIPPING"

An FEA regulation permitted oil refiners to collect increased oil costs twice. This practice which has been dubbed "double dipping" might have eventually led to $332 million in consumer overcharges. After 6 months this loophole was discovered and eliminated. An Agency for Consumer Protection might have spotted the loophole and spared us 6 months of "double dipping."

USDA FAVORS GAS-RIPENED TOMATOES

In 1937, the Department of Agriculture issued a rule that vine ripened tomatoes must be larger than those which are picked prematurely and colored artificially with ethylene gas. The effect was to give premature tomatoes a competitive advantage. Although the gas ripened vegetables are inferior in taste, texture, and vitamin content, the USDA kept the regulation on the books long after the Depression based rationale for the rule had become obsolete. Two weeks ago, consumer groups won a lawsuit to overturn the regulation. An Agency for Consumer Protection could have petitioned USDA far earlier to reverse the rule and sought court review to insure consumers tasty and nutritious tomatoes.

FPC CONFLICTS OF INTEREST

In September, 1974, the GAO released a report charging that the Federal Power Commission (FPC) has been decidedly lax in enforcing its own requirements for disclosure of potential conflicts of interest among its high-level officials. Although FPC standards of conduct regulations require disclosure of financial holdings by officials, the report said a 10-month GAO investigation had revealed numerous failures in filing and reviewing the forms filed. For example, of 125 officials required at the time they were hired to file financial disclosure forms, 55 did not do so, and nine used a less detailed form intended for lower-level officials. Nineteen officials (including administrative law judges and officials in the Commission's Bureau of Power and Office of Economics) were found to own prohibited securities in gas production and pipeline and electric power companies such as Exxon, Texaco, Tenneco and Potomac Electric Power. Under GAO prodding, the nineteen were ordered by the FPC to divest holdings "that could conflict with their duties." An ACP could make sure that the necessary divestitures are carried out and that the FPC does a better job of enforcing its regulations in the future.

RAISING THE PRICE OF OLD OIL

The Cost of Living Council raised the controlled price of old oil (two-thirds of U.S. production) from $4.25 to $5.25 a barrel in December 1973 without opportunity for any public comment or even a statement for reasons. Subsequent freedom of information requests revealed that the agency's own documents argued against the increase which cost consumers about $2½ billion. A federal advocate within the government could have found out about this imminent increase before it took place and argued against it.

FEA ALLOWS PROFIT MARGINS TO GAS RETAILERS

On January 15, 1974 and again on March 1, 1974, the FEA granted increases totalling 3¢ per gallon in the permissible profit margin limitations allowed gasoline retailers. These increases were granted to cover fixed costs during the period of decreased gasoline sales caused by government allocation during the oil embargo. When gasoline sales returned to pre-embargo levels, FEA continued its policy of expanded profit margins. In response to a consumer petition, FEA finally reviewed the profit margins on April 24, 1975, over one year after the special dealer margin increase was no longer warranted. A consumer advocate could have forced the FEA to act sooner, saving consumers millions of dollars.

RUSSIAN WHEAT DEAL

In the summer of 1972, the USSR bought over 700 million bushels of grain from six large U.S. grain corporations. Nearly 440 million bushels of this was wheat—25 percent of the total U.S. wheat crop. The Department of Agriculture

(USDA) paid $300 million in export subsidies—supposedly as an incentive for the Soviets to buy—despite intelligence reports indicating poor crop conditions in the USSR and the fact that the U.S. was the dominant world wheat supplier. Secretary Butz, as chairman of the Board of Directors of the Commodity Credit Corporation, decided to grant the subsidy which allowed the grain companies to sell for prices lower than those prevailing in the domestic U.S. market. The Export Marketing Service in USDA then established the daily subsidy rates.

The USDA decision to subsidize the sale of an unlimited amount of wheat to the Russians cost consumers dearly. The direct cost of unnecessary subsidies was $300 million. In addition, consumers paid enormous indirect costs including higher prices for bread and flour-based products, increased prices for beef, pork, poultry, eggs and dairy products due to higher costs for feed grains and a severe disruption of transportation facilities, resulting in higher costs and shortages or delays in delivering certain supplies. Joseph Ferri, Assistant Director of GAO, estimated that the total cost to the American consumer was about $1 billion.

The Soviet grain deal also had an adverse effect on farmers who were unaware of the same and sold their crops at low prices in the beginning of the summer. Farmers in Texas, Oklahoma, Illinois and Missouri sold their wheat in July for $1.38 a bushel; on August 8, a bushel of wheat cost $2.04.

If an ACP had existed, it could have participated in the USDA's decisions and perhaps averted the losses suffered by consumers and farmers.

CAB TURNS DOWN CHEAP FLIGHTS TO LONDON

CAB, in its role of controlling the entry of airlines into the market has not approved a new trunk carrier since 1938. In September 1974, CAB rejected an application by Laker Airways, a privately owned British airline, to fly regularly scheduled New York-to-London flights for $125 each way—a little more than one-third the "economy" fare now charged by Pan Am, TWA, and other members of the IATA, the International rate-fixing cartel. The consumer advocate could have intervened in the application proceeding and sought Judicial review of the agency rejection on behalf of the consumer interest in competition.

IMPORT TRADE RESTRAINT

Voluntary trade restraint agreements are generally negotiated by interagency task forces in informal proceedings that provide no opportunity for input by interested consumer groups. Three examples illustrate the need for an ACP in this area:

(1) Consumer groups estimate that voluntary restraint agreefents on steel negotiated by the State Department without public notice until December 1974 cost U.S. consumers between $500 million and $1 billion. The GAO reported that although restraints on steel protected the domestic industry against import competition between 1969 and 1971, they did not result in increased modernization or other improvement in the industry.

(2) The Committee for the Implementation of Textile Agreements provides no formal public hearings before agreements with foreign exporters are announced. Consumer groups estimate that this added between $1 billion and $2.5 billion in costs to consumers in 1972.

For both steel and textile restraints, the GAO estimated costs of $430 million for administration of the quotas, loss of Treasury revenue from import taxes, and concessions to foreign governments as compensation for their loss due to restrained exports. There were set-offs to this cost but GAO did not suggest a figure. GAO did suggest, however, that these restraints were negotiated without a careful assessment of the arguments for protection and the most appropriate form it should take, and without regard to current or prospective conditions.

(3) Although high meat prices and consumer outrage brought an end in 1972 to voluntary restraint agreements limiting the amount of meat the U.S. imported, new restraint agreements have been negotiated in response to cries for protection from cattlemen throughout 1974.

The ACP could introduce consumers views to these and other heretofore closed negotiations detrimental to consumer interests.

Wasting funds in federal agencies is a common occurrence, due to inefficiency, disorganization, and inertia. The following cases are examples where the ACP could have intervened and saved the federal government money.

EXPENSIVE DRUGS

HEW issued a regulation in July 1975 which states that the government will reimburse, under Medicare and Medicaid, only for the "maximum allowable cost" of prescription drugs, which is the lowest cost at which a drug is widely available. HEW's action comes in response to evidence documented by a variety of sources (including Congressional hearings) that although drugs of the same quality are sold at widely differing prices, the difference often depends simply on whether a drug is sold under its generic or a brand name. When the new regulation is in effect, it will save state and federal governments from $60 to $75 million a year, according to Dr. Mark Novich, Deputy Assistant Commissioner for Medicaid Affairs. However, as of April 1977, the regulation has not yet been implemented. Two drugs, ampicilin and penicilin pk, are nearly final action. These two drugs alone will save the government $2 million a year. Twenty to thirty more "MAC" limits will be imposed within the next year, according to Dr. Novich. AMA filed a lawsuit to block the implementation of this program—which was settled in March 1977 in favor of the government. The ACP could have been instrumental in defending this program, and ensuring a thorough and more immediate implementation.

USDA'S WASTEFUL STUDIES

USDA recently spent $45,000 on a study for food industries to discover how long Americans usually take to cook breakfast. Similar studies are planned for cooking lunch and dinner. The agency spends $16 million annually on press releases and television films as self-promotion. $16 million is spend on publications to be distributed to the public. The Department spends $22 million annually on cotton research, and the same for wheat, corn and soybean research—although the latter are far more important to U.S. farm income. ACP intervention could prove these kinds of activities wasteful, and consequently save federal funds.

TAXPAYERS PAY TO FIND OUT WHY MONKEYS CLENCH THEIR JAWS

In 1975, the National Science Foundation (NSF) spent $84,000 on three studies to learn why people fall in love. NSF, the Space Agency, and the Office of Naval Research spent $500,000 jointly to research why monkeys clench their jaws. In 1976, National Aeronautics and Space Administration (NASA) requested $2.8 million to build housing for 100 pounds of moon rocks. NASA already spent $8.7 million in 1971 for a building to store, handle, and study the rocks. ACP could examine these kinds of wasteful expenditures and tighten the government's budget.

WASTE IN HEALTH CARE SYSTEM

The magnitude of wasteful costs tolerated by our system of health care is staggering. It has been estimated, for example, that unnecessary hospitalizations cost about $10 billion every year, and that unnecessary surgeries cost over $4 billion per year. (See testimony by Dr. Sidney Wolfe before House Subcommittee on Oversight and Investigations, July 15, 1975). HEW has the power to reduce substantially some of this waste, yet it has not taken sufficient action. For example, Medicare and Medicaid payments could be made contingent upon hospitals' use of preadmission certification to verify the necessity of every hospitalization, or second opinions to confirm the necessity of every elective surgery. In 1974 HEW was considering a proposal to require preadmission approval of all federally-reimbursed hospitalizations, but the proposal was withdrawn by Secretary Weinberger. Subsequently, in February 1975, HEW did issue a regulation requiring the hospitals to review hospitalizations within 24 hours of admission, but the regulation is in jeopardy from an AMA lawsuit challenging it. Furthermore, HEW has done nothing to require second surgical opinions or other waste-trimming measures such as pre-admission testing which have been shown to be effective in reducing costly overutilization without sacrificing quality of care. An ACP could prod HEW into action in this area.

Large government subsidy and advocacy programs that benefit business interests already exist.

GOVERNMENT SUBSIDIES TO BUSINESS

A study published by the Joint Economic Committee in 1974 projected the amount of federal subsidies in 1975 as $95.1 billion. The committee's staff estimates that the amount has now passed the $100 billion level (New York Times).

The study defines a subsidy as "the provision of Federal economic assistance, at the expense of others in the economy, to the private sector producers or consumers of a particular good, service or factor of production." Government subsidizes a plethora of areas: food and agriculture, health, education, transportation, trade, commerce and economic development, etc. The following examples are industries subsidized by federal funding:

Conrail, the nation's largest railroad, began operations in April of 1976. The 17,000 mile rail system employes some 96,000 people thru 16 northeast states. In the first nine months, Conrail lost $205.5 million on revenues of $2.45 billion. Edward Jordan, chairman and chief executive officer of Conrail, estimates that the industry will make a profit by the end of 1980. The government will invest more than $2 billion during this time to keep the railroad operating.

The annual subsidy in 1975 for the maritime industry was $589.7 million for the construction of ships, sailors' wages, and research and development. The 1977 authorization bill calls for $500 million for the entire maritime industry.

Secretary Bergland estimates that the price supports program for agriculture as submitted by the administration for 1978 will be around $2 billion.

The USDA will spend $4 million in 1977 on peanut research, including studies examining how to increase yields. At the same time, the Department will pay $188 million for surplus peanuts.

U.S. Travel Service spent $11.2 million in 1975 to promote travel to this country. In effect, the government funded an advertising campaign for airline and hotel industries.

Overseas Private Investment Corporation provides insurance and guarantees for corporations investing in undeveloped countries. Between 1970 and 1975, the government funded OPIC with $106 million: of which 70 percent supported the 500 largest industrial corporations.

The number of federally insured and federally guaranteed loan programs total 147, with a substantial amount of the monies underwriting business interests.

Loan Guarantee Catalog

Department of Agriculture

1. Farm Credit Administration.
2. Farmers Home Administration—Emergency Loans.
3. Farmers Home Administration—Farm Labor Housing and Grants.
4. Farmers Home Administration—Farm Operating Loans.
5. Farmers Home Administration—Farm Ownership Loans.
6. Farmers Home Administration—Grazing Association Loans.
7. Farmers Home Administration—Irrigation, Drainage and Other Soil and Water Conservation Loans.
8. Farmers Home Administration—Low to Moderate Income Housing Loans.
9. Farmers Home Administration—Rural Housing Site Loans.
10. Farmers Home Administration—Recreation Facility Loans.
11. Farmers Home Administration—Resource Conservation and Development Loans.
12. Farmers Home Administration—Rural Rental Housing Loans.
13. Farmers Home Administration—Soil and Water Loans.
14. Farmers Home Administration—Water and Waste Disposal Systems for Rural Communities.
15. Farmers Home Administration—Watershed Protection and Flood Prevention Loans.
16. Farmers Home Administration—Business and Industrial Loans.
17. Farmers Home Administration—Indian Tribes and Tribal Corporation Loans.
18. Farmers Home Administration—Community Facilities Loans.
19. Farmers Home Administration—Emergency Livestock Loans.
20. Farmers Home Administration—Federal Crop Insurance Corporation.

Department of Commerce

21. Bureau of Indian Affairs—Indian Loans, Economic Development.
22. National Oceanic and Atmospheric Administration—Fishermen Reimbursement of Losses.

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23. National Oceanic and Atmospheric Administration—Fishing Vessel Obligation Guarantees.
24. Maritime Administration—Maritime War Risk Insurance.
25. Maritime Administration—Federal Ship Financing.
26. Trade Adjustment Assistance for Firms.
27. Trade Adjustment Assistance for Communities.
28. Economic Development—Business Development Assistance.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

29. Health Maintenance Organization Development.
30. Nursing School Construction Assistance Direct Loans, Grants, Guarantees, and Interest Subsidies.
31. Higher Education Act Insured Loans.
32. Student Loans.
33. Academic Facilities Loan Insurance.
34. Academic Facilities Loan Insurance.
35. Student Loan Marketing Association.
36. Hospital Construction Loan Program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

37. Federal Insurance Administration: Food Insurance.
38. Federal Insurance Administration: Urban Property Insurance.
39. Federal Insurance Administration: Crime Insurance.
40. Housing Production and Mortgage Credit: Interest Reduction Payments—Rental and Co-op Housing for Lower Income Families.
41. Housing Production and Mortgage Credit: Interest Reduction Acquisition and Rehabilitation of Homes for Resale to Lower Income Families.
42. Housing Production and Mortgage Credit: Interest Reduction and Mortgage Insurance for Homes for Lower Income Families.
43. Housing Production and Mortgage Credit: Interest Reduction and Mortgage Insurance for the Rehabilitated Homes for Lower Income Families.
44. Mamoj Home Improvement: Loan Insurance for Housing Outside Urban Renewal Areas.
45. Mortgage Insurance: Mobile Homes.
46. Mortgage Insurance: Construction or Rehabilitation of Condominium Projects.
47. Mortgage Insurance for Development of Cooperative Housing Projects.
48. Mortgage Insurance for Group Practice Facilities.
49. Mortgage Insurance for Home Purchases.
50. Mortgage Insurance for Homes for Certified Veterans.
51. Mortgage Insurance for Homes for Disaster Victims.
52. Homeownership Mortgage Insurance for Low and Moderate Income Families.
53. Mortgage Insurance for Homes in Outlying Areas.
54. Mortgage Insurance for Homes in Urban Renewal Areas.
55. Mortgage Insurance for Housing in Older Declining Neighborhoods.
56. Mortgage Insurance for New Communities.
57. Mortgage Insurance for Management-Type Cooperative Projects.
58. Mortgage Insurance for Hospitals.
59. Mortgage Insurance for Mobile Home Courts and Parks.
60. Mortgage Insurance for Nursing Homes and Related Care Facilities.
61. Mortgage Insurance for Purchase of Sales-Type Cooperative Housing.
62. Mortgage Insurance for Purchase by Homeowners of Fee Simple Title from Lessors.
63. Mortgage Insurance for Purchase of Units of Condominiums.
64. Mortgage Insurance for Rental Housing.
65. Mortgage Insurance for Rental Housing for Moderate Income Families.
66. Mortgage Insurance for Rental Housing for Low and Moderate Income Families, Market Interest Rate.
67. Mortgage Insurance for Rental Housing for the Elderly.
68. Mortgage Insurance for Rental Housing in Urban Renewal Areas.
69. Mortgage Insurance for Special Credit Risks.
70. Property Improvement Loan Insurance for Improving All Existing Structures and Buildings of New Non-Residential Structures.
71. Property Improvement Loan Insurance for Construction of Non-Residential Farm Structures.

72. Property Insurance Loans for Existing Multifamily Dwellings.
73. Property Insurance Loans for Construction of Non-Residential or Non-Farm Structures.
74. Supplemental Loan Insurance for Multifamily Rental Housing and Health Care Facilities.
75. Mortgage Insurance for Experimental Homes.
76. Mortgage Insurance for Experimental Projects Other Than Housing.
77. Mortgage Insurance for Experimental Rental Housing.
78. Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.
79. Community Planning and Development—New Communities Loan Guarantees.
80. Single Family Home Mortgage Coinsurance.
81. Multifamily Housing Coinsurance.
82. Mortgage Insurance for Graduated Payment Mortgages.
83. Aid to Indian Housing—Annual Contributions to Pay off Bonds and Notes.
84. College Housing Debt Service Grants.
85. Mortgage Insurance for Armed Service Housing in Impacted Areas.
86. GNMA Mortgage-Backed Guarantees.
87. GNMA Special Assistance Mortgage Purchases.
88. Mortgage Insurance for One to Four Family Homes.
89. Homeowner's Emergency Relief to Assist Homeowners in Danger of Foreclosure—Coinsurance.
90. Mortgage Insurance for Multi-Family Rental Housing.
91. Low-Income Public Housing Contributions for Payment of Bonds and Notes.

DEPARTMENT OF THE INTERIOR

92. Indian Loan Guarantees.
93. Indian Loan Insurance.

DEPARTMENT OF TRANSPORTATION

94. FAA—Aviation War Risk Insurance.
95. National Capital Transportation Act.
96. Rail Passenger Service Act.
97. Regional Rail Reorganization Act.
98. Aircraft Loan Guarantee Program.
99. Emergency Rail Guarantee Program.
100. Guarantee Program for Washington Metropolitan Area Transit Authority Obligations.
101. Passenger Rail Improvement Program.
102. United States Railway Association (Acquisition and Modernization Loans).
103. Emergency Assistance for Railroads Operating Passenger Service.

DEPARTMENT OF STATE

104. Worldwide and Latin American Housing Guarantee Program.
105. Protection of Ships from Foreign Seizure.
106. Agricultural and Productive Credit and Self-Help Community Development Program.
107. Foreign Housing Investment Guarantees.

EXPORT-IMPORT BANK

108. Loans Sold with Recourse.
109. Medium Term Guaranties.
110. Certificates of Loan Participation.
111. Medium Term Insurance.
112. Short-Term Insurance.

SMALL BUSINESS ADMINISTRATION

113. Displaced Business Loans.
114. Economic Injury Disaster Loans.
115. Economic Opportunity Loans for Small Businesses.
116. Lease Guarantees for Small Businesses.
117. Physical Disaster Loans.

118. Small Business Loans.
119. Small Business Investment Companies.
120. State and Local Development Company Loans.
121. Coal Mine Health and Safety Loans.
122. Bond Guarantee for Surety Companies.
123. Meat and Poultry Inspection Loans.
124. Occupational Safety and Health Loans.
125. Base Closing Economic Injury Loans.
126. Handicapped Assistance Loans.
127. Handicapped Assistance Loans.
128. Emergency Energy Shortage.
129. Strategic Arms Economic Injury Loans.
130. Water Pollution Control Loans.
131. Air Pollution Control Loans.
132. Loans to Minority Enterprise Small Business Investment Companies.
133. Small Business Loan Program.
134. Pollution Control Financing Program.

OVERSEAS PRIVATE INVESTMENT CORPORATION

135. Foreign Investment Insurance.
136. Foreign Investment Guarantee.

VETERANS ADMINISTRATION

137. Mobile Home Loans.
138. Veterans Insured Loans for Residential Housing.
139. Veterans Guaranteed Loans for Residential Housing.

ADDITIONAL

140. Emergency Loan Guarantee Board.
141. Defense Production Act.
142. Foreign Military Credit Sales.
143. Federal National Mortgage Association.
144. Farm Credit Administration Banks for Cooperatives.

GENERAL SERVICES ADMINISTRATION

145. Federal Building Loan Guarantee.
146. Guaranteed Loans.
147. Real Property Guarantees.

There are several government agencies which already intervene in other agency's proceedings. Occasionally the consumer interest gets represented in this fashion, but more often than not it is the business interest that gets represented.

COMMERCE DEPARTMENT

The Commerce Department intervened on behalf of Borden, Inc. in a Federal Trade Commission (FTC) case that would require Borden to license other companies to make and sell Borden's Real Lemon under the Real Lemon name (Wall Street Journal, March 21, 1977). The government insured that the business interest was developed and considered by the FTC.

SMALL BUSINESS ADMINISTRATION

The SBA represents small businesses primarily in rule changes or proposed legislative changes. SBA has never intervened in formal agency proceedings, but works behind the scenes to have agencies respond to individual complaints. SBA will not represent a small business unless the case will benefit the small business industry at large. SBA has a liaison with 37 agencies, and acts as ombudsman for industry.

Steve Millet of SBA says the SBA budget is approximately $750,000. SBA's authority comes from 15 USC 631, 637 B 12, 639 F. The supplemental executive order, 11-518, March 20, 1970, and Federal Register, Vol. 35, p. 4939, provides for increased representation of small business concerns. He said that SBA "saves small businesses three times what they spend on us." The following are examples of SBA cases:

FEA proposed that all businesses turn off their signs at night. SBA intervened because for many small businesses, signs lighted at night are the only form of advertising.

ICC controls the movement of freight by determining a specific route (gateway) for independent truckers. SBA became involved in this case as small businesses who do not have a direct route as described by the ICC are at a disadvantage.

When DOD decided to change the bidding system for moving the household goods of military personnel around the world, SBA intervened on behalf of the smal. freight forwarders. The new system would consolidate such moves by geographical area. Large freight forwarders would have the advantage as they have more equipment, more authority from the ICC to move across state lines and can underbid the small forwarders. This new bidding system would eventually eliminate 60 small freight forwarder companies and affect some 20,000 individuals.

GENERAL SERVICES ADMINISTRATION

The GSA is primarily interested in state cases, representing the interests of the government as an advocate. There are six lawyers in the agency who travel in various states to litigate. These lawyers are in the Regulatory Law Division in the Counsel Department. This division has worked on and off since 1949, and consistently since 1973. The agency has 14 jurisdictions, dealing with issues in transportation, electricity, gas, telephone—basic revenue issues. Annually, GSA works on 20–25 cases actively mostly among state commissions. The authority for GSA derives from 40 USC 481–A4. The following is an example of GSA intervention:

Florida has the highest business telephone rates in the country, but Southern Bell Telephone and Telegraph is applying for still higher rates. GSA will intervene in the rate proceedings, representing federal agency interests.

JUSTICE DEPARTMENT—ANTITRUST DIVISION

In the last decade, the Antitrust Division has become increasingly involved in cases and proceedings before regulatory agencies. One-third of the Justice Department's Washington-based attorneys are involved in litigation before regulatory agencies. This section, approximately 50 lawyers, handles some 200 cases each year.

There is no statute granting the Justice Department authority to intervene in regulatory proceedings. The Antitrust Division takes authority from Justice Department regulations, 28 CFR 0.40, and is referenced by appropriation bills.

According to George Hays of the Economic Policy Office, approximately $6 million is designated for litigation with regulatory agencies. He says it is impossible to state how much money is saved by such intervention, but cites examples of cases in which a considerable amount of money is saved.

In 1968 the AD worked to eliminate the fixed rate at the New York stock exchange, which saved approximately $300 million in the first year.

The Antitrust Division is presently intervening in CAB regulations on behalf of the airlines. If the CAB regulations are relaxed, affecting 22 to 50 percent of the nation's airfares, approximately $1.5 billion will be saved.

In 1966, the FCC approved the ITT acquisition of the American Broadcasting Company. The AD found this merger anti-competitive, and requested the FCC to reverse its decision. As FCC refused, the AD filed suit in federal court to prevent the sale. ITT and AB abandoned their deal before the case went to trial.

In February 1977 the Antitrust Division urged the FEA to amend its regulations to encourage increased supplies of and lowed prices for residual fuel oil and refined petroleum products. Residual fuel oil is used by utilities for the generation of electricity and as boiler fuel, primarily on the East Coast.

CIVIL AERONAUTICS BOARD—OFFICE OF CONSUMER ADVOCACY

The Office of Consumer Advocacy (OCA) is a staff component of the U.S. Civil Aeronautics Board. In a March 1977 compendium OCA listed the following as an example of its representation of the consumer interests: Domestic Baggage Liability Rules Investigation.

However, the original petition to increase baggage liability from $500 to $750 came from the Aviation Consumer Action Project in August 1973. OCA filed its first comments in the matter in June 1975 even though its complaint handling section finds that 10–12% of complaints are on baggage. No real action was taken by the CAB on the issue until February, 1977, two weeks after ACAP filed suit. The final rule raising baggage liability to $750 plus consequential damages is scheduled to become effective April 19, 1977, four years after the formal petition by ACAP.

Although the OCA developed a position comparable to that of the outside consumer advocate, as an in-house critic the office was not that influential.

RESPONSES TO QUESTIONS ABOUT THE AGENCY FOR CONSUMER PROTECTION

Question. Why not reform the existing agencies instead of creating a new agency?

Answer. The Agency for Consumer Protection is the most sensible route to regulatory reform. It is an anti-bureaucratic ombudsman which can prod the regulatory agencies to perform. And it addresses the fundamental flaw in the regulatory process—the failure of agencies to consider the interests of all affected persons in making crucial decisions affecting citizens' health, safety and economic well-being.

Regulatory agencies act in a quasi-judicial capacity and base their decisions on the record of information before them. To be an effective advocate before an agency requires considerable expertise and money. Large corporations and trade associations have the wherewithal to present a strong case to a regulatory agency. Consumers, however, lack the organization and resources. While they are charged with acting in the public interest, regulatory agencies are not obliged to search out rebuttal information and analyses to make a balanced record on behalf of consumers, and indeed they rarely do so. As a result, agencies have habitually tilted toward those exerting the most persistent pressure. With a consumer representative, the regulators would have to strike the fairest balance between opposing views because capricious accommodation of one party would form the basis for a judicial challenge by the other side.

Thus, while agency procedures can and should be reformed, procedural reform is no substitute for equal representation. No amount of procedural reform will provide consumers with the expertise and analysis that is developed by an advocate in a specific proceeding. And not to be dismissed is the fact that, with that expertise in hand, citizens would be better able to express their individual views.

Question. How can the Consumer Protection Agency contribute to regulatory reform?

Answer. The consumer advocate would enhance and further the goals of regulatory reform. For example, it would seek:

More openness in the conduct of government and particiaption by citizens in decisionmaking;

Explicit reasons publicly stated for actions taken or not taken by an agency;

Review and exposure of excesses and violations of rights by agencies;

Abolition of whole or parts of agencies, particularly those which shield industries from competition, deter new entrants, and prevent enforcement of the anti-trust laws;

Systematic non-partisan reporting to the Congress about the contributions and the deficiencies of regulatory actions, especially as they affect the victims who are supposed to be protected; and

Consistent, in depth review of specific agency activities.

Regulatory reform is a continuing process, not a one time decision. As an independent participant in agency proceedings, the consumer advocate would be in a position to continually push for, evaluate, and report on agency reform.

Question. Will the consumer agency be another layer of bureaucracy?

Answer. No. Because it is an advocate, not a regulatory agency, its rights are virtually identical to those of any other person under the law. It cannot stop a regulatory agency from acting, nor can it force it to act. It cannot impose any penalties, nor issue any licenses. It does not constitute another step in the regulatory process with which the regulated industry must contend, except to the extent that it must be accorded due process rights to comment or otherwise participate in an agency proceeding and to seek judicial review on behalf of consumers just as the regulated industry is accorded these rights.

To suggest that representation of interests not otherwise represented in a government proceeding constitutes a "layer" of activity is to misunderstand advocacy and due process rights. In addition, the consumer advocate's activities do not duplicate any responsibilities or functions of existing agencies.

Question. In view of the need to cut Government spending, how can the creation of this agency be justified?

Answer. First, it is a mere polka dot in the federal budget, with a maximum authorization of $15 million in the first year and $25 million in the third (less in the House bill). The appropriation will be smaller. This represents about two to three hours of the Pentagon budget, or about 25 cents per American taxpaying family per year. By way of comparison, the Commerce Department, which is charged with the duty to "foster, promote, and develop commerce and industry," has a budget of $1.4 billion, many times that of the consumer agency.

Second, it is hypocrisy to suggest that we cannot afford a tiny consumer advocate at a time when the government is spending billions and billions of dollars of taxpayer money for subsidies and promotion of a multitude of business interests including aviation, maritime, trucking, cotton, tobacco, banking, nuclear power, drugs, automobiles, agribusiness, small business, and on and on. Each of these industries has a government agency concerned specifically about its welfare. Cotton, Inc., for example, was recently appropriated $3 million in federal funds to promote cotton.

Third, the consumer agency is not a subsidy program. Historically, the mushrooming budgets have supported subsidy programs, not the regulatory agencies. The budgets for the federal regulatory agencies are together less than about $500 million, and agencies like the Federal Trade Commission which have been in existence since 1914 have budgets of only $40 million. Claims that the consumer advocate's budget will balloon ignore historical precedents.

Question. Won't the consumer advocate increase the cost of Agency proceedings?

Answer. To the extent that existing proceedings are budgeted to hear opposing views, as they obviously should, it is unlikely that one additional voice will increase agency costs. To the extent that agencies do not now consider a variety of views, it is possible that a small incremental cost will be added. On the other hand, a consumer advocate can be a catalyst for more expeditious proceedings by opposing the kind of intentional delay now practiced by regulated industries as their way of avoiding enforcement and maintaining the status quo. Because deaths, injuries and frauds are continuing, consumers are usually interested in speedy action. Where delays are short circuited, costs are cut.

Other gains can also offset costs. These include:

(1) Effective consumer advocacy in opposing unjustified or excessive increases in prices sought by regulated industries can reduce budgetary pressures on federal agencies who are large consumers of goods and services supplied by regulated industries (e.g., the Defense Department is one of the largest users of long distance telephone calls);

(2) Regulated industries will tend to exercise restraint in seeking excessive or unjustified increases and concessions in the face of effective consumer opposition;

(3) The sharpening of issues and narrowing of debate likely to result from adversary proceedings in which all sides are reasonably represented will lead to more efficient decision-making, and more importantly, fairer decisions.

Question. Won't the consumer advocate increase the cost of complying with Government regulations?

Answer. There is no inherent reason why consumer participation should increase compliance costs. In fact, for many cases the presence of a consumer advocate should help reduce compliance costs because consumers do not want to pay higher prices. Thus, regulations which require trucks to travel empty to accommodate the trucking monopoly or railroad cars to remain idle would be opposed.

As to health and safety standards, one role of a consumer advocate could be to press for performance standards, thus allowing the manufacturer to meet the standards with any design it wishes, including the most cost/ineffective designs.

Regulated industries have blamed the government again and again for increased prices when in fact only a small portion of an increase, if any, is attributable to the regulations. Automobile manufacturers are a case in point. An important role for a consumer advocate is to dissect cost claims so that regulatory agencies can strike the fairest balance between protection of the public and the costs of achieving that protection. Without consumer participation in regulatory proceedings, the cost claims of the regulated industry are rarely examined.

Question. How will the consumer advocate decide what is in the interest of consumers?

Answer. The consumer interest in health, safety and economic well being in marketplace transactions is generally both apparent and uniform. For example, all consumers have an interest in preventing consumer fraud. Where there are different consumer interests, the responsibility of the advocate is to make sure they are reasonably heard, not to decide which to represent and which to ignore. To the extent anyone is already adequately represented, the advocate is directed to focus on others. The bill also makes it clear that the agency is not an exclusive advocate, thus encouraging private consumer representation wherever feasible.

Thus, the consumer advocate need not decide what is "the" consumer interest. Rather, it would present facts and arguments about the effect of Federal agency decisions on consumers, with either single or multiple points of view. In this regard, the consumer agency is no different from other organizations which represent diverse points of view, whether they are the Department of Agriculture or the Chamber of Commerce.

The fact that consumer interests may be diverse is hardly a reason for perpetuating the present monopoly of representation by producers, and rejecting representation by consumer advocate.

Question. Can't consumers be adequately represented by offices within the regulatory agencies or by private organizations?

Answer. Consumer protection offices within Federal agencies can serve as an important referral service and prod for consumers interests, but they are not a substitute for an independent office outside the regulatory agencies. A consumer advocate must not be beholden to the interests of the agency before which it is appearing. Businessmen routinely hire outside the auditors to review business activities independently. The same principle applies to consumer representation. Agency consumer offices are merely adjuncts of the agency, with little or no authority (for example, no right of judicial review) and meager budgets. Business Week referred to them, whether in corporations or agencies, as "window dressing." If adequately staffed, a consumer advocate office within each agency, even without judicial review, would cost more than H.R. 7575 or S. 200.

As to private organizations, historically they have been under-financed and forced to compete beyond their means with business trade organizations as the Chamber of Commerce (budget: about $20 million); the American Petroleum Institute (budget: about $18 million); the National Association of Manufacturers (budget: about $6.7 million); the Grocery Manufacturers Association (budget: about $3 million); the Business Roundtable (budget: about $3 million); the National Association of Food Chains (budget: about $1.25 million). In addition, the corporate members of these trade associations have millions of dollars to spend on representing their interest in addition to being the key source for information about the matter subject to regulation. Furthermore, it is unrealistic to suggest that even a combination of consumer groups could handle intervention or participation in major cases such as long distance telephone rate increases or corporate fraud.

Question. Is it appropriate for one Government agency to sue another?

Answer. The belief that the United States cannot sue itself is the greatest misconception of all. In the *U.S. v. I.C.C.*, the Supreme Court overturned a district court decision which had held the government was restricted in this way.

The Justice Department has stated that intra-governmental litigation "in fact, of course . . . is far from unique." Milton M. Carrow, Chairman of the ABA Section of Administrative law has written: ". . . no new problems, either doctrinal or practical, are presented by the proposal to give the CPA the right to initiate or intervene in proceedings for judicial review of other agency's actions, and that the feasibility and desirability of interagency litigation should accordingly be recognized in this context as readily as elsewhere."

RESPONSE TO BUSINESS COMMENTS ON CONSUMER PROTECTION AGENCY

Question. Would CPA create more unnecessary bureaucracy unresponsive to consumers?

Answer. CPA is a response to the fact that the existing governmental decision-making has been closed to those without power, money, and organization. CPA would "break in" to the bureaucracy, carrying the views of consumers who have been unable to penetrate the agencies making crucial decisions affecting them. Rather than increase bureaucracy, CPA would help to make it more responsive to citizen interests.

Question. Would CPA be a super agency with powers never before given to a Government agency?

Answer. CPA would have absolutely no power to regulate, to impose penalties, to grant or deny licenses, or to make rules. It would serve simply as an advocate. CPA would have no greater right to obtain information from business or from other Government agencies.

Question. Would CPA radically alter the way Government relates to business?

Answer. To the extent that Government and business have reached closed-door decisions without giving due consideration to the consumer viewpoint, CPA would change the present relationship. However, CPA would not change the regulatory responsibilities of other agencies nor would it prohibit business and other interested parties from communicating with these agencies. CPA would simply open the door on these deliberations, exercising its right to participate to the same extent as other interested parties.

Question. Would CPA mean more delay and redtape for business?

Answer. CPA would be bound by the same procedural rules and time limits which apply to business and other parties to agency proceedings. CPA would simply enter an ongoing agency proceeding or activity, in accordance with the rules of the host agency. Also, the CPA will have limited resources ($15 to $25 million)—less, for example, than the Defense Department's public relations office or the annual budget of the Chamber of the Commerce, and it therefore would be able to participate in relatively few, carefully chosen cases.

Question. Would CPA be a "dual prosecutor"?

Answer. CPA would have no power to decide the outcome of a case or to impose fines or other penalties. Its rights in enforcement proceedings would be the same rights of advocacy, discovery, cross-examination of witnesses, and presentation of evidence as other parties or participants.

Question. Would CPA harass business with "fishing expeditions"?

Answer. CPA is given limited power to gather consumer-related information by sending interrogatories (i.e., questionnaires) to those engaged in business activities which substantially affect consumers' interests. Business can challenge these requests in court and they will be enforced only if CPA can show that they seek information that substantially affects consumer health or safety or which is necessary to discover consumer fraud or other unconscionable conduct detrimental to consumers. They will not be enforced if the recipient shows that they are excessively burdensome. Moreover, CPA can not use this power if the information is already available publicly or from another agency.

CPA has no independent subpoena power, but it does have the same right to ask a host agency to use its subpoena power during an agency proceeding as any other party, including any business, has under the Administrative Procedure Act. CPA may also request that an agency issue a subpoena relevant to a structured proceeding in which it is a participant but not a full party, but the host agency will issue the substance only if it is relevant and the evidence sought is reasonable.

Question. Could CPA expose trade secrets?

Answer. CPA employees would be subject to the same criminal penalties for unauthorized disclosure of trade secrets and other confidential information which apply to employees of other federal agencies. CPA would not be authorized to disclose trade secrets or other information acquired from another agency if that agency stated that the information is exempt from disclosure under the Freedom of Information Act. Where CPA acquired trade secret information from another source, it could be disclosed *only* if necessary to protect the public health and safety.

Question. Does the bill bar CPA from intervening in any matter affecting labor unions?

Answer. No. CPA would be barred only from participating in labor-management negotiation sessions before the NLRB or the Federal Mediation and Conciliation Service, agencies that serve principally as impartial arbiters assuring that both sides follow procedural rules in working out their differences. Although labor costs do affect prices in the market-place, both labor and management (including active opponents of CPA who berate this exemption) favor exclusion of CPA from participating in these sessions, as CPA would require access to management's productivity and other financial data in preparing its case. Of course CPA would not be precluded from intervening where a union serves in a role other than collective bargaining agent. For example, CPA could act where a union conspired with an employer to violate anti-trust laws or where a union owned bank violated truth-in-lending laws.

Question. Would CPA have unique rights to seek judicial review or agency decisions which would open all agency decisions to "second guessing?

Answer. No. Any person who is "aggrieved" by an agency decision may seek judicial review of that decision whether or not he participated below. Participation in an agency proceeding is *not* a prerequisite for standing to seek review of the agency's decision, according to case law. CPA is given statutory standing where consumer interests are aggrieved and thus may initiate judicial action or intervene in an ongoing case, as any "aggrieved" party could.

Prior to *initiating* judicial review of decisions in which he did not participate, however, CPA must petition the host agency for rehearing or reconsideration. No other person is required to automatically file such a petition in every case. It is a unique burden placed on CPA. Thus, CPA's ability to seek review of these decisions is not unique and would not open decisions to "second guessing" to which they are not already subjected.

Question. Would CPA make informal negotiations between Government and business impossible?

Answer. No, but CPA could participate in these non-structured activities by presenting written or oral submissions in an orderly manner and without causing undue delay. The Federal agency would have to give full consideration to these submissions. Such orderly participation does not make negotiations impossible. It merely assures that the decisionmakers are cognizant of the impact proposed negotiated agreements will have on consumers before negotiations are concluded.

Question. Would CPA result in less consumer protection by increasing costs and reducing choices in the marketplace?

Answer. CPA would have no power to take products off the market or to set standards which products must meet. If products on the market are unsafe or ineffective, the consumer interest warrants bringing these facts to the attention of the appropriate regulatory agency. CPA could petition the agency to act, but the regulatory agency would decide whether to take the products off just as they do today.

SAFEGUARDS IN THE AGENCY FOR CONSUMER PROTECTION BILL

1. *The ACP will have no regulatory authority.*—The ACP cannot overrule, veto or impair any Federal agency's final determinations. ACP cannot institute enforcement proceedings against alleged violators of law, or impose fines or other penalties. No authority granted to ACP may be construed to supersede, supplant, or replace the jurisdiction, functions or powers of any other agency to discharge its own statutory responsibilities.

2. *Limitations on ACP intervention.*—ACP may intervene as a party in formal agency proceedings, but the Administrator must exercise discretion to avoid unnecessary involvement. He must refrain from intervening as a party unless he determines that participation to that extent is necessary to adequately represent an interest of consumers. Where the submission of written views or information or the presentation of oral argument would suffice, he must limit his involvement accordingly. § 6(a)

3. *Protection against disruption and delay of agency proceedings and activities.*—When intervening or participating in agency proceedings, the Administrator must comply with the host agency's statutes and rules of procedure. § 6(a). When submitting oral or written views in an informal agency activity, the Administrator must do so in an orderly manner and without causing undue delay. § 6(a)(2)

4. *Protection against misuse of a host agency's compulsory process.*—Where ACP is a party to a proceeding and seeks like any other party to use an agency's subpoena authority for discovery purposes, the host agency retains discretion and control over ACP's access to such authority. The host agency has discretion to deny ACP's request if it is not relevant to the proceeding or is not reasonable in scope. § 6(g)

5. *Limitations on ACP's power to issue interrogatories to business.*—The Administrator's authority to gather information from businesses through the use of interrogatories may not be exercised to obtain data which (1) is available as a matter of public record, (2) can be obtained from another Federal agency, or (3) is for use in connection with his intervention in any pending agency proceeding involving the person to whom an interrogatory is addressed. Interrogatories may be directed to businesses only if the Administrator can carry the burden of proving in court that the information sought is required to protect the health or safety of consumers or to discover consumer fraud or substantial eco-

nomic injury to consumers and that they are relevant to a legitimate inquiry and the recipient does not show that the questionnaires are unnecessarily burdensome.

6. *Protection against arbitrary or capricious intervention by the ACP.*—The Administrator is required to set forth concisely in a public statement the interest of consumers which he is representing in any agency proceeding. § 6(b)

7. *Protection against publicity of frivolous consumer complaints against a business, its products or services.*—Upon receipt of significant consumer complaints, the ACP must notify the companies named and afford them sixty days to comment before complaints are available for public inspection. When placed on public display, these complaints must be displayed together with any comments received. § 7

8. *Limitations on ACP's access to information held by other federal agencies.*—Federal agencies may deny ACP access to classified information and restricted data whose dissemination is controlled pursuant to the Atomic Energy Act; policy recommendations intended for internal agency use only; information concerning routine executive and administrative functions, personnel and medical files, information which would constitute a clearly unwarranted invasion of personal privacy, and information which agencies are expressly prohibited from disclosing to another federal agency. Sec. 10(b).

9. *Protection against ACP access to income tax records.*—There is no authorization in this act to any federal agency to divulge the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed solely in any income return, or to permit the Administrator access to any Federal income tax return. This will insure that records which are now treated as confidential by the IRS with respect to access by other federal agencies will be treated in the same manner with respect to ACP. Sec. 10(c).

10. *Protection against disclosure of confidential information relating to business practices and trade secrets.*—Federal agencies may deny ACP access to trade secrets and other confidential business information if the agency could not have obtained the information without an agreement to keep it confidential and if the failure to obtain the information would seriously impair the carrying out of the host agency's program. Sec. 10(b)(6). Where ACP is given access to this information by another agency, ACP may not decide to disclose it to the public. The decision on disclosure rests with the federal agency which was the source of the information.

11. *Protection against disclosure to the public of false or misleading information regarding a business.*—ACP is directed to take all reasonable measures to insure that any information it discloses is accurate. Changes or additional information affecting the accuracy of previously disseminated information must be promptly released. Sec. 11(c) (1) and (3).

12. *Procedural Fairness.*—ACP must act in accordance with rules issued under the Administrative Procedure Act to assure all fairness to all affected parties and the opportunity to comment prior to release on the proposed release of product test data.

THE AGENCY FOR CONSUMER ADVOCACY AND LABOR-MANAGEMENT RELATIONS

One provision in the consumer agency bill, H.R. 6118 which has attracted considerable attention and debate states that the ACA shall not inter alia, intervene in labor-management disputes before the National Labor Relations Board (NLRB), and its sister agency, the Federal Mediation and Conciliation Service (FMCS). It is argued that a consumer advocate should be able to participate in federal agency acitvities involving labor as it will before those regulating business inasmuch as wages contribute significantly to the ultimate cost of consumer products. The purpose of this memorandum is to show that under the basic definition of "interests of consumers" in H.R. 6118 and under the scope of the NLRB and FMCS authority, the consumer advocate would be powerless to affect the terms of labor contracts.

It is important initially to stress that the limitation under discussion is not an exemption of organized labor. To the contrary, unions that intervene directly in the product and service market are as much subject to H.R. 6118 as any other person.

During the last forty years it has been acknowledged that labor-management bargaining could not work effectively unless the parties were left to negotiate without outside interference. The labor laws in this country have accordingly been extensively and carefully nurtured over the years to accommodate this

reality. Thus, the NLRB and the FMCS—the only two agencies which brush the bargaining process—may not determine or dictate in any way, shape or form the parties' demands or the terms of their settlement.

The NLRB was created to protect employees' rights to select bargaining representatives without management interference and to bargain collectively. Beyond that, the NLRB does not have the authority to affect the actual outcome of the bargaining process. Indeed, the Supreme Court just five years ago expressly held that the Board may not intervene in that process or dictate any of the substantive terms (including the economic impact on consumers) of collective bargaining agreements. Justice Black, speaking for the Court in *Porter* v. *NLRB*, 397 U.S. 99, 106, 107–108, had this to say about the Board's role:

"It is clear that the Board may not, either directly or indirectly compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements * * * and that Sec. 8(d) [in particular] was an attempt by Congress to prevent the Board from controlling the settling of the terms of collective bargaining agreements. * * * It is implicit in the entire structure of the Act that the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties."

Since Congress has determined that the Board is not to assess the "substantive terms of collective bargaining agreements", it would be mischievous to empower the ACA to intervene before the Board to argue issues which are outside the scope of the Board's jurisdiction.

Thus, while there can be no doubt that the activities of unions in representing the interests of their members—the working men and women of this nation—do from time to time "impede the flow of goods in interstate commerce" or temporarily "impair the operations of an instrumentality of commerce", as found by the Congress in section 1 of the National Labor Relations Act (29 U.S.C. 151), the purpose of the Congress there was not to confer responsibility or authority upon the NLRB to evaluate economic considerations of labor-management controversies as has been suggested by certain opponents of the ACA. In fact, any casual student of the legislative process readily recognizes that this language was inserted in the National Labor Relations Act as a means of bringing it within the scope of the interstate commerce clause of the United States Constitution. Moreover, even a summary examination of the history of that Act reveals that the Congress hoped to reduce the number and frequency of the many long, bitter and often violent strikes which characterized the times as a result of total employer recalcitrance to the very notion of collective bargaining. Indeed, this goal has been largely obtained by guaranteeing employees the right to organize, to strike, if need be, and to select representatives with whom employers must bargain collectively.

Another misconception advanced by some opponents of the ACA is that the NLRB is authorized, and does regularly consider, many other public interest objectives such as the safety and general welfare of the population at large when resolving various disputes arising under the National Labor Relations Act. Were this the case, then ACA intervention in NLRB proceedings might be appropriate to present such considerations. In fact, however, the Board is charged with responsibility under its Act for protecting employees' rights, including the right to strike, regardless of the consequences unless the strike is directed against a neutral or secondary employer.

In order to provide relief to the general public in emergencies when a strike might threaten the public health, safety or welfare, the Congress conferred authority upon the President to impose what are commonly called Taft-Hartley injunctions. 29 U.S.C. §§ 176 et seq. By exempting the NLRB from the ACA, the Congress would hardly be prohibiting that agency from calling upon the President to issue such an injunction. The important point is quite simply that the NLRB is not empowered to consider the effects of its actions upon the general consuming public.

Those who argue that the ACA should be entitled to participate in proceedings before the NLRB argue that cases arising under Section 8(b)(4) and (e) of the National Labor Relations Act can have a substantial impact on consumers. The provisions in question prohibit union activities, including strikes, which are directed at neutral, or secondary employers, as a tool for obtaining a favorable settlement of a dispute with a primary employer whose employees the union actually represents. An illustration of this type of proscribed activity, which has in fact been cited repeatedly by opponents of the labor-management provision, is

where a union is seeking to preserve work for its members and is striking to prevent an employer from purchasing prefabricated materials from an entirely neutral company.

In *Woodwork Mfgrs. Ass'n.* v. *NLRB*, 386 U.S. 612 (1967), the Supreme Court was presented with the issue whether a strike by carpenters to protest their employer's decision to purchase prefabricated doors, instead of permitting them to cut the doors themselves, was a prohibited secondary union activity. In affirming an NLRB finding that in the circumstances of the case Sections 8(b)(4) and 8(e) had not been violated, the Court made it clear that these provisions were "limited to protecting employers in the position of neutrals between contending parties" and that the NLRB's task was not to weigh the economic effects, but rather to determine whether the strike was really directed toward the striking employees' own employer (*viz.*, a "primary" strike protected by Sections 7 and 13), or toward another "neutral" employer (*viz.*, a "secondary" strike prohibited by Section 8(b)(4) and (e)). See 386 U.S. at 625, 645–646.

As to the relevance of economic considerations in arriving at this determination, the Supreme Court stressed:

"The Woodwork Manufacturers Association and amici who support its position advance several reasons, grounded in economic and technological factors, why [work preservation strikes] should be invalid in all circumstances. Those arguments are addressed to the wrong branch of government. It may be that the time has come for a re-evaluation of the basic content of collective bargaining as contemplated by the federal legislation. But that is for Congress. Congress has demonstrated its capacity to adjust the Nation's labor legislation to what, in its legislative judgment, constitutes the statutory pattern appropriate to the developing state of labor relations in the country. Major revisions of the basic statute were enacted in 1947 and 1959. To be sure, then, Congress might be of opinion that greater stress should be put on . . . eliminating more and more economic weapons from the . . . [Union's] grasp. . . . But Congress' policy has not yet moved to this point. . . . *Labor Board* v. *Insurance Agents' International Union*, 361 U.S. 477, 500." (386 U.S. at 644.)

In light of the foregoing, should there still be any lingering doubt about the Supreme Court's command to the NLRB to refrain from taking into consideration the economic and other peripheral consequences of its decisions which are to be based solely upon the legal criteria set forth in the National Labor Relations Act, then an analysis of Section 4 will surely remove that doubt. From the date of its creation in 1935 through 1940, the NLRB utilized the services of an internal organization known as the Division of Economic Research which prepared economic data for use by the Board when resolving cases arising under its Act. When the Congress learned of this fact in 1940, it specifically abolished the Division. (See S. Min. Rep. No. 105, pt. 2, 80th Cong. 1st Sess., p. 33) But in 1947 Senator Taft and Congressman Hartley were so intent on assuring that the Board would attend to the law, and not to potential economic consequences, that they added to Section 4 the proviso that "Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of * * * economic analysis." The point that under our present national labor policy the ACA has no place in NLRB or FMCS proceedings could not be more forcefully put.

Similarly, there is no role for the ACA to serve before the Federal Mediation and Conciliation Service which was created simply to offer mediation services to parties in labor disputes to help them resolve their disagreements peacefully. It has no regulatory functions. The FMCS cannot impose its services upon unwilling parties nor dictate the outcome of negotiations where their services have not been solicited.

Historically, the Congress has studiously followed a course of non-interference with free, give-and-take collective bargaining and has sought only to create and preserve the delicate balance between organized labor and business management. While some people may believe that the time has come to readjust this balance, the place to do so is not in the consumer agency bill. Any legislative tinkering with the collective bargaining process or the potential economic strength of the respective parties will require a thorough analysis of all labor laws and the amendment of many of their provisions. The relative state of labor peace we have achieved in this country by allowing two evenly matched, albeit economically powerful, parties to engage in unencumbered negotiations is not to be so cavalierly discarded.

Should a decision to readjust this delicate balance and to encourage consumer intervention be made, the Congress would have to give consumers the tools

needed to effectively participate in labor-management negotiations, including a distinct group of expert personnel, subpoena power, and full rights of participation.

A consumer representative could not intelligently assess union demands, nor effectively advocate a position of restraint without first making an extensive inquiry into productivity, an important correlative factor in the consumer price function. The consumer representative would accordingly have to be able to secure from management extensive information dealing with such zealously guarded matters as profits on various lines of products, decisions relating to the type, cost and supply of raw materials, the design or composition of products, the design of assembly lines and allocation of the labor force, the availability of more advanced or efficient machinery, plant locations, etc. As Mr. Lloyd T. Williams, Assistant General Counsel for Automotive Distribution, Ford Motor Company, said in the 1973 House hearings on the consumer agency bill, intervention by consumers in labor-management negotiations would be costly to the parties. It is apparent few legislators are now prepared to insert consumer interests into the midst of labor-management negotiations on a full partnership basis.

The case for the creation of the independent Agency for Consumer Advocacy proposed in H.R. 6118 and for arming it with the painstakingly delineated powers stated in Sections 4, 5, and 6 has been so strongly made that some opponents of the bill, bereft of arguments on the merits, have resorted to fabrication of a superficially appealing issue. Their public posture against the labor-management relations provision is billed as advocacy of equal treatment of business and labor and opposition to an exemption for a powerful special interest group. The hypocrisy of these new converts to strengthening the ACA's powers with authority to intervene in labor-management activities is made evident by their simultaneous opposition to removal of Section 10(d)(1) which exempts over 90 percent of all businesses from the duty to provide information to the ACA. The so-called "labor exemption" smokescreen is another creation designed to confuse many well-intended members of Congress who as a matter of principle do not favor special exceptions in legislation.

Consumer Protection and Small Business

In many ways the plight of the small businessman and the consumer are parallel. The Consumer Protection Agency bill creates an instrument, a consumer advocate, which will substantially benefit small businesses as well as consumers in the following ways:

(1) Some of the most significant and necessary costs to consumers and to small businesses emanate from anticompetitive and monopolistic practices. Professors William Shepherd and Richard Barber have both calculated that up to two-thirds of our manufacturing sector is characterized by oligopoly power—where four or fewer firms control 50% or more of the market. In a preliminary 1972 study of just 100 major industries, the Federal Trade Commission found consumers overcharged a total of $15 billion due merely to their concentrated structures. F. M. Scherer, director of the Federal Trade Commission's Bureau of Economics, has estimated the economic waste and losses from oligopoly and other breakdowns of competition at 6.2% of the GNP—which based on the 1974 GNP of $1,396.7 billion amounts to $87 billion annually.

In addition to their overpayment of costs because of monopoly power, small business is continually squeezed out by the monopoly power of large companies. One key obligation of the consumer advocate will be to focus on monopolistic practices and press for strict enforcement of the antitrust laws through participation in antitrust consent decree hearings, through sending data to the Justice Department Antitrust Division and the Federal Trade Commission Bureau of Competition, through petitions to these agencies for initiation of cases enforcing the law, and recommendations to Congress for new legislation to facilitate antitrust enforcement on behalf of consumer interests.

(2) Business fraud is a major source of illegal revenue and much of it is taken from honest small businessmen as well as from consumers. Other criminal activity by business increases prices or results in unfair competition. An unprecedented wave of corporate illegality has been sweeping the business community, with daily revelations about political payoffs, tax fraud, illegal campaign contributions, (some in return for specific favors), over charges by government contractors, failure to comply with securities disclosure laws and others.

In the 18 months ending in December, 1974, the FBI announced that white collar convictions were up 30 per cent, and the United States Chamber of Commerce reports that white collar crime costs Americans at least $40 billion annually.

One responsibility of the consumer advocate will be to press for enforcement of federal regulatory laws against violators, whether they be deceptive advertisers, price fixers, or manufacturers of defective products. While protecting consumer interests, such action by the consumer advocate will also facilitate the business operations of honest small businessmen who are disadvantaged by dishonest competitors or corrupt sellers of products small businessmen use in the course of doing business.

(3) Many of the rate-making regulatory agencies have become governmentally sanctioned price fixers for the regulated industries, such as trucking, airlines and telecommunications. The agencies' slow pace and expensive clearance procedures deter entry of newcomers into the marketplace, their requirements often cost consumers far more than an unregulated, competitive industry, and the antitrust immunity granted the regulated industry fosters monopoly which in turn demands continued regulation. The consumer interest and small businessman's interest in deregulation of such industries and reintroduction of competition is similar. The consumer advocate could petition existing agencies to release some of their regulatory controls and recommend corrective legislation to the Congress.

(4) The small farmer will also be significantly assisted by the consumer advocate. Like all American families, farmers face the same consumer injustices, such as price gouging, fraudulent schemes, mail-order gyps, unsafe products, credit abuses, and energy manipulations. Farmers also consume products for their operations—propane and other fuels, fertilizers, seed, farm equipment—and need such services as credit and animal health care. Just in the farm equipment area alone, a volume could be written about farmer grievances. And farmers often speak, as do state attorneys general, of monopolistic practices and corporate collusiveness designed specifically to relieve farmers of their hard earned money. Another concern of farmers is transportation of farm products. Railroad freight rates and practices may not concern the Interstate Commerce Commission but they do concern farmers. Exorbitant "middle men" profits raise the price of food to consumers for which farmers often receive the blame. The Washington D.C. based trade associations which represent many of these "middle men" are predictably against the consumer agency.

To provide some historical perspective to this testimony, I am providing a synopsis of some of the issues that faced the 94th Congress.

QUESTIONS SENT TO OPPONENTS OF CPA ACT

1. What has Congress done for consumers in a period racked by rising prices, business-dominated government, and widespread disclosures of corporate and government violations?

2. How can a member of Congress vote against a modest consumer agency yet support or condone billions of dollars of taxpayer funds to promote and subsidize many business interests?

3. Why is it fair to approve large subsidy and advocacy activities on behalf of corporate interests by the Department of Commerce, the Maritime Administration, the Department of Interior and other Departments while denying millions of American consumers, young and old, just the right to advocacy (at less than 10¢ per consumer per year) in Washington, D.C.?

4. Does not Congress need a consumer advocacy agency to balance the adversary process before federal regulatory agencies who make quasi-judicial decisions affecting the health, safety and economic well-being of millions of Americans?

5. Is there not needed a non-regulatory consumer agency to advise Congress about what really is going on in these regulatory institutions and to work for deregulation where it benefits consumers?

6. Isn't there a need for a consumer agency to push for fairer procedures that would permit participation before these departments and agencies by citizens and civic groups around the country who are now shut out of this part of their government because of the expense, and other unjust obstacles?

7. Are you not interested in the ways in which the consumer agency is equipped to help small businessmen and farmers as consumers of products and services in the course of doing business?

8. Do you intend to vote against all future special interest business subsidies and promotional activities, renewed or initiated, that build up the bureaucracy at the taxpayer expense if you vote against the consumer bill?

9. Do you dismiss the judgment and experience of hundreds of consumer, civic, religious, labor, cooperative, women, senior citizens and farm groups, along with several dozen companies, who strongly favor H.R. 7575 and who both oppose bu-

reaucracy, inflation and marketplace injustices that have led to so many casualties and so much depletion of consumers' income?

10. If you oppose this bill, would you be willing to debate your position with consumer advocates on radio and television from your office or the House studio for transmission back to your district?

THE POLITICS OF CONSUMER PROTECTION

Although many new democratic procedures have been adopted in the Congress during in 1970's, minority rule still governs. For five years [1] the Consumer Protection Agency bill has been the captive of a few vigorous Congressional opponents and a lobby of multinational corporations. With no regulatory or enforcement power, the consumer agency would act solely as a representative and advocate of consumer interests. The embattled consumer would be assured, for the first time, that his voice is heard when federal agencies make the important daily decisions that affect his health, safety and pocketbook which buys 8.8 percent less today than it did last year, and 18.2 percent less than it did in 1973.

Fearful that the enlightened 94th Congress might enact the long-awaited consumer bill, the business establishment has mounted a massive campaign to secure a Presidential veto commitment and to capture enough progressive votes to prevent a two-thirds veto override. Their techniques mirror a James Bond novel—

Computer-directed mail campaigns from companies all over the United States sparked to oppose the bill by misleading trade association information;

Discrete conversations with the President while playing golf;

An expensive, unethical public opinion poll purporting to show that people no longer want government supported consumer protection; [2]

A lengthy television film with retired Senator Sam Ervin railing against a bill he never understood during the years he filibustered it in the Senate ("the Administrator would be an official scandal-monger and would destroy business without any recourse to the courts." [3]);

Grassroots lobbying by corporate district managers;

Withheld or promised campaign contributions;

Big dollar honoraria for speeches by Members of Congress;

A misleading and intimidating letter sent at the request of the Chamber of Commerce by Representative Don Fuqua (D-FL) to the business supporters [4] of the bill suggesting that their position had been misstated by the supporters of the bill, and on and on.

Securing the promise of a Presidential veto was easy for the corporate lobbyists, even though it required reversal of Ford's prior support for the bill as Congressman from Grand Rapids [5] and rejection of the 1972 Republican platform by an unelected President. The Challenge was to co-opt the new Congress. After the third Senate filibuster against the bill was finally broken by a vote of 71 to 28, the business lobby focused its fire on the House where the bill is certain to pass but needs to muster a ⅔ vote for enactment over the veto.

BUSINESS LOBBYING TO DENY CONSUMERS THE PRIVILEGES IT ENJOYS

While the Chamber of Commerce (budget: $20 million), National Association of Manufacturers (budget: $6.7 million), Grocery Manufacturers Association

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[1] The Senate passed the bill by a vote of 74 to 4 in 1970, but a tie vote in the House Rules Committee prevented the House from voting on the measure. The House overwhelmingly passed the bill in the 92d and 93d Congresses, but the Senate filibustered both times. Sixty-five Senate votes in 1974 was one vote short of the two-thirds needed.

[2] The Library of Congress analyzed the poll in depth and concluded that "The public may favor the Consumer Advocacy Agency or oppose it, but it is not possible to use the Opinion Research poll to arrive at a final conclusion on this matter."

[3] The Chamber sent the film and tape to hundreds of television and radio stations but refused to disclose the list to the bill's sponsors who have filed a complaint with the FCC.

[4] Supporters of the bill include: AMFAC, Inc.; Atlantic Richfield Co.; Bantam Books; Connecticut General Life Insurance Company; the Dreyfus Corporation; Gulf and Western Co.; Jewel Companies, Inc.; King Super Markets, Inc.; Labenthal Company; Mobil Oil Co.; Montgomery Ward; Phillips-Van Heusen; Polaroid Corporation; Stop and Shop Companies; Stride Rite Shoes; United Artists.

[5] In the 92nd Congress, Representative Gerald Ford said: ". . . it is a sound workable bill . . . I think we will be well on the road to good legislation in the consumer area."

(budget: $3 million), Business Roundtable (budget: $3 million) and others[6] oppose giving consumers the capability in a modest $10 to $20 million agency to monitor the federal agencies and present their case at the appropriate time, they themselves have long enjoyed these privileges. Although business receives tax deductions for the costs of lobbying federal agencies, there is scarcely a major business interest group which does not also have an agency or department expressly designed to spend its many millions of dollars of annual budget to promote, subsidize or advocate its interests: aviation, maritime, trucking, cotton, tobacco, banking, nuclear power, drugs, automobiles, agribusiness, etc. A few examples of legislated subsidies recently passed or renewed are:

On February 19 the House increased railroad assistance grants from $85 million to $282 million for operating expenses. The next day it added $100 million for Penn Central and other bankrupt railroads.

On May 12, the House passed the maritime industry's annual subsidy. Much of the $589.7 million budget subsidizes the construction of ships, research and development.

On May 13, the House gave $11.2 million to the U.S. Travel Service to mount an advertising campaign promoting business for the hotel and airline industries.

On June 26, the House passed the Department of Commerce appropriation. Included was $61 million for the Domestic and International Business Administration which subsidizes the sale of U.S. goods in foreign and domestic markets.

On July 14, the House refused to delete a subsidy for Cotton, Inc. from the Agriculture appropriations bill despite flagrant abuses by the corporation, including building renovation and moving expenses of well over a million dollars and payment to the corporation's President of a salary twice that of the Secretary of Agriculture. The remainder of the $3 billion in funds is spent on research which the industry should be doing itself.

On September 15 the tobacco industry obtained an alteration of the formula which determines tobacco price supports. The cost over the next 15 months: $157 million.

In the face of evidence that about 5,000 deaths and 200,000 injuries result each year from burns associated with flammable fabrics, Congress strengthened the Flammable Fabrics Act of 1967. The Commerce Department charged with administering this law, took no action under it for four years. Finally, the agency issues clothing standards for children's sleepwear up to size 6X (fits children 6–7 years old). Manufacturers were given a two-year grace period to meet these requirements. There are still no flammability standards for any clothing over size 6X.

The Department of Transportation failed for seven years to issue standards to improve the crash survivability of school buses despite numerous Congressional requests. This failure finally necessitated Congressional enactment of statutory deadlines requiring DOT action.

The Federal Energy Office raised the maximum profit margin for gasoline retailers from 8 cents to 11 cents per gallon during the early months of 1974 to compensate them for a reduction in sales caused by government allocation. But when gasoline sales returned to normal, the Federal Energy Office failed to roll back the maximum profit margin to 8 cents.

A 1975 Report by the Comptroller General of the United States found that the Food and Drug Administration did not comply with its own procedures to independently investigate the cause of a recall of cardiac pacemakers by manufacturers. The common defect in the pacemakers was a leakage of body fluids through the plastic seal of the pacemakers causing short circuiting. The FDA did not give adequate consideration to possible adoption of a standard developed by the Navy for hermetic sealing of electronic components to prevent short-circuiting caused by moisture, and still has not issued any standards to deal with this problem.

[6] Major business opponents: Chamber of Commerce, National Association of Manufacturers, Business Roundtable, National Association of Food Chains, Grocery Manufacturers Association, General Motors, Ford Motor Co., American Cyanamid, Greyhound, Goodrich Tire, Sears Roebuck, Gulf Oil, Procter and Gamble, Union Carbide, General Electric, American Can. Bryce Harlow of Procter and Gamble and Rodney Markley of Ford are Presidential confidants.

OBJECTIONS TO THE CONSUMER REPRESENTATION PLANS PROPOSED BY THE FORD ADMINISTRATION

The following is a list of the major objections the consumer movement has to the Ford Administration's proposed Consumer Representation Plans. The fact that representatives of consumer organizations have been denied the opportunity to present their views at these regional conferences manifests the lack of interest the White House actually has in hearing what consumers have to say.

1. The plans were developed as a cosmetic device to allow Gerald Ford to claim that he is interested in the plight of consumers despite his declared intention to veto the Consumer Protection bill, which passed the Senate in May and the House in November. This bill, long and actively supported by consumer groups, would establish an independent advocate to argue the consumer's interest before federal agencies and courts. Were the White House truly concerned about the American consumer, Gerald Ford would sign the Consumer Protection bill.

2. The plans create no new legal rights for consumers. Citizens have no legal right to assure that the agencies obey the guidelines they have set out.

3. Many of the plans add new jobs and new layers of bureaucracy. By doing so, they may well make citizen access to government more difficult and will certainly cost many taxpayer dollars.

4. The plans fail to address the problem of consumer advocacy. What the Consumer Protection bill does, and what these plans fail to do, is to assure that the consumer interest will be presented before any government agency makes a decision which affects the health, safety, or pocketbook of the American consumer. Quicker response to consumer complaints, establishment of more advisory councils, and abstract pledges to consider the interest of consumers cannot substitute for the creation of a consumer advocate.

5. Plans were submitted by only seventeen agencies and departments. Regulatory agencies, whose decisions directly impact on every American's life, submitted no plans.

6. Symptomatic of the White House attitude towards consumers is the format of the regional conferences. They are set up to assure that the press covers the statements of the White House officials. The opportunity for citizen statements is scheduled to prevent significant press attention. Furthermore, the length of individual statements is severely limited.

7. The release of the Consumer Representation Plans and the planning of regional conferences are designed to delude the public about Gerald Ford's record on consumer issues. As President, Gerald Ford has been a disaster for the American consumer. He has opposed measures to require tougher health and safety standards while endorsing efforts to increase profits for large corporations.

BUSINESS SUPPORTERS OF THE CONSUMER PROTECTION BILLS—H.R. 6118 AND S. 1262

Advanced R & D, Inc., Orlando, Fla.
Aldi-Benner, Burlington, Iowa.
Alexander Hamilton Life Insurance Co., Farmington, Mich.
American Income Life Insurance Co., Waco, Tex.
American Sound Corp., Warren, Mich.
AMFAC, Inc., Honolulu, Hawaii.
Amivest Corp., New York, N.Y.
Applikay Textile Process Corp., Passaic, N.J.
Atlantic Richfield Co., Los Angeles, Calif.
Bantam Books, New York, N.Y.
Blake's, Springfield, Mass.
Brands Mart, New York, N.Y.
Cardinal Outdoor Advertising: Erie, Pa.; Danville, Ill.; Terre Haute, Ind.
Chain Store Systems, Burlington, Iowa.
Chief Auto Supply, Cerritos, Calif.
Cinema 5 Development, New York, N.Y.
Coffee Associates Food Enterprises, South Windsor, Conn.
Condamatic Company, Inc., Warren, Mich.
Connecticut General Life Insurance, Hartford, Conn.
Consumers Cooperative of Berkeley, Inc., Berkeley, Calif.
Consumers Cooperative Society of Palo Alto, Palo Alto, Calif.
Consumers United Insurance Co., Arlington, Va.
Co-op and Consumer Supermarkets, SCAN Contemporary Co-Op Furniture, Silver Spring, Md.
Cummins Engine Co., Columbus, Ind.

Dansk Design, Mt. Kisco, N.Y.
The Dreyfus Corp., New York, N.Y.
Dyna Day Plastics, Inc., Warren, Mich.
Dyson-Kissner Corp., New York, N.Y.
Walter Emery, Bank of Denver, Denver, Colo.
Executive Life Insurance of New York, New York, N.Y.
Factory Equipment Corp., Los Angeles, Calif.
Federation of Cooperatives, New York, N.Y.
Feuer Precision Gauges, Inc., Forest Hills, N.Y.
Florida Investors Mortgage Corp., Gainsville, Fla.
Frankel Carbon & Ribbon, Denver, Colo.
General Instrument Corp., New York, N.Y.
Laurence Good, (L.S. Good), Wheeling, W. Va.
GRT Corp., Sunnyvale, Calif.
Gulf & Western Co., New York, N.Y.
Hamburger's, Baltimore, Md.
Hang Ten International, San Diego, Calif.
Harper Systems, Little Rock, Ark.
Harris & Frank, Los Angeles, Calif.
Robert Hart, Boulder National Bank, Boulder, Colo.
Henhouse Interstate, St. Louis, Mo.
Hydro Medical Science, New Brunswick, N.J.
International Creative Management, New York, N.Y.
International Group Plans, Inc., Washington, D.C.
Jewel Companies, Inc., Chicago, Ill.
Joseph & Feiss, Cleveland, Ohio.
KB Marketing System, Inc., Brillant, Ohio.
Kennedy's, Boston, Mass.
King Super Markets, Inc., Irvington, N.J.
Labenthal Co., New York, N.Y.
Levi-Strauss, San Francisco, Calif.
Lloyd's Shopping Center, Middletown, N.Y.
Maxell Corp. of America, Moonachie, N.J.
MCA (parent of Universal Pictures), Universal City, Calif.
Mobil Oil Co., New York, N.Y.
Monogram Industries, Inc., Los Angeles, Calif.
Montgomery Ward, Chicago, Ill.
Myers Bros., Springfield, Ill.
National Patent Development Co., New York, N.Y.
Oakland Consolidated Corp., Maitland, Fla.
Optical Systems Corp., Los Angeles, Calif.
Phillips-Van Heusen, New York, N.Y.
Piedmont Industries, New York, N.Y.
Pioneer Systems, Manchester, Conn.
Polaroid Corp., Cambridge, Mass.
Professional Insurance Agents, Washington, D.C.
Puritan Fashions Corp., New York, N.Y.
Putnam-Gellman Corp., New York, N.Y.
Ratner Corp., San Diego, Calif.
Redwood & Ross Stores, Kalamazoo, Mich.
Rice's/Nachman's Stores, Norfolk, Va.
Rob Roy, New York, N.Y.
Royal Transmission, Las Vegas, Nev.
Scottie Car, Springfield, Ill.
Scottish Inns of America, Knoxville, Tenn.
Stop and Shop Co.'s, Boston, Mass.
Stratford Town Fairs, Stratford, Conn.
Stride Rite Shoes, Boston, Mass.
TDK, Garden City, N.Y.
United Artists, New York, N.Y.
Warner Communication, New York, N.Y.
Wrangler Hosiery, New York, N.Y.

Our coalition, consisting of various consumer, farm, senior citizen, religious, and community groups, labor unions, and state and local officials, favor enactment of the agency for consumer advocacy legislation.

NATIONAL GROUPS

Amalgamated Clothing Workers of America (AFL–CIO).
Amalgamated Meat Cutters and Butcher Workmen (AFL–CIO).
American Association of Retired Persons.
American Association of University Women.
Americans for Democratic Action.
B'nai B'rith Women.
Common Cause.
Communications Workers of America (AFL–CIO).
Consumer Action for Improved Food and Drugs.
Consumer Federation of America.
Consumers Union of the United States, Inc.
Cooperative League of the United States of America.
Friends of the Earth.
International Association of Machinists and Aerospace Workers (AFL–CIO).
International Union of Electrical Radio and Machine Workers (AFL–CIO).
International Ladies Garment Workers Union (AFL–CIO).
Movement for Economic Justice.
National Black Media Coalition.
National Congress of Hispanic-American Citizens.
National Consumers Congress.
National Consumers League (Esther Peterson, President).
National Council of Senior Citizens.
National Farmers Union.
National Women's Political Caucus.
Oil, Chemical and Atomic Workers International Union (AFL–CIO).
Public Citizen (Congress Watch).
Retail Clerks International Association (AFL–CIO).
Sierra Club.
United Auto Workers.
United Mine Workers of America.
United Presbyterian Church (Washington Office).
United Steelworkers of America (AFL–CIO).
Women's Equity Action League.
Women's Lobby.
Women's National Democratic Club.
Consumer Advocates.

LOCAL GROUPS AND INDIVIDUALS

Alabama

Alabama Labor Council (AFL–CIO).
Julian Butler, Attorney-at-Law (Huntsville).
Morris Dees, Civil Rights Attorney (Montgomery).
Elmore Community Action Committee (Watumpka).
Dr. Higdon Roberts, Jr., Director, Center for Labor Education and Research, University of Alabama (Birmingham).
Ronald Menton, Director, Alabama Credit Union League.
William Baxley, Attorney General.

Arizona

Paul Castro, Governor.
Arizona Consumer Council.
Arizona Committee for Social Utility.
Tucson Public Power.

Arkansas

David Pryor, Governor.
Earl Anthes, Community Development Consultant (West Memphis).
Arkansas Community Organization for Reform Now (Little Rock).
Arkansas Consumer Research (Little Rock).
Jim Guy Tucker, Attorney General.

California

Alameda County Consumer Action, Inc.
California Citizen Action Group.
California Public Interest Research Group.

CalPIRG Advocates.
Coalition for Santa Clara Valley.
Consumers Cooperative (Don Rothenberg, Richmond).
Consumers Coop of Palo Alto.
Consumers United of Palo Alto.
Fight Inflation Together (Los Angeles).
Friends Committee on Legislation of Southern California.
Gil Graham, Esq., Lawyers Committee for Urban Affairs (San Francisco).
Bob Fellmeth, Deputy District Attorney (San Diego).
People's Lobby (Los Angeles).
San Francisco Consumer Action.
San Francisco Consumer Advocates.

Colorado

Colorado League for Consumer Protection.
Colorado Public Interest Research Group.

Connecticut

Connecticut Citizen Action Group.
Connecticut Consumer Association, Inc.
Connecticut Public Interest Research Group.

Delaware

Mrs. Frances West (Director, Consumer Affairs Division).

District of Columbia

District of Columbia Public Interest Research Group.

Florida

Reuben Askew, Governor.
American Consumers Association, Inc.
Concerned Consumers of Dade County.
Congress of Senior Citizens.
Consumer Information Center of Central Florida, Inc.
Mrs. Stanley Goldberg, Commissioner of Metropolitan Dade County.

Georgia

Citizens Consumer Council of Georgia.

Guam

Ricardo Bordallo, Governor.

Idaho

Cecil D. Andrus, Governor.

Illinois

Dan Walker, Governor.
Illinois Public Interest Research Group.

Indiana

Indiana Public Interest Research Group.

Iowa

Iowa Consumer's League.
Iowa Public Interest Research Group.

Kansas

Consumer Relations Board, Kansas State University.
Consumer United Program.
William Griffin, Assistant Attorney General & Chief, Consumer Protection Division.
Kansas City Consumers Association.
Richard L. D. Morse, Professor, Family Economics, Kansas State University.
Earl Sayre, Legislative Chairman, Kansas Council on Aging.
Curt Schneider, Attorney General.

Kentucky

Consumers Association of Kentucky, Inc.
Kentucky Public Interest Research Group.

Louisiana

Acadiana League.
Consumer Protection Center.
William Guste, Attorney General.
Louisiana Consumer's League.
Mayor's Office of Consumer Affairs (New Orleans).
Charles W. Tapp, Director, Louisiana Governor's Office of Consumer Protection.

Maine

COMBAT, Inc. (Portland).
Maine Public Interest Research Group.

Maryland

Marvin Mandel, Governor.
Alliance for Democratic Reform (Montgomery County).
Maryland Citizens Consumer Council.
Maryland Public Interest Research Group.
Montgomery County Office of Consumer Affairs.

Massachusetts

Father McEwen, President, Association of Massachusetts Consumers (Boston).
Massachusetts Public Interest Research Group.

Michigan

William G. Milliken, Governor.
Consumer Alliance of Michigan.
Michigan Citizen's Lobby.
Michigan's Consumer's Council.
Michigan Public Interest Research Group.
Esther K. Shapiro, Director, Consumer Affairs Department, City of Detroit.
Robert Leonard, District Attorney (Flint).

Minnesota

Wendell R. Anderson, Governor.
Sherry Chenoweth, Director, Minnesota Office of Consumer Services.

Missouri

Housewives Elect Lower Prices.
Mid-American Coalition for Energy Alternatives (Clinton).
Missouri Public Interest Research Group.
St. Louis Consumer Federation.

Montana

Thomas L. Judge, Governor.
Consumer Affairs Council, Inc., of Montana.

Nebraska

J. James Exon, Governor.
Consumer Alliance of Nebraska.

Nevada

Consumer League of Nevada.
Rex Lundberg, Commissioner of Consumer Affairs.
Robert List, Attorney General.
Elliot Sattler, Deputy Attorney General.

New Jersey

Brendan Byrne, Governor.
Center for Consumer Education Services (Edison).
New Jersey Public Interest Research Group.

New Mexico

Toney Anaya, Attorney General.
Emily Belasquez, Director, Consumer Education Program, All Indian Pueblo Council.
Delacroix Davis, Jr., Chairman, FEB Consumer Issues Committee (Albuquerque-Santa Fe).

Herman Grace, Director, Division of Human Resources, Office of the Governor.
Mrs. Viola Pena, Director, Consumer Protection Division (Albuquerque).
New Mexico Public Interest Research Group.
Jerry Apodaca, Governor.

New York

Adolfo Alayon, Consumer Action (Bedford Stuyvesant).
Center for Community Issues Research (Rochester).
Consumer Action Now (CAN).
Consumers Association of New York (Rochester).
Consumer Protection Board (Huntington).
Metro-Act of Rochester.
New York Consumers Assembly.
New York Public Interest Research Group.
James Picken, Commissioner of Consumer Affairs (Nassau County).

North Carolina

North Carolina Consumer Council.
Consumer Center of North Carolina.
Conservation Council of North Carolina.
North Carolina Public Interest Research Group.

North Dakota

Arthur A. Link, Governor.
Community Action Line (Grand Forks).

Ohio

Consumer Action of North Dayton.
Consumer Conference of Greater Cincinnati.
Consumer Protection Association of Cleveland.
Consumers League of Ohio.
Ohio Consumers Association.

Oregon

Community Care Association, Inc. (Portland).
Oregon Consumers' League.

Pennsylvania.

Milton Shapp, Governor.
Alliance for Consumer Protection.
Bucks County Consumer Organization.
Pennsylvania League for Consumer Protection.
Philadelphia Area Consumers' Council.
Ruth Rodman, Director, Consumer Affairs Education Division, Philadelphia School District.

Rhode Island

Philip W. Noel, Governor.

South Dakota

Richard F. Kneip, Governor.

Tennessee

Tennessee Consumer Alliance.

Texas

John Hill, Attorney General.
Texas Consumer Association.
Texas Public Interest Research Group.

Vermont

Thomas P. Salmon, Governor.
Vermont Public Interest Research Group.

Virginia

Virginia Consumers Citizens Council.

Washington

Daniel J. Evans, Governor.
Washington Committee on Consumer Interests.

West Virginia
West Virginia Citizen Action Group.

Wisconsin
Patrick J. Lucey, Governor.

Wyoming
Wyoming Public Interest Research Group.

Mr. BROOKS. The subcommittee will stand adjourned until 2 o'clock when we will hear a panel of State attorneys general and a panel of business leaders.

With that, the subcommittee will stand adjourned until 2 p.m.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 2 p.m.]

AFTERNOON SESSION

Mr. BROOKS. The subcommittee will come to order.

We will next hear from our panel of attorneys general from the States. These officers have become more and more involved in consumer protection on the State level in recent years, and have rendered outstanding service in cleaning up the marketplace.

We are glad to have them with us and will be pleased to hear their views based on their own experiences of the need for an agency to represent the interests of consumers at the Federal level.

The panel is composed of Hon. Julius C. Michaelson, attorney general of Rhode Island, and the Honorable Michael Szolosi, first assistant attorney general of the State of Ohio. Mr. Szolosi will be accompanied by Robert S. Tongren, chief of the consumers fraud and crime section in the office of the attorney general.

We will be pleased to hear from you, Mr. Michaelson and Mr. Szolosi.

STATEMENT OF JULIUS C. MICHAELSON, ATTORNEY GENERAL, STATE OF RHODE ISLAND

Mr. MICHAELSON. Thank you, Mr. Chairman, and thank you for that warm welcome.

Mr. Chairman and members of the committee, I appear before you as the vice chairman of the consumer protection committee of the National Association of Attorneys General. The association, consisting of all of the attorneys general of the United States, strongly supports the proposed legislation for an independent consumer advocacy agency.

You will be supplied, Mr. Chairman and members of the committee, with the resolution adopted by the association supporting the legislation.

Mr. BROOKS. We have this information now in the committee and it will be inserted in the record of this hearing.

Mr. MICHAELSON. Thank you, Mr. Chairman.

State attorneys general are continuously involved in consumer protection law enforcement in their States. While attorneys general have different jurisdictions—some attorneys general have criminal jurisdiction as well as civil jurisdiction—all attorneys general have consumer protection responsibilities.

In my State, Mr. Chairman and members of the committee, we receive more mail, more calls, and more visits from citizens on mat-

ters involving consumer problems than on any other matter. In Rhode Island, the attorney general is also the district attorney.

Therefore, we deal, in my office, with street crime, with organized crime, with corruption, and yet the number of complaints on all of these matters combined do not equal the number of visits, calls, and complaints that we get on consumer matters.

Nothing seems to arouse the citizenry as much as consumer problems, and, in particular, items which are involved with Federal regulation. In the State of Rhode Island—which has less than a million people—we can receive as many as 3,000 telephone calls a week on consumer complaints.

In less than 18 months, in my office, we returned to the people of the State of Rhode Island more than $1 million in cash and services as a result of those complaints. Yet we cannot really do the job because the problem is virtually always on the Federal level.

In Rhode Island, since 1970, we have perhaps had as many protests—or almost as many protests—and meetings about utility rates as there were about the war in Vietnam. We are a State which, in the last 2 years, has seen an unemployment rate which reached 20 percent.

We are a State which has, perhaps, the second largest percentage of senior citizens in the Nation living on fixed incomes.

Utility costs and oil costs—almost all regulated on the Federal level—have swelled the budgets of our educational institutions, our welfare recipients, and our factories. Our people, Mr. Chairman and members of the committee, often feel very powerless and very frustrated.

The U.S. Supreme Court has continuously stated that ratemaking involves a balancing of the interests between the ratepayer and the consumer. I think that more than 50 percent of the cost of electric rates and gas rates come about as a result of Federal regulation.

That balancing of the consumer interest can only occur if there is an active consumer advocate appearing before that Federal regulatory body, articulating the particular consumer problems in the area that is going to be affected by the decision of the Federal Power Commission.

Mr. Chairman and members of the committee, I think that the price of food, the cost of shelter, the price of power are all determined, in a very large measure, federally—and, yet, in a very large measure, federally, the consumer has no voice and the consumer has no advocate.

My own feeling is that a consumer advocate really ought to be involved at the highest levels of Government. When the State Department and the Department of Agriculture determines that it was appropriate for foreign policy and for other reasons to sell wheat to the Russians, somewhere, somehow there ought to be some input as to what the impact of that will be on the consumers of this Nation.

I know that this bill may not do that, but if it were up to me I would enact legislation whereby the consumer would have some input in the economic policies of this Nation.

I believe, Mr. Chairman and members of the committee, that in this war against inflation—which our President and the Congress are now waging—a consumer advocate can be a very powerful weapon.

Thank you, Mr. Chairman and members of the committee.

Mr. BROOKS. I want to thank you very much for a very fine statement. We are grateful for your coming here and making a concrete contribution to the evaluation which we will make on this legislation.

You represent a great State. You are gracious to take time out to come down here and help on this legislation that will help so many people.

Mr. MICHAELSON. Thank you very much, Mr. Chairman.

Mr. BROOKS. Mr. Pritchard?

Mr. PRITCHARD. Your thesis is that the utility rates would be lower if we had a consumer agency; is that right?

Mr. MICHAELSON. The Federal Power Commission serves in a quasi-judicial capacity, as you know, Congressman. Frequently, the consumer interest is never articulated before that Federal Power Commission.

What is intended to be an adversary proceeding, and one where the decision should be based on a balancing of the interests between the ratepayer and the stockholder does not always come about that way because there is nobody there representing the ratepayer.

My thesis is that if we are going to do anything about utility rates on the local level, we have to do something about Federal regulations first because those rates are automatically passed on.

When the Federal Power Commission gives a rate increase to the wholesale company which supplies the utility in Rhode Island, that automatically is passed on to Rhode Island consumers. Very often, they have no voice in it.

Mr. PRITCHARD. I am not sure that the rates would go down if this Agency took over. You might have your input, but whether it would affect the rates is something else.

I am going to have some time with my attorney general, Slade Gordon—who I think you gentlemen know—and I will discuss with him his views on this issue.

Mr. MICHAELSON. He is the president of our association, and he is a fine representative.

Mr. PRITCHARD. Thank you. We are sort of proud of him. We do not have many Republicans in office these days so we are glad to hear that he is doing all right.

I will be interested in hearing the other two gentlemen. Thank you for your contribution.

Mr. BROOKS. Thank you, Mr. Pritchard.

Congressman Rosenthal?

Mr. ROSENTHAL. I have no questions.

Mr. BROOKS. I want to thank you very much, Mr. Michaelson.

Mr. Szolosi.

STATEMENT OF MICHAEL R. SZOLOSI, FIRST ASSISTANT ATTORNEY GENERAL, STATE OF OHIO; ACCOMPANIED BY ROBERT S. TONGREN, CHIEF, CONSUMER FRAUDS AND CRIMES SECTION

Mr. SZOLOSI. Thank you, Mr. Chairman.

My name is Michael Szolosi. I am the first assistant attorney general to Ohio Attorney General William J. Brown. Mr. Tongren is accompanying me here today.

First, I would like to express my thanks to the committee for the opportunity to appear here today and express the regrets of Ohio At-

torney General William J. Brown on his inability to be here himself.

He serves as chairman of the consumer protection committee of the National Association of Attorneys General and very much wanted to be here. Unfortunately, the press of business in Ohio did not permit him the opportunity to attend.

He did ask that I express his strong, enthusiastic support for this legislation.

In the interests of the committee's time and because I have had the opportunity to see the very impressive list of witnesses that are to follow our testimony today, I would ask simply that my written remarks be incorporated into the record, and I be permitted to make very brief oral remarks.

Mr. BROOKS. Without objection, so ordered.

Mr. SZOLOSI. Mr. Chairman and members of the subcommittee, I would like to make two points in my testimony today.

The first is that the legislation is very much needed, and that the attorneys general of the States are, indeed, aware of how much it is needed.

Second, I would like to urge on this subcommittee the consideration of one or two amendments which we think are needed. The most important of these is to authorize a grant-in-aid program to assist and strengthen the efforts on the State level.

First, with respect to situations in Ohio—where there is strong evidence of the need for a Federal consumer advocate—I might indicate, for the subcommittee's benefit, that—as I am sure all of you are well aware—in Ohio and in many other States, we have just survived a very severe winter heating season.

The Federal Power Commission, in our minds, did not assist as they might have done in solving some of the problems that Ohio faced. For instance, there was much self-help gas in Ohio which might have been moved from the location of the well to cities like Columbus and Dayton which were served by the Columbia Gas Co. of Ohio.

Unfortunately, that did not occur because neither the Federal Power Commission nor Columbia saw fit to take steps to allow it to occur. Had there been a Federal advocate, he might well have initiated action which would have prompted that, and that, in turn, would have assisted in allevitating the very grave situation that existed in Ohio.

Another illustration that we, in Ohio, are familiar with involves the Federal Communications Commission, which, as you know, regulates the telephone industry. Only recently was there a decision rendered by that agency which allows competitors of the Bell affiliates and other telephone companies to sell their terminal equipment without interconnect charges.

One impact on Ohio, as a result of the long delay in rendering that decision—in fact, as I understand, it is still subject to appeal—can be illustrated very well by a discussion of what has happened on the campus at Kent State University.

There, in an effort to conserve costs with the building of a new college of business, the administration saw fit to purchase their own terminal equipment. In purchasing the terminal equipment, they were able to save and reduce the cost of telephone service and, therefore, reduce costs to students and their parents of what is otherwise a very expensive college education.

Unfortunately, in the last rate case for Ohio Bell, the centrex station charges—which were only $8 per station—were raised to $28 per station with no evidence in the record which showed any cost increase to Ohio Bell. Obviously, however, they lost income.

Should other subscribers see fit to use competitors' equipment, they might well lose additional income.

If there had been a Federal advocate who might have argued earlier and very strongly in favor of the decision which was ultimately rendered at the Federal Communications Commission, the situation that occurred at the Kent State campus might not have occurred at all.

The third illustration that I would like to bring to the attention of this subcommittee involves the Securities and Exchange Commission's jurisdiction as a result of the Utility Holding Company Act.

As you know, their jurisdiction allows them to regulate, in some respects, parent companies such as the American Electric Power System.

Recently, in Ohio, we have participated, as an attorney general, in fuel adjustment clause hearings involving the Ohio Power Co.'s pass-through of coal costs in generating electric energy.

Our efforts to obtain discovery, in many cases, were thwarted because many of the documents were in the possession of the American Electric Power System which is not subject to Ohio regulatory agencies, but is subject to the SEC and other Federal agencies.

Discovery is obviously an important tool to effective consumer representation. Had there been a Federal advocate, we might have been materially assisted in obtaining such discovery.

I would like, now, to tell you a little bit, very quickly, about Ohio's recent experience. The general assembly, in 1976, passed some legislation which created—for the first time in Ohio—the office of consumer counsel. It is an office where a lawyer is appointed to serve as the counsel by a nine-member board, and he is responsible exclusively for representation of residential consumers before utility regulatory agencies.

Certainly, the reasons which the Ohio General Assembly found persuasive are persuasive here for the establishment of a Federal consumer advocate. The Ohio attorney general and the National Association of Attorneys General would urge those same reasons on this subcommittee, and on Congress in general, as support for this legislation.

Indeed, in December of 1976 at the mid-term meeting of the NAAG Association, a resolution was passed endorsing this legislation and it is attached to my statement today. The resolution also endorses the primary amendment that I would seek to have considered by this subcommittee—that is, the grant-in-aid program.

The concept of grants-in-aid is simply designed to assist the State efforts so that they might complement what we envision a Federal consumer advocate will do to represent consumers throughout this country.

There are only 16 States now, to my knowledge, that have consumer counsels for utility matters. Of all the States, I believe 48 perform some consumer protection functions and, of those, in perhaps 38 those functions are housed entirely in the attorneys general's offices.

Among all of those agencies, they are resource-poor and could well utilize additional funds.

One example that I would urge on this subcommittee is the recent experience we found in the Ohio Bell rate case in Ohio. There it was

estimated that Ohio Bell spent over $1.5 million in presenting its rate case.

The Ohio attorney general, who had the privilege to appear there on behalf of certain intervenors, spent only $30,000. There were very limited dollars spent, if any, on behalf of residential consumers generally.

The Ohio Bell rate case resulted in an approximately $200 million increase in additional revenue over that which had been received previously.

I think that evidence certainly indicates the need for additional sources of funding at the State level.

Again, I would like to offer my thanks to the chairman and to the members of the subcommittee for the time they have afforded.

Thank you.

Mr. BROOKS. You are very gracious to come here. We appreciate it.

Congressman Pritchard?

Mr. PRITCHARD. I would only comment that this bill is going to have a hard enough time getting through without any money hooked onto it. I think you have to be very realistic.

For an appropriation to be tied onto this thing would result in a miniscule chance for passage, if any chance at all.

I think the chairman would agree with me. Maybe he does want to put some money on this, but I would be surprised at that.

Mr. BROOKS. We discussed this matter with the attorneys general and did not feel it would be appropriate to put it in the original bill as submitted. We are nevertheless open to their suggestions.

We are always open to the constructive suggestions of the witnesses, and we are grateful for their efforts.

The Chair recognizes the gentleman from New York, Mr. Rosenthal.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

You spoke of grants to State agencies to pursue their responsibilities in this field. What kind of money are you talking about? How much money do you think Ohio or Rhode Island would need? How can we put that together to project any kind of a figure?

Mr. SZOLOSI. Mr. Chairman, Congressman Rosenthal, I am a great believer in the old adage that you have to walk before you run. I would suspect that some amount in the nature of, perhaps, $5 million as a figure that we might suggest, on behalf of the Ohio attorney general, is an appropriate amount to consider for all of the States at an initial appropriation stage.

Therefore, those States which already have programs in effect might receive some supplement to bolster their efforts, and some States which are entirely lacking in any agency—with the attraction of Federal dollars—might legislate or appropriate State dollars.

Mr. ROSENTHAL. I am, in general, sympathetic to that idea because I think it is useful. We run against the problem that we have poured billions of dollars into LEAA and not many of us have been overly impressed with the results there, that is the dichotomy we are faced with.

Mr. MICHAELSON. There is an alternative to that. In my own State, for example, it would be much more beneficial than simply receiving dollars if there were an expertise which was developed on the national level, and if the people on the national level were required, when requested, to render assistance to the States.

For example, in a rate case, such questions as what is a reasonable rate of return require a great deal of economic expertise. We need accounting expertise to look into questions of depreciation.

A rate case is very complicated. The cost of obtaining expert witnesses to try one rate case for a small State can be $60,000 or $70,000, and we might have 10 cases a year.

Therefore, just as good as the money would be the availability of experts to assist the States with these problems from the Federal level.

Mr. ROSENTHAL. On page 13, the bill has authority. This is where it says:

> Nothing in this section shall be construed to prohibit the Administrator from communicating with or providing information or analysis to Federal, State, or local agencies or courts at times and in manner not inconsistent with law or agency rules.

It also denies the Administrator the authority to intervene.

Mr. MICHAELSON. We would want that mandated in the act, Congressman. In other words, there was a time—I was involved in utility cases in the 1950's—when the Federal regulatory agencies would make available this kind of expert help to some of the States, but you cannot get it any more.

Mr. ROSENTHAL. Do you mean they are less cooperative today than they were then?

Mr. MICHAELSON. Very much so, Congressman.

You don't ask them anymore. The point is that the workload is so much greater now. These cases proliferate and they pile one on top of the other, and there is no agency.

If this Agency is created by the Congress and if it has the kind of people that a State can call, and if the Agency is required to make that service available to the State, it will be as good as money because the money, in my State, would be used for precisely that purpose.

Mr. ROSENTHAL. Thank you, Mr. Chairman.

Mr. BROOKS. Gentlemen, we appreciate your contribution here and your coming down.

I do feel the extension of expert information will be helpful to you.

Thank you very much.

[Mr. Szolosi's prepared statement follows:]

PREPARED STATEMENT OF MICHAEL R. SZOLOSI, FIRST ASSISTANT ATTORNEY GENERAL, STATE OF OHIO

Mr. Chairman and Members of the Subcommittee, we would like to thank you for inviting the Ohio Attorney General's Office to to make a presentation here today in support of the federal Agency for Consumer Protection. I am Michael R. Szolosi, First Assistant Attorney General, and with me today is Robert S. Tongren, Chief of the Consumer Frauds and Crimes Section. We appear today on behalf of Attorney General William J. Brown, the chief legal officer of the State of Ohio and the Chairman of the Consumer Protection Committee of the National Association of Attorneys General. He was unable to be here due to other legal matters which require his presence in Ohio, and asked that we come in his place to express his enthusiastic support for H.R. 6118.

Legislation to establish a federal Agency for Consumer Protection has been considered, discussed and debated since the 91st Congress. Unfortunately, the consumers of our country have not yet been provided with the representation they need in the federal regulatory decision making process. Although that process is often adversary in nature, opposing interests are seldom presented. The problem with this process is that the regulator, quite naturally, is exposed only to the views of those persons with a sufficient economic stake in the proceeding to justify the expense of hiring lawyers and expert witnesses to present their case. Non-economic interests, or economic interests which are too small or diffuse to justify the expense of representation are seldom, if ever, adequately advocated. As a result, the consumer's interest has not had a truly active advocate anywhere in the federal regulatory system.

Last year, the Ohio General Assembly considered the question of consumer representation in the Ohio administrative decision making process with respect to the utility industry. It realized that our consumers had virtually no effective representation before the Ohio Public Utilities Commission and, in response, enacted legislation establishing a "Consumer's Counsel" to represent "residential consumers" in administrative matters regarding utilities. Under the law, the Counsel may:

1) Appear before the Commission to examine and cross-examine witnesses and present evidence;

2) Take appropriate action on consumer complaints concerning the quality of service, service charges and operation of the Commission;

3) Institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of consumers concerning review of decisions rendered by, or failure to act by, the Commission; and

4) Conduct long-range studies concerning rates charged to consumers.

Although its application is limited to public utilities, the basis for this recent enactment by the Ohio General Assembly is identical to that of the proposal to establish a federal Agency for Consumer Protection. Both will ensure effective representation of consumers in proceedings which affect their economic well being.

The Attorneys General of the country have been leaders in the field of consumer protection. They have led the fight in many states for legislation to protect their consumers from marketplace abuses and ensure effective representation of consumer interests. According to a recent survey by the National Association of Attorneys General, the Attorneys General exercise some or all consumer protection responsibilities in forty-eight states, Puerto Rico and Guam. In our work as a nationwide organization, we have realized the extreme need for an effective and cooperative state-federal relationship in coordinating our consumer protection efforts. It is difficult, if not impossible, to obtain, sufficiently analyze and effectively respond to the multitude of regulations which daily appear in the Federal Register. As Attorneys General with common law and numerous statutory responsibilities, we cannot begin to cope with the quantitative regulation of the federal regulatory agencies. We cannot possibly be expected to effectively represent our consumer's interests before both our state and the federal regulatory agencies.

It is understandable then that Attorney General Brown and the National Association of Attorneys General have previously gone on record in support of the establishment of a federal Agency for Consumer Protection. In 1974 and 1975, Attorney General Brown, in urging Ohio's senators and representatives to vote for then S. 200 and H.R. 7575, stated:

> "We in Ohio have been vigorously fighting consumer fraud on the state level with all the legal tools at our disposal. But no state or its officials are in a position to effectively monitor important federal agency decisions affecting the vital interests of Ohio's citizens and millions of consumers nationwide. We believe the consumers of Ohio and this nation have the right to be represented and have access to information on decisions affecting their health, welfare and economic status."

The Consumer Protection Committee of the National Association of Attorneys General, as well as the National Association itself, has advocated the adoption of this legislation. At its 68th Annual Meeting in June, 1974, the National Association of Attorneys General endorsed the concept of a federal Agency for Consumer Protection. At its Mid-Term Meeting in December, 1976, the Association passed a second resolution, a copy of which is

attached, reiterating its support for this legislation.

Opponents of the Agency for Consumer Protection have charged that it would become a regulatory agency itself, that it would cost taxpayers too much money and that it could not determine what is the consumer interest. The proposed Agency for Consumer Protection will clearly not bring about more regulation; rather, it will produce better regulation through its participation in other agency regulatory proceedings. It could not impose fines, set rates or ban products. It would merely present evidence and arguments to the federal decision makers regarding the effect of their decisions on consumers.

Even if the 15 million dollars appropriated for the Agency's first year of operation is spent, the resulting benefit of its advocacy could produce a savings to consumer-taxpayers far in excess of that amount. We are all familiar with the beneficial savings that have resulted through consumer representation on the state level in just one area, the utilities. Intervention by Attorneys General or other consumer advocates has saved consumers millions of dollars in rate increase request cases. The monetary savings to consumers produced through the enforcement efforts of the Consumer Frauds and Crimes Section in Attorney General Brown's Office since 1972 establish that the Office has virtually paid for itself. We have consistently returned more money to Ohio consumers through our complaint handling activities and enforcement actions than these taxpayers have paid for our efforts. Since 1972 when our consumer law became effective, we have recovered $1 million in excess of the cost of consumer protection activities. Clearly, the monetary benefit resulting from consumer representation by a federal Agency for Consumer Protection will more than outweigh its estimated cost to the average American taxpaying family.

Reasonable guidelines are available for the Agency to determine what is the "consumer interest". Attorney General Brown and his fellow Attorneys General have to make this determination every day. Some of the criteria we use to determine this interest are who is being injured; what is the cost of the injuries in dollars; is the interest already being adequately represented; would this interest be best served by consumer education, prosecution and so forth. The "consumer interest" is obvious in federal administrative proceedings regarding economic regulation, health, safety, misleading advertising and other apparent aspects of consumer protection. On those occasions when several and perhaps competing, consumer interests may apply, the Agency will first determine whether any of those particular interests are being represented. If that representation is provided, the Agency, rather than advocate that particular interest, would ensure that the decision maker is presented with other consumer viewpoints without advocating one at the expense of the other. The Agency's participation will ensure that the ultimate decision is based upon a thorough and objective analysis of all the information and arguments.

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Legislation introduced in 1973 to establish a federal Consumer Protection Agency contained provisions for grants to state and local agencies to assist them in the establishment and operation of state and local consumer protection programs. Those provisions recognized that many states, because of budgetary reasons, do not have active consumer protection agencies. Attorneys General themselves, with limited budgets, have been forced to use substantial volunteer help in order to detect violations of their consumer protection laws. The resolution adopted by the National Association of Attorneys General addresses this issue in calling for an adequate funding program through the Agency for Consumer Protection to ensure a coordinated effort between local, state and federal enforcement agencies and to strengthen each agency's ability to respond to consumer needs. Attorney General Brown and the National Association of Attorneys General urge you to include language in H.R. 6118 to provide for an effective grant-in-aid program to benefit state and local consumer protection agencies. We have been fortunate in Ohio to have an adequate budget to respond to a lot of consumer problems. However, there is much more that we could, and should, do to more effectively protect Ohio consumers. Unfortunately, we don't have the resources with our limited budget to provide the full protection our consumers need and deserve. An effective grant-in-aid program through the Agency for Consumer Protection would help Ohio and the other states in their efforts to work with the Agency and better protect consumers throughout our country. The savings in consumer dollars to state and local consumers that could result from such a grant program would equal if not surpass the cost of the program.

Citizens have become increasingly disillusioned with the federal government. They have neither the expertise, finances nor perseverence to cope with the numerous federal agency decisions which affect their lives. Attorney General Brown shares these frustrations with Ohio citizens, and he believes that the federal Agency for Consumer Protection would help give consumers a much needed voice in federal decision making and in turn, help federal agencies to become more responsive to the needs of the people. We urge this Subcommittee and the entire House to act quickly on this very important and long overdue legislation.

RESOLUTION VII
FEDERAL AGENCY FOR CONSUMER ADVOCACY
Adopted by the
NATIONAL ASSOCIATION OF ATTORNEYS GENERAL
December 14, 1976
Honolulu, Hawaii

WHEREAS, the National Association of Attorneys General, whose members have provided leadership for consumer protection law enforcement in their respective States, endorsed the concept of an independent and effective Consumer Protection Agency to afford consumer advocacy at the federal level at its 68th Annual Meeting, held in Coeur D'Alene, Idaho on June 23-26, 1974:

WHEREAS, the Association desires to reaffirm its support of this important concept as embodied in that resolution which called for the coordinated efforts of local, state and federal enforcement agencies and for the insuring of adequate funding to strengthen each agency's ability to respond to consumer needs;

THEREFORE, BE IT RESOLVED that:

1. The National Association of Attorneys General again urges the United States Congress to pass legislation which establishes an independent and effective Consumer Protection Agency for consumer advocacy on a federal level and designed to strengthen state and local consumer programs through federal grants-in-aid, which would recognize the necessity for maintaining effective enforcement of our consumer protection laws at the state and local level.

2. The Association's Washington Counsel is authorized and directed to take all reasonable and appropriate steps to communicate this Association's support for an independent Consumer Protection Agency, and for federal grants to states for consumer protection programs.

3. The special Subcommittee on Legislation of the Association's Consumer Protection Committee shall monitor and coordinate efforts of the Washington Counsel and Association members in regard to this legislation.

Mr. BROOKS. We now have a panel of very distinguished businessmen to give us their views on the need for a consumer agency. I am particularly pleased to welcome back to this hearing Mr. Peter Jones, vice president for Levi Strauss & Co., and formerly general counsel of MARCOR.

I believe he is accompanied by one of the great advocates of the Congress, a man who thinks so much of Congress and their staff work, their remuneration and their dedication, their contribution to this body—Harry MacPherson—one of the real advocates of a strong, independent Congress.

Mr. JONES. I just thought, Mr. Chairman, that you ought to have an opportunity to have at my dear friend, Harry, as well as have at me.

Mr. BROOKS. I am delighted to have both of you here.

We also expected to have with us Mr. William Fitzmorris, the president of the Aldi Bennar Co., and Mr. Bud Barger of TDK Electronics.

These witnesses let us know there are really many in the business community who believe, candidly, that consumers should have a voice in the councils of government, and are quite willing to speak up and say so.

As I look over my mail and review the requests to be witnesses, I want to commend you all for your courage and your stability. I hope the Bennar Co. and TDK Electronics are in as good a shape as Levi Strauss because I know they are doing well.

If you can't make money selling blue jeans that are this long and that wide [indicating] for $14, then I don't know how to do it.

[Laughter.]

Mr. BROOKS. I do want to commend you, Mr. Jones. I am glad you are doing well, and I am glad you are on the side of the public in making those things available. You have them believing they are the best in the world, and they may be.

I would be pleased, at this time, to welcome you to the committee to hear your comments.

STATEMENT OF PETER JONES, VICE PRESIDENT, LEVI STRAUSS & CO.

Mr. JONES. Thank you, Mr. Chairman, very much. I am delighted to be back here.

Mr. BROOKS. Back in the saddle again?

Mr. JONES. It is a Levi saddle. I might add that the only reason for that relationship you referred to between size 10 slims and 14 clams is that there is a certain law of nature that relates slims and clams, and that is what has gotten us where we are, Mr. Chairman.

Mr. BROOKS. I understand.

Mr. JONES. Let me begin by quoting a letter written by Peter E. Haas, president of Levi Strauss, to President Carter. It is as follows:

> I am writing to inform you of Levi Strauss and Co.'s strong support for the early enactment into law of a Consumer Protection Agency bill so long as that bill contains carefully balanced benefits and safeguards for consumers, business and other government agencies approximating those embodied in the two similar bills passed by the Senate and House last year.
>
> . . . Of prime importance, such a bill would establish a separate consumer agency with the power to represent consumer interests in proceedings of other agencies but without the power to change the substantive laws administered by those agencies or to issue any regulation of its own.

. . . In addition, we must remember that businessmen can go to the Department of Commerce; farmers to Agriculture; bankers to Treasury and workers to Labor and find government officials with expertise and responsibilities regarding their problems, needs and views. We believe that consumers should also have a separate home within the councils of government.

Parenthetically, one thing we would commend for your consideration is that, after 6 long years in the vineyards in both Houses trying to get this bill through, it seems to me that the bills passed by the Senate and House last year—both very similar—do not really need much more attention. My hope is that they would go forward with the contents that they now have.

I think that the principal reason that the Haas family and Levi Strauss decided to support this bill is summarized in the last part of the letter I have read. In terms of any rough sense of equity or fairness, it seems to me that since we have a consumer movement that is here to stay we ought to have a place where consumers can go in the Federal Government and find that same kind of expertise and concern that farmers, businessmen and bankers now find. To not do this at this stage in our Nation's history would be difficult to justify.

I will not impose on the committee's time to record Levi's rather exceptional commitment and performance in the area of corporate social responsibility. Our chairman, Walter Haas, stated his basic philosophy which underlies the support of this bill when he said in effect that the business of business must be something more than just business—Milton Freedman notwithstanding. As Mr. Haas put it, "the positive and negative forces at work in our Nation today demand that the corporation must take a philosophical and a material response to the other needs of the people in the community."

In the long run, this new task of the corporation will be in its own best interest, since it cannot prosper as fully or as long in a society frustrated by social ills and upheaval.

It seems to me that that is the reverse side of the coin of "What is good for General Motors . . .

The issues involved in this legislation are well known to all the members of this committee. When we ask why it has taken so many years to get us to where we are today, I think we must remember the threat of a veto in past administrations and the intense efforts of some segments of the business community have been responsible for the delay.

Now it is clear that with the support of President Carter the threat of a veto has been removed, and that a growing number of major corporations support the measure including United Artists, the Jewel Companies, the Dreyfus Corp., Mobil Corp., Montgomery Ward, Connecticut General Life, and others.

Yet, some opposition from other business interests continues. That opposition is understandable, but I feel it is misplaced.

We believe that the problems in the legislation—when it began its legislative course in 1971—have, by and large, been met by amendments to it, and that the idea of a super agency with fearful powers over business and other Government agencies is a bugaboo, and not a reality.

If we take some of the principal concerns that still seem to hover over this agency, I think they are that a significant number of constituents are still saying to some of our Congressmen:

Even granting that the purposes of these regulations and requirements are good, there still comes a time when the overload of Government regulations may well become too heavy, depress private initiative, and impose economic costs on private firms and individuals far greater than the public benefit which the regulations were intended to provide.

In response to these complaints from constituents, today I think we have a situation in the House where—as Congressman Pritchard said—we already have a close vote on our hands.

However, the main argument in opposition that I hear—now that this bill has been worked over and worked over—contains very little complaint about the bill as it now stands, either on the Senate side or the House side.

There is almost no legitimate objection that the business community has raised that has not been handled in the bill as it now is, except the desire to eliminate or emasculate the bill entirely. The only argument that is left—and I do get this from the opponents—is "Yes, but it can get larger, it can get bigger."

You can also get into an automobile and have an accident so never drive a car. They forget the fact that the bill on the Senate side has a sunset provision that, 3 years from now, it has to be completely evaluated, that you go back to "zero-base budgeting" and look at it from scratch.

If it does not pass muster at the end of 3 years, the Congress is in a position to say, "Goodbye." When they got started, most other agency bills did not have that feature built into them.

I find very difficult to swallow the sentiments of those principal opponents of this bill today who say, "We have no major objections to the bill as it is now written, as it will be passed and signed into law, but it could get worse and bigger sometime in the future, and, therefore, we oppose it."

However, given the atmosphere of concern about big government, given the campaign pledges of both Presidential candidates that we would cut back on the intervention of government in people's lives, we still have to ask: "Why is President Carter so strongly supporting it? Why are the Members of Congress that still support it so strongly supporting it?"

I think this is for two basic reasons. The first we have already mentioned—to give the consuming government a voice in government. And the second is to improve the performance of those government agencies which have, as their mandate, attending to the needs of consumers.

The first is democratic—consumers ought to have a home in Washington. I think it is hard to fight that.

The second is managerial—to increase efficiency. We are talking about making Government more efficient. This is a brandnew experiment. There has been nothing tried of this sort that I know of in the history of Congress—certainly in the modern history. It is a pilot project.

Everybody is concerned about "How do you make the Federal Government and the executive branch more responsive and efficient?" Let's give this a chance, and 3 years from now let's take a look at it and see what kind of a job it has done.

However, for goodness sake, let's not throw it out before we have gotten started.

The businessmen who do support this, it seems to me, support it because they think it can make Government more efficient, but, more importantly, because businessmen are reading the opinion polls that tell them that public confidence in business and Government is still low.

We are examining the reports of pilferage, vandalism, and debt delinquency that indicate, at best, a carelessness and, at worst, a contempt toward private property and economic responsibility.

We are looking down the line toward a society in which the ordinary citizen views government and business as their alien enemies, cooperating to gouge them.

To the extent that businessmen are successful, they become part of the establishment, and they sense that an important part of each succeeding generation is becoming more and more skeptical—not to say cynical—toward any and all establishments—big business, big government, big labor, big anything.

There are two ways of handling this. One response is to dig in your heels and fight, to indulge in economic class warfare, and to oppose every Federal statute, every regulation designed either to create greater social responsibility by business or to help protect consumers.

Choosing this course would mean accepting the downward slide of the public's attitude toward business as given, and deciding to get and hold as much as can be gotten before the roof falls in on the private sector.

I lived in three countries in Latin America for 7 years and I watched businessmen dig in their heels and fight every inch of the way until they were totally destroyed in the process. If we cannot learn some lessons from our neighbors to the south here in this country, and wake up before it is too late, I think it is too bad.

The other course, obviously, is to examine the root causes of public skepticism and cynicism toward business, and to try to eliminate some of them. One cause, in my view, is the conviction in some circles that business and Government have a cozy arrangement that permits business to get away with murder on some matters affecting consumer interests.

Mary Gardner Jones testified that when she was an FTC Commissioner consumer interests rarely were represented at all, and even more rarely effectively, before the FTC Commissioners in their proceedings.

Whether there is a cozy arrangement or not—and I have had enough experience with regulatory agencies to know that, in virtually all cases, there is no such cozy arrangement—as long as the American public and the consumer does not have a right to participate, is kept out, and believes that cozy arrangements exist, we have a problem on our hands.

As long as, in fact, it is not so in virtually all cases, why not let them in—let the sunshine and the consumer in—through this consumer advocate, through this Administrator, to participate in those proceedings, and see if we cannot actually improve the efficacy of Government in the process?

In my view and, more importantly, in the view of Levi Strauss, the consumer should have the standing to assert his interests systematically and as a right not only on the Hill, but in the departments

and agencies downtown because that strikes us as fair, and the essence of justice is fairness.

If you do not have a just society where people feel that they are being treated fairly, you cannot have a free society because people will not voluntarily act in a way which will support the community if they do not feel that they are being treated fairly.

In the marketplace, it seems to me that a prerequisite for regaining the confidence of consumers is to give them a greater sense of participation.

One last comment. It will not be enough for this new Agency to win Ralph Nader's praise, or even to win the praise of the companies that now support it. It seems to me that it is going to have to do three things.

It is going to have to show business that it is fair. It will have to show the Government bureaucrats that it is responsible. And it will have to show consumers that it is effective.

We believe that the current bills passed by the Senate and the House last year provide a sound legislative basis for the new Agency doing just that, and that the requisite number of able and dedicated people can be found to administer it successfully.

If these things are done, we believe the new Agency can also help to create a climate in which more and more consumers, realizing that they will have an effective voice in the councils of government, will come to have a greater confidence in the fairness of our mixed economic system.

It is for these reasons, Mr. Chairman, that we, at Levi Strauss, support the Consumer Protection Act of 1977.

Thank you very much.

Mr. BROOKS. We want to thank you very much, Mr. Jones, and suggest that we include the complete letter which Mr. Haas sent to President Carter in the hearing record, without objection.

Mr. JONES. Thank you very much.

[The letter referred to follows:]

EXECUTIVE OFFICES

March 1, 1977

The President
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

I am writing to inform you of Levi Strauss & Co.'s strong support for the early enactment into law of a Consumer Protection Agency bill so long as that bill contains carefully balanced benefits and safeguards for consumers, business and other government agencies approximating those embodied in the two similar bills passed by the Senate and House last year.

We believe a bill containing the essential features of the latest Senate and House versions would be beneficial and fair to all concerned. Such a bill would reflect the constructive results of several years of intensive effort, compromise and refinement by all interested parties working with both Houses of Congress.

Of prime importance, such a bill would establish a separate consumer agency with the power to represent consumer interests in proceedings of other agencies but without the power to change the substantive laws administered by those agencies or to issue any regulations of its own.

We do not believe the national interest would be served by giving the new agency the authority to issue its own regulations or change the substantive laws administered by other agencies.

We do, however, believe that having a separate consumer agency with the authority to represent consumer interests in proceedings of other agencies will improve the

prospects of such interests being consistently and fully considered. This will give consumers additional grounds for confidence in the fairness and soundness of our government's procedures and decisions which affect the pocketbook, health and safety of all of us.

In addition, we must remember that businessmen can go to the Department of Commerce, farmers to Agriculture, bankers to Treasury and workers to Labor and find government officials with expertise and responsibilities regarding their problems, needs and views. We believe that consumers should also have a separate home within the councils of government.

Virtually any bill including the latest versions passed by the Senate and House can always be further improved. Certain features of these measures are still subject to intensive debate between experienced persons of goodwill, both within the business community and between business and other segments of our society. Nevertheless, we believe the nation would be better served by enacting a measure approximating the latest Senate and House versions now rather than to delay further or make any major changes in what the Senate and House have produced as the result of years of impressive, thoughtful effort.

We therefore take great pleasure in joining with numerous other individuals and organizations - business and non-business alike - to support the efforts of those in the Senate and House who have labored so long and hard for the passage of a fair and effective Consumer Protection Agency bill. We are particularly pleased to be able to support the leadership in this regard provided by California's own Senator Cranston, as well as by Senator Magnuson and especially by the bill's three original Senate sponsors - Senators Javits, Percy and Ribicoff.

We urge you and your Administration to give the latest Senate-House versions of this legislation your most careful consideration and fullest possible support. Should you need anything further from us in regard to this legislation, please do not hesitate to call on me or on our General Counsel, Peter T. Jones, and Washington counsel, Harry McPherson, who have worked on this matter for several years.

We also wish you the very best in your efforts to serve our national interests at home and abroad and congratulate you for getting us off to a good start.

Warmest regards,

Peter E. Haas
President

cc: Vice President Walter Mondale
Budget Director Bert Lance
Stuart Eizenstat

Mr. BROOKS. We point out that the termination of this particular act is scheduled for September 1985, though as you and I know, any legislation that is seriously objectionable to the Congress and the people of this country can be repealed tomorrow.

We do not have to wait for 1 year, 3 years, 5 years, or 10 years. You can kill it the day you have the votes. You may have to override a veto to do it, so it takes two-thirds. That is a fact situation.

However, this artificial sunset concept is saying something that everybody knows—whenever you have the votes, you can kill a program. Whenever you have the votes, you can pass one.

I do not believe that any new law is going to change that constitutional precept.

I want to thank you. I thought your statement was especially refereshing and candid, and that it reflects what I would like to say is a typical view; but I think an enlightened view would be a more accurate portrayal.

I appreciate your coming down and bringing Harry with you. It is good to see him again.

Mr. Jones, will enactment of the Consumer Protection Act of 1977 be beneficial or harmful to America's business which wants to be competitive, and, at the same time, have consumer interests in mind?

Mr. JONES. Mr. Chairman, I think that it will not only be good for business, I really think that what is good for the consumer is good for business.

I would like to submit, for the record, a list of the primary business safeguards that, over the last 6 years, have been put into this bill which, in my judgment and the judgment even of most of the opponents that I have spoken with, are more than ample.

Mr. BROOKS. Without objection, so ordered. We are pleased to have you document that.

[The information referred to follows:]

[From the Congressional Record, Apr. 6, 1977]

BUSINESS SAFEGUARDS

1. Restrictions on Information Gathering. Section 10 delineates the ACA's information gathering authority, placing restrictions on the Agency's powers to obtain information from business and from government. Generally, the administrator is authorized to compel disclosure of information only when necessary to protect the health or safety of consumers or to discover consumer fraud and substantial economic injury to consumers. Such information may only be obtained from businesses which substantially affect interstate commerce whose activities substantially affect consumer interests. In addition to these general limitations, specific prohibitions limit ACA power to obtain information from small businesses and from other Federal agencies.

(a) The ACA is prohibited from requiring the disclosure of information from small businesses as defined in the Act. (Section 10(a)(4))

(b) The Act also includes a number of restrictions on access to information held by other Federal agencies. The categories of information which ACA has no access to, include: information classified in the interest of national security; policy or prosecutorial recommendations; personnel or medical files; information which a Federal agency is prohibited from disclosing to another agency; information which would disclose the financial condition of individual bank customers; information from Federal income tax returns; and trade secrets and confidential commercial or financial information obtained prior to the enactment of the Act (the ACA has no right of access to any information collected in the future by an agency if the agency is only able to obtain such information by promising to keep it confidential). Before the ACA obtains any trade secrets or confidential commercial or financial information from another agency, the agency holding the information must notify the person from whom the information was collected. Such a person will have a reasonable time to comment or seek injunctive relief. (Section 10(b))

2. Prohibition on Disclosure of Information, Section 11 governing the ACA's duty to disclose information to the public, prohibits the Agency from disclosing any of the following:

(a) information received from another agency which is exempt from disclosure under the Freedom of Information Act or any other law, and which the agency has specified shall not be disclosed. (Section 11(a)(2))

(b) trade secrets or other confidential business information received from a business, except where necessary to protect the health and safety of consumers. (Section 11(a)(1))

3. Limitations Governing Disclosure of Information. Section 11(b) sets forth provisions governing the release of information by the Administrator. Where the release of information is likely to cause substantial injury to a person, the Administrator is required to notify such person and provide an opportunity for comment and injunctive relief, unless immediate release is necessary to protect public health or safety. In addition, the Administrator is directed to take all reasonable measures to assure that any information it releases is accurate and not misleading or incomplete. Tight restrictions are imposed on the release of information which discloses product or service names. Among other restrictions, the Agency is prohibited from indicating that any specific product is a better buy than any other product.

4. Objections to Interrogatories—ACA Burden. A private party may object to any interrogatory ACA serves on it. In such a case, the burden will be on the Administrator to prove that the information sought substantially affects the health or safety of consumers, or is necessary in the discovery of consumer fraud or other unconscionable conduct and is relevant to the purposes for which the information is sought. In addition, no person is required to answer an interrogatory which is unnecessarily burdensome. (Section 10(a)(3))

5. Consumer Complaints—Opportunity to Respond. When, under Section 7, ACA transmits consumer complaints to other government agencies or makes them available to the public, ACA must also forward the complaint to the person who is the subject of the complaint. The only exception to this requirement is when such notification might impede or prejudice action against a person for a violation of the law. The person's response to the complaint must be made available to the public along with any disclosure of the original complaint.

6. Judicial Review Protection. Section 21(b)(1) gives any party to a final agency proceeding reviewable under the law the right to obtain judicial review on the grounds that the ACA participation in the proceedings resulted in the error prejudicial to the party.

7. Restrictions on Initiation of Civil Proceedings. ACA's ability to initiate court actions involving agency proceedings in which it did not participate is specifically subject to a requirement that the ACA first petition the agency for reconsideration and is further subject to an initial judicial determination that such action would not impede the interests of justice. (Section 6(c))

8. Additional Small Business Protections. Section 18 requires the ACA and all other Federal agencies to keep the unique needs of small businesses in mind when implementing the Act, and requires the ACA to treat all businesses, whether large or small, in an equitable fashion. In addition, the Small Business Administrator is directed to keep small businesses informed about the activities of the ACA, and to report to Congress on actions taken under this Act affecting small businesses. Similarly, the Administrator of ACA is required to consult with representatives of small businesses before establishing the Agency's general priorities or policies, and directs the Agency to respond in an expeditious manner to requests and other correspondence from small businesses.

9. Assurance of Fairness. Generally, in carrying out functions under the Act, the Administrator is required to act in accordance with rules that assure fairness to affected persons. (Section 4(a)(4))

Mr. BROOKS. In today's economy with its dual burden of inflation and unemployment, is the Agency for Consumer Protection more needed or less needed?

Mr. JONES. It seems to me that it is more needed because we are trying to streamline the Federal Government—the executive branch—make it more effective, and also to give the American people, and the consumer, a sense that he and she had a participation in the councils of government.

With this new Agency, I think there is a reasonable change that it can make a useful contribution to increasing the efficiency of some of the Federal agencies downtown, and also to giving the American consumer a feeling that, "Yes, finally, I, too, have a home in government, as do the businessmen, the bankers, the labor unions, and the farmers."

Mr. BROOKS. Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

I want to thank you, Mr. Jones, for your statement.

Does your company belong either to the National Association of Manufacturers or the chamber of commerce?

Mr. JONES. No, sir. That is one more thing that is different about Levi Strauss.

Mr. HORTON. I was very much interested in the comments that you had to make concerning the support of business for this Agency. Some of the statements made by the opposition would tend to make this appear to be another bureaucracy.

The opposition also speaks in terms of it being a regulatory agency. Is it a regulatory agency?

Mr. JONES. It is clear, Mr. Congressman, that both the Senate and the House bills—already passed last year, and the bills that are being considered by both Houses this year—make it crystal clear that this new agency will have absolutely no authority at all to issue any regulations whatsoever.

My feeling is that a number of people looked at this bill back in 1971—or, looked at the title and nothing more than the title, and "Consumer Protection Agency" sounded regulatory so that was far as they got.

It seems that a number of people who feel that this is a regulatory agency simply have not had the time to read the bill.

It does not have any authority to issue any regulations, whatsoever.

Mr. HORTON [presiding]. Thank you very much.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Jones, I note in the quotation on the first page of your statement the observation that "businessmen can go to the Department of Commerce; farmers to Agriculture; bankers to Treasury and workers to Labor. * * *"

This is the concept that many adhere to—that each individual group should have its own separate voice in a Cabinet-level department or an agency of Government.

I recall there were some who suggested that, because the Department of Defense is the successor to the War Department and is really a Department of War, we ought to have a Department of Peace so that those people who were interested in peace would have their department as their spokesman.

Do you really believe that our Government ought to be structured so that each separate group with a different interest has its official spokesman in the highest councils of government?

Do you not fear that, by doing this, we will have a structure that breeds disputes; and that we do not then have any unified voice of government?

Mr. JONES. I am especially glad that you asked that because—last year or 2 years ago, when I was here—we got into a similar discussion

of this very same topic. I attempted to write what I wrote with our chairman in his letter to President Carter to take very much into account what I think you and I both ended up agreeing to when I last appeared before this distinguished committee.

That was that every one of our Cabinet agencies should have a strong sense of the national interest being one of their principal purposes they are serving, rather than only the narrow interest to their constituencies.

I quite agree. It was really because of your comments and the discussion that I attempted to clarify that by saying that each of these groups—the farmers when they go to Agriculture, the bankers to Treasury, the businessmen to Commerce—can "find Government officials with expertise and responsibilities regarding their problems, needs, and views"; not that they are going to advocate, necessarily, a narrow view at all.

However, I attempted to say that there is a body of expertise in the Department of Agriculture about the problems of farmers and civil servants which understand them, which can weigh them, and which—because the expertise is there—can then take that knowledgeably and relate it to the national interest.

It seems to me that it would well serve this Nation to have a home for consumers that had a similar degree of expertise and understanding about the views and interest of consumers without, in any way, being committed to narrowly argue that viewpoint, and only that viewpoint, in the interagency councils of government.

Mr. ERLENBORN. In a structure like the Department of Agriculture, it is representing a group that does not include everyone. It concerns farmers, those concerned with agriculture.

However, even in that smaller group, you find a great divergence of opinion.

Mr. JONES. You certainly do.

Mr. ERLENBORN. The Farm Bureau Federation and the National Farmers' Union, I think, are poles apart in their philosophies.

Mr. JONES. Absolutely.

Mr. ERLENBORN. Does it not concern you that the consumer advocate, in participating in agency proceedings, in deciding which side of a case to enter, will polarize the consumer viewpoint by saying, "This is the consumer interest in this matter"?

At the present time, we have Mr. Nader, who may agree or disagree with the Consumer Federation of America. We have a plethora of different voluntary consumer advocates who do not necessarily agree. They may have different viewpoints.

Mr. JONES. Absolutely. I would present two comments on that.

The first is that the analogy to the Department of Agriculture is absolutely apt, and quite appropriate. This is because the Secretary of Agriculture has a responsibility with his staff, first, to listen to all of these competing definitions of the farmers' interests.

Every one of these groups comes in and says, "The farmer's interest is my interest."

After he has listened to all of these, he has to make a decision. The Secretary of Agriculture weighs all of this, weighs that against the national interest, takes it all into account, and finally comes out, in the councils of government, with one view of what he considers to be either the farmers' interests or the farmers' interests in tandem with the national interest.

All I am proposing is that this Consumer Agency have exactly the same function—to weigh all of these competing consumer interests, do what the Secretary of Agriculture now does, and that, in no way, prevents all the different consumer groups from still coming into the councils of government and presenting their own views just as the National Farm Bureau does when they have disagreed with an Orville Freeman or a Bob Bergland.

Therefore, it seems to me that we are trying to create something that has symmetry to what already exists in these other departments.

Mr. ERLENBORN. I think there has already been a marked decrease in public support of many of the consumer-oriented voluntary groups. Although I think it is not necessarily universally true, it is quite often true, that public money drives out private money.

I think the voluntary consumer groups that have a lessening of support today will see less and less support once you institutionalize, governmentalize the consumer interests. I believe that other departments and agencies will be given the message that it is no longer their concern to worry about the consumer.

"We have now institutionalized this process. We have one person—the Administrator of the Consumer Agency who determines what is in the consumers' best interests."

There are those who think that this is something Government should decide. I think this is a basic difference in philosophy.

I remember discussing this with a professor back home. I tried to drive him to the wall; and he finally admitted that he did not think people should have a choice of buying big or small cars.

He though that we should not have different colored packages on the shelf because that might confuse the consumer. He would like Government to decide what is good for people.

My philosophy does not seem to be in tune with that.

Mr. JONES. I share your philosophy.

When Bob Bergland, the present Secretary of Agriculture, is sitting there in a position to make an active representation of the farmers' interests, as he conceives them, I think that has acted as a greater stimulus to the National Farm Bureau and every other farmers' organization to do more rather than less because there is a home in Government where they really feel they can and must make their views felt.

My hope would be that a new Consumer Agency would have the similar experience that once consumer groups—and individual consumers as well—have a feeling there is someone who will listen, and that when they send off a missile it does not necessarily disappear, that it can become part of a pattern, this may well stimulate greater grassroots consumer participation because they now have some place to go to.

That would be my hope.

Mr. ERLENBORN. Of course, the Department of Agriculture is regulatory, versus the Consumer Agency, which we hope will not be. That does bring up a point.

Besides organized labor or labor/management problems being exempt from this bill, agriculture is exempt. Marketing orders certainly have an immediate and a great impact on the consumer.

I wonder about some of these exemptions—the validity of exempting a marketing order. Why should the consumers' voice not be heard there in addition to the farmers' voice?

Mr. JONES. I have some question about that, too. When we discussed this a year ago, we talked about that—the Christmas tree ornament approach to legislation and the fact that nobody can completely avoid some of these aberrations and lack of symmetry.

However, I think there is a feeling that the agricultural exemption is much broader than makes sense. I would have no disagreement with that at all.

Mr. ERLENBORN. Thank you very much.

Mr. BROOKS [presiding]. Thank you.

Mr. Pritchard?

Mr. PRITCHARD. Mr. Jones, you are a businessman. By background, are you a lawyer?

Mr. JONES. Lawyer, and I spent 7 years in South America on the management side.

Mr. PRITCHARD. Then we will say that you are all right. I am not a lawyer so I am always looking for that counsel.

What do you think is the reason that, almost without exception, every businessman in my city is opposed to this and, in many cases, violently opposed to this legislation?

Mr. JONES. There are two reasons. One is because, for the last 40 years—which is about as far back as I have checked—there is almost no even moderately innovative piece of legislation that might cost more—starting with social security, the education act, and the child labor laws—that the vast majority of organized business has not stubbornly, ideologically fought.

When you go back and read any history of the New Deal, and look at some of the letters and speeches that were made about social security by the captains of industry at the time, they seem to say that, if it passed, the end of private enterprise was at hand.

It seems to me therefore that this opposition to the consumer bill, at least, is consistent.

Alexander Pope had something to say about some kinds of consistency, but I will leave that aside.

It also seems to me that most of the people who oppose this have not read it, and do not even want to read it—but certainly have not.

I was just reminded of one thing we had in our text. I am not being either kind or wholly fair to some of those in the business community who oppose this bill when I say that their reasons are: One, it is ideological and consistent with past opposition to most things; and two, that they have not read the bill. I tend to feel that is true in many cases, but certainly not in all cases.

I think the other reason, to which we have tried to address ourselves here, is this deep concern—not only on the part of businessmen but also on the part of others—about too much regulation, too much government.

There is an atmosphere today which says, "I don't even care if the purpose is good. Go away." I think that is a legitimate concern.

If I—God forbid—were the head of this new Agency, one of the things I would try to figure out how to do in the first 3 years would be find some areas of waste and unnecessary involvement in the daily lives of both businessmen and the average citizen on which I could zero in and which I could get rid of.

I think if the new Agency falls into the trap of becoming just one more agency, it deserves the fate that I would hope it would then get. But I think the legislation has been well-designed to avoid this.

I really think there are enough safeguards in there to sharply reduce the amount of unwarranted harassment that is possible—though it cannot eliminate this risk entirely. The real key will be the quality of the people who are put in there to run it.

If they sense the times, and the concern about too much government, and use the powers of this Agency to put the spotlight on excess waste and excess intervention, and excess cost, and restrain themselves from not intervening in an adjudicatory proceeding when it is not necessary—and the statute says they should not, that they have to decide that—if they follow the basic guidelines of this statute, I think they have a chance, 3 years from now, of people saying, "My God, they actually did something useful—no miracles, but something useful."

I think, however, that it is an understandable concern on the part of business that they do not believe it can happen. But as I said earlier, most of the lawyers who have worked on this bill for businesses that oppose it have said to me that they are not really concerned about the bill as it is right now. They think that it is in fairly reasonable shape.

It is what it might grow into as a "monster down the road"—that is what concerns them, and I think that that is a legitimate concern but not one that justifies killing the Agency before it has a chance to prove its usefulness.

Mr. PRITCHARD. The track record is not very good.

Mr. JONES. No, in some cases it is not. However, the FTC is, for example, or DOJ not as much larger than it was when it was founded; Lord knows how many years ago. We looked at some of those figures last year.

The growth of the Department of Justice and the Federal Trade Commission over the years has not been this kind of horrendous mammoth explosion that we have seen in some other agencies. It is possible that an agency can stay relatively small and also be truly effective.

There are precedents where they have stayed small and done a reasonably useful job.

Mr. PRITCHARD. If I understand your testimony, then, it is possible that this can work and work very well. It is also possible that it will not.

Mr. JONES. Absolutely.

I think there are some safeguards in the legislation itself—and in the Senate bill there is included this sunset 3-year provision—which might cause the plant to be pulled up and looked at 3 years from now.

These provisions increase the chances of an Administrator being more cautious than he would be if he just had an open field from here on out. I think that is an excellent statutory safeguard which, in my judgment, reduces the chances of this growing into a monster.

Mr. PRITCHARD. Therefore, it is very important who is appointed?

Mr. JONES. Yes, sir.

Mr. PRITCHARD. Of course, you know that the politics of appointment are many times the politics of appeasement.

When you are trying to placate many different interests, it lends itself to an appointment that might not be too balanced.

Mr. JONES. I think, thus far in this new administration of President Carter's, the business community that I have talked to has been

pleasantly surprised at the degree of balance, judgment, and middle of the road experience that they have found in the major appointments of the President.

I think that that is a fair statement.

Mr. PRITCHARD. I appreciate your comments.

Mr. JONES. Thank you, sir.

Mr. HORTON [presiding]. I appreciate your testimony, Mr. Jones. Thank you very much.

Our next witness is Mr. Charles Fitzmorris of Burlington, Iowa, president of Chain Store Systems which is a company supplying computer services and systems to domestic and foreign chains.

He is also president of the Aldi-Benner Food Chain, limited stock economy stores which are operating in several Midwestern States.

I am sure that the chairman has said to you and to others that we will be very happy to put your statement in the record and have you summarize it if you would care to do that.

STATEMENT OF CHARLES FITZMORRIS, PRESIDENT, ALDI-BENNER FOOD CHAIN

Mr. FITZMORRIS. Yes, sir, I would.

Mr. Chairman and members of the committee, I would be very happy to tell you why I am in favor of this bill. I am for the CPA because I feel that there is a real need for it.

I think that the idea of having the Agency find out what the consumer needs is excellent. As I have read the bill, it says that the Agency has the power to communicate with the State agencies and with the State legislatures.

I think, gentlemen, that the bill should go a little further than that and should instruct the Agency to appear at administrative hearings and at legislative hearings in the States.

I believe that one of the purposes of this committee can be to get uniform legislation and to eliminate legislation. I have had some experience with unit pricing.

The administration came out for unit pricing several years ago and the industry rose up—just as you said, Mr. Jones—against this. They said that it would raise the price of food in the United States.

With my computer company, I have found a quick way to explain unit pricing to all the other chains so that they could do it with no additional expense to themselves. Thanks to the president for consumer affairs, I received a good deal of publicity in the New York Times.

The result of this was that we had more private corporate airplanes arrive in Burlington, Iowa, than had ever been there or that have ever been there since. They came to look at the system.

They then went home and, today, most of the major food chains in the country have unit pricing, and there is no Federal legislation and very few States have unit pricing legislation.

I believe that this Agency can take a giant step forward in reducing legislation and getting uniform legislation. Today, I am faced with a very terrible problem. The problem is going out of business.

I have a new idea in food merchandising which I brought in from Europe. This food merchandising method reduces cost, and I sell

groceries for 24 to 35 percent less than the average chain in the United States.

There is legislation under which I think the Agency would discover the facts, and it would avoid this legislation that is proliferating, not only in the Congress but in most of the States.

The legislation was never meant to prevent a chain like mine from coming into business. The legislation is called item pricing against unit pricing.

Item pricing is where the price must be stamped on every item. That had to do with scanning.

I am not here to argue about scanning or nonscanning. I can't afford it. It costs $100,000 per store. The total equipment for my stores only costs $10,000, therefore, I am not concerned with that.

However, that bill, gentlemen—because there is not the proper understanding in the legislatures, except with the consumer—the consumer understands it.

In Illinois, we had a bill introduced which said that there had to be unit pricing. I put up, in every one of my 14 stores in Illinois, a sign which said: "This store will be permanently closed if House bill 12 passes."

The outpouring from the consumers was tremendous, and that was fine and dandy. The bill was brought before the house in Springfield and it was tabled because an amendment that vitiated the whole bill was voted against by two-thirds of the house.

Gentlemen, the bill was reintroduced again. We have another bill in Missouri. There are proponents of it in Iowa, in all the three States in which I operate.

I feel that if there were a Federal agency we would get some understanding in the States of what the consumer wants, and I do not think that the consumer's voice is properly heard in the right places.

It is my opinion that this Agency can make a giant step toward that, and that is the reason that I ask that the wording in the bill—that some wording be added that the Agency is instructed to appear at State administrative hearings and State legislative hearings.

This is because I believe that if somebody from the Federal Government could explain it to the State legislatures, I would not have to have a man today in Springfield going through the same thing that I went through 2 months ago.

I thank you very much.

Mr. HORTON. Thank you, Mr. Fitzmorris.

Without objection, your complete written testimony will be included in the record at this point.

[Mr. Fitzmorris' prepared statement follows:]

PREPARED STATEMENT OF CHARLES FITZMORRIS, PRESIDENT, ALDI-BENNER FOOD CHAIN

Mr. Chairman:

My name is Charles Fitzmorris. I am President of Chain Store Systems, a company supplying computer services and systems to domestic and foreign food chains. I am also President of the Aldi-Benner Food Chain, limited stock, economy stores operating in several mid-western states.

I am pleased to be with you today to advocate the joint consumer/business interest in the bill being considered by this committee, a bill to establish a small agency which would remind other parts of government, not to forget the consumer's needs when major decisions are made.

I know that some businessmen have an automatic negative reflex when government officials talk about proposals on behalf of the consumer. I remember the objections in my industry to unit pricing when it was first suggested by the Special Assistant to the President for Consumer Affairs. Unit pricing helped the industry, consumers, and made money for people like myself who enjoy selling something that is ethically and economically sound. So I wouldn't be really surprised if there are some negative business attitudes towards the creation of a consumer advocate agency.

I know this is not another layer of government regulations - a "super agency" to make their lives miserable. I have taken the time to find out that the proposed consumer agency isn't a regulator at all - that it will have no power to issue regulations, policies, licences, etc. The bill isn't aimed at business deficiencies at all, but rather at the failure of regulators' decisions to adequately consider the consumer viewpoint. If consumers have more confidence in these decisions, this increase of confidence is good for the business environment.

I am pleased to see that this ACA with a budget of $15 million (or about 400 positions) will be created largely through consolidation of existing positions around government, and that both Senate and House bills call for major Congressional evaluations as to what kind of job the agency is doing after a trial period.

I'm also glad to see that the Senate bill allows the ACA to question food marketing orders and other food pricing decisions regarding their effect on consumers. I hope the final House bill does the same thing, because the food chain and the consumer have the same interest here. I also urge the committees of both Houses to allow the ACA to participate in labor negotiations of NLRB. Again, we in the food business share the consumer's interests and the occasional presence of the consumer voice will have a healthy effect upon the negotiations. It is after all the consumer who always pays the bill when management and labor are imprudent in their negotiations. A small agency would, as the President's message suggests,

have to set priorities and the number of rule making cases, hearings and other decisions it could speak up for consumers in will be very small. That's too bad because the more cases the ACA can look into the greater the sensitivity of government regulators to consumer needs - and that's good for business. I don't want some regulator who doesn't even shop having sole responsibility over my stores. I want the ACA to tell that regulator that his regulations are supposed to help the consumer.

Business should be especially interested in that part of the bill which is directed at business - the so called power of interrogatory which would allow the ACA to obtain data from business on issues substantially affecting the interests of consumers. I feel that the appeal rights and safeguards in the bill plus the clearance procedures proposed by the President are sufficient to preclude unreasonable burdens on business. I understand that small business is completely exempted from the ACA's ability to gather data for use in representing consumers before other agencies of Government. I believe this is wise. Naturally, information which is exempt from disclosure under the Freedom of Information Act should not be disclosed by the ACA.

Let's look at the benefits of ACA to business.

I have already mentioned the benefit to business derived from increased consumer confidence in Government's decisions. There are more immediate benefits. Most of the major problems facing consumer

product and service industries today are joint business/consumer problems. I refer to such problems as:

a) Differing regulations of different states.

b) Differing state vs. Federal regulations

c) The need to get Federal agencies to act more promptly on joint consumer/business problems.

d) The need to get Federal agencies to establish sound priorities and to stick to those priorities so business and consumers can make plans to deal with changed governmental policies.

e) Differing regulatory policies among Government agencies.

Let me give you a concrete example. Large food chains are installing front and scanners which read a label code and automatically compute the current price from the code, eliminating the stores need for readable prices. Consumers may still feel this need and have asked states and cities to require the price to continue to appear on the label. There is no national policy here, and it is a problem. Consider new chains like mine which offer limited stock of goods, available at lower price and which cut costs by providing consumers with a list of all today's prices on the limited stock list so that they can compare prices to their heart's content. The consumer can take her small price list with her. It isn't necessary to repeat it on the item itself. Yet according to some jurisdictions' laws our stores may also have to add to costs and consumer prices through a redundant pricing of the item. I favor the ACA because I need consistent consumer protection

legislation that is based on common sense not on the peculiar prerogatives of a few jurisdictions. The ACA will have a mandate to advocate consumer interests on major consumer programs, and believe me this is one. I am here today to ask you to permit, indeed to mandate, ACA to enter the states and encourage uniformity of regulation before state and federal government -- not just communicate information but encourage and facilitate uniform regulations that will save the consumer's dollar. If the truth were known business needs ACA more than consumers. We need less regulation through more uniform regulation. ACA should be a force for uniformity calling for Federal and state regulators to get their act together.

I support ACA because I see in it some hope for uniformity.

Thank you.

Mr. HORTON. Our next witness is Mr. Bud Barger from Garden City, N.Y. He is a graduate of the City College of New York, and is now divisional sales manager of TDK Electronics Corp.

We have about 3 or 4 minutes before we must be on the floor for a vote. Would you please summarize your statement very quickly? We will then take questions when we come back.

STATEMENT OF BUD BARGER, DIVISION SALES MANAGER, TDK ELECTRONICS CORP.

Mr. BARGER. Certainly, Mr. Chairman.

Mr. Chairman and members of the committee, my company, TDK Electronics, is in Garden City, N.Y.

We support the bill to create this Agency for several reasons, but we understand it will not be a regulatory agency. We feel that if the consumers interest is protected it is good for business, as previously stated.

I want to bring out a comment concerning the President's message of April 6 concerning the consumer problems and the formation of the Agency of Consumer Advocacy. He said he would instruct the Administrator to establish responsible priorities for consumer advocacy.

Neither the Senate nor the House bills mention establishment of these priorities.

I feel very strongly that, by establishing priorities in the areas that concern and affect both business and consumers, not only will the consumer be properly serviced and protected, but business will be given the confidence that this Agency and the Government is for their benefit, as well as that of the consumer.

Confidence and support may be restored to the businesses who feel that this Agency is not to their advantage and will do them no good.

In conclusion, I would like to point out that, in my case—in the case of my company—we have imitations of our products, those which we manufacture, that are being passed on to the consumer. These play on our reputation, our name, our advertising, our packaging, our trade symbols, and our consumer relations.

These imitations are very damaging to both consumers and businessmen. For the protection of both consumers and business interests regarding these products, control of this problem should be one of the priorities established for this Agency.

We hope you will give this suggestion favorable consideration.

Thank you.

Mr. BROOKS [presiding]. We want to thank you very much, Mr. Barger, for a very interesting statement. We appreciate your coming down.

Without objection, your statement will be included in the record.

[Mr. Barger's prepared statement follows:]

PREPARED STATEMENT OF BUD BARGER, DIVISION SALES MANAGER, TDK ELECTRONICS CORPORATION

Mr. Chairman:

My name is Bud Barger and I'm pleased to be here representing TDK Electronics Corporation speaking in support of the Bill to create, through consolidation by the President, a small agency to advocate the consumer's point of view before other government agencies.

My support and that of my company is based on these points:

1) The agency is not a regulator, but merely a consumer advocate before government regulators,

2) The newspapers continue to carry stories of agency decisions which failed to consider the consumer's views - from decisions on auto ignition interlocks to clearances for unsafe food additives,

3) If consumers have an advocate they will trust government decisions more than they do now - that's good for the business climate.

4) As the President's message indicates the agency will set consumer priorities - that will promote more predictability in the actions of regulators and more order in the demands of consumers

5) My company makes quality audio tape cassettes and we welcome the public's and consumer agencies' interest in our products. In fact I would like to urge this committee to include in the final legislation an instruction to the agency to give high priority to those issues representing joint business/consumer problems - problems that hurt consumer's pocketbooks and the reputation of good companies. In the case of my own company we and our

customers are being hurt by imitations of our products which trade off our good name, our advertising, our packaging, our trade symbols and our good consumer relations.

We hope that you will give favorable consideration to our suggestion.

Mr. BROOKS. If any of you gentlemen have additional information that you would like to submit, we would be pleased to have it. I want to thank you all for being here.

We will continue the hearing with representatives of consumer organizations, a panel of consumer representatives who are on the firing line every day.

We are glad to welcome these advocates who know the value of having a voice in the decisionmaking process. This panel is composed of Ms. Kathleen O'Reilly, executive director of the Consumers Federations of America; Ms. Sandra L. Willett, the executive director of the National Consumers League; Ms. Barbara Gregg, executive director of the Montgomery County, Md., Office of Consumer Affairs; Ms. Christine Sullivan, the Massachusetts Secretary of Consumer Affairs; and Ms. Ellen Haas, Community Nutrition Institute of Washington, D.C.

It is a pleasure to have you all here. We welcome your testimony.

Ms. Willett, will you begin?

Ms. WILLETT. I would appreciate the opportunity to address the committee first since I have to catch a plane in a few minutes.

Mr. BROOKS. Please proceed.

STATEMENT OF SANDRA L. WILLETT, EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE

Ms. WILLETT. Mr. Chairman and members of the committee, I will summarize my position.

I am Sandra Willett, the new executive director of National Consumers League. We thank you for the opportunity of appearing today.

As you know, the National Consumers League is the oldest consumer organization in the country. It was founded in 1899 to protect the rights and the economic well-being of workers and consumers.

The National Consumers League considers this bill that established the Agency for Consumer Protection the single most important consumer bill to come before Congress in this decade. This bill and the ACP will, at long last, provide the mechanism by which the views of the American consumers can be represented and integrated in the Federal Government decisionmaking.

The end results of this will be that the decisions made will be more balanced and more enlightened. Secondly, the consumers will regain confidence in their Government knowing that their consumer viewpoint—along with the interests of business, of labor, of the farmer, and others—have been well considered.

Our democracy demands that a structured approach to consumer representation happen now. We cannot leave representation of the consumer to chance, or even to the private organizations, for that matter. Many of these do not have the funds to support technical research.

Therefore, to assure consumer representation in a regularized, authentic fashion, we believe the Agency for Consumer Protection must have certain basic rights. These essential rights are as follows:

One, the right to participate on a regular basis in agency activities. Two, the right to intervene, when necessary, to protect the substantial rights and interests of consumers. Three, the right to ask for appeal and judicial review of an agency decision when it has been determined

that this decision may not have taken the consumer interests into full account.

The ACP must also have the right to gather information and conduct research to substantiate the viewpoint of the consumer.

National Consumers League is reiterating what every consumer group is saying—namely, that the Agency for Consumer Protection is not a regulatory agency. Careful procedures will be followed to assure that ACP disrupts no agency and no business.

Participation and intervention will be on carefully selected issues. In fact, what NCL believes, what we support, and what we believe to be Congress intent is that ACP will be a small, effective, tightly organized agency which cuts through—not adds to—the bureaucracy to the real significant interests affecting consumers.

We are, therefore, supporting, Mr. Chairman, this Agency for Consumer Protection which will be a low-cost item—costing only $15 million in the first fiscal year which comes to about 25 cents for the average taxpaying American family.

National Consumers League believes, surely, that we can support such an investment to obtain the essential, efficient, and balanced representation of the American consumer which is needed now to make our democratic system work even better.

Thank you very much, gentlemen.

Mr. BROOKS. Thank you very much, Ms. Willett.

Without objection, your complete statement will appear in the record.

[Ms. Willett's prepared statement follows:]

PREPARED STATEMENT OF SANDRA L. WILLETT, EXECUTIVE DIRECTOR, NATIONAL CONSUMERS LEAGUE

Mr. Chairman, members of the Committee, the National Consumers League thanks you for the opportunity to address you regarding H.R. 6118 (S. 1262) which will at long last establish the Agency for Consumer Protection.

The National Consumers League is the oldest consumer organization in the country. Founded in 1899, NCL for the past 78 years has fought for the health, safety and economic well being of the American worker and consumer. NCL's pioneering work has led to the end of abusive child labor, exploitively low wages, and senseless safety risks in the workplace. In recent decades NCL has defended and promoted the rights and well being of the consumer—not only the purchaser of goods and services in the marketplace but also the recipient of services such as health care.

NCL's leadership is as distinguished as its legacy of action. Louis Brandeis and Felix Frankfurter served as the League's counsel. Eleanor Roosevelt served as Vice-President. With its notable history, the National Consumers League is particularly pleased to comment today on legislation urgently needed to benefit the consumer.

The National Consumers League regards H.R. 6118 (S. 1262) as the single most important consumer bill to come before the Congress during the last decade. If enacted, it will provide the mechanism by which the views of American consumers can be represented and integrated into the Federal governmental decisionmaking process.

The United States is facing a critical period. Wracked with inflation and unemployment, this country is also confronted with complex problems such as pollution, soaring health costs, lack of population planning, deteriorating quality of goods, decreasing levels of productivity, and inadequate security for the poor. Above all we have the new problem of severe energy shortages. Superimposed on these problems are both a deep sense of individual powerlessness and an unfortunately increasing sense of mistrust on the part of citizens toward all institutions, particularly government.

The Congress, and particularly the members of this Committee, deserve praise and gratitude for your efforts over the past eight years to establish an independ-

ent agency to alleviate much of this distrust. Now, with bipartisan support and the full weight of President Carter behind this legislation, the prospects for passage of H.R. 6118 (S. 1262) are much brighter. However, prompt enactment will require all of our best thinking and full support. We are grateful for the leadership of Esther Peterson, Special Assistant to President Carter, who serves as Vice Chairperson to the League and who is devoting her wisdom and experience to establishing an effective Agency for Consumer Protection.

The Agency for Consumer Protection is needed now. Every day hundreds of Federal agency decisions are made which affect consumers. The decisionmaker has ample opportunity to hear from business, labor and the farm community who have been well represented in Washington for decades. But consumers have no institutionalized representative in the halls of government. Too often decisionmakers do not consider the impact of their actions on the consumer. They lack the incentive—since the consumer voice is not a full partner in the action—and they lack the data.

How many unnecessarily inflationary regulations or Federal programs have been perpetuated which inadequately reflected the consumers priorities, needs and trade-offs? The 1974 FEO regulations, for example, are estimated to have cost consumers $40 million in higher oil charges. How can consumers be expected to support such regulations unless the consumers of this country know that their interests were formally—and visibly—represented in the decisionmaking process and, most important, were seriously taken into account.

Similarly, the current issues with respect to clean air regulations could substantially benefit from consumer input. The impact of cleaner air on consumer health, on clothing and household cleaning bills, on the use of medical facilities and medication—all of this data reflecting consumer concerns and costs should be systematically presented and integrated into the larger picture of social impact, capital resource requirements and other factors which must be weighed in arriving at optimum solutions for the nation. Without an Agency for Consumer Protection, the multifaceted consumer interests in any single issue will not be identified, analysed and available to the decisionmaker. The ultimate decision—and I truly believe the nation as a whole—will be the poorer.

Finally, drawing on the experience of the Federal Trade Commission, we understand that the FTC would have benefited from consumer expertise during the period when it was struggling with the very real credit and warranty problems plaguing consumers.

Government agencies should not have to depend on the fortuitious arrival on the scene of skilled citizen groups to point out weaknesses and to articulate consumer concerns. Our democracy demands a more fundamental structured approach to ensure that the consumer interest is integrated into government decisionmaking along with the other interest groups. Much of the current lack of confidence in governmental decisions and programs would disappear if, in fact, consumers knew their views were integrated into the policies and decisions along with those of other major interest groups.

At long last the Agency for Consumer Protection will provide consumers with a formal, institutionalized voice in the decisions made by their Federal government, affecting their pocketbooks and the quality of their lives. The ACP legislation restores consumers to their rightful position of equality alongside business and labor and other organized interests.

The National Consumers League is convinced that consumer viewpoints are as essential as business viewpoints for the government's effective decisionmaking. Consumer concerns are essential because the government must receive a balanced presentation of the issues in order to try and determine where the public interest truly lies. We do not equate the public interest with the consumer interest even though all of us frequently refer to consumers as the public. The public interest is made up of the business, the labor, the farm, the international and the consumer interests. All these interests overlap and inter-relate. They all have a right to call upon their government to hear and protect them. But if government is exposed to only one side of a problem, to only one set of viewpoints, to only one interpretation of the data, the resulting decision may well be a discriminating and destructive one, rather than balanced, thoughtful action taken on the basis of knowledge, sensitivity and compromise where delicate trade-offs must be made. The bill before us will eliminate the gross imbalances and will provide consumers with equal representation in our democratic system.

There are several aspects of the bill under consideration about which the National Consumers League feels adamant. There are certain crucial features of the bill which, in our judgment, are critical if we are to achieve the essential goal of providing the consumer with an effective voice in government.

The primary function of the ACP must be to "represent the interests of consumers before Federal agencies and courts." The bulk of the ACP's resources and time commitments should be devoted to this undeniably important function. To carry out this crucial function, the ACP must have the right to participate in Federal agency proceedings affecting the consumer, the right to intervene for the purpose of representing an interest of consumers, and the right to have certain Federal agency decisions, which the Administrator finds after careful examination did not consider or did not reflect the consumer's interest, reviewed by the Federal courts.

1. The right to participate and to have the Administrator's submission taken into full account in an agency's proceedings (as in Section 6) is essential for the orderly and regular representation of consumers. This right assures that as numerous policy and programmatic decisions are made on a daily basis, the decisionmakers are alerted to the consumer's concerns.

2. The right of the ACP to intervene and to be a party in the proceedings of Federal agencies (Section 6) which involve the consumer interest provides needed legal backing to consumer representation. Without this firmly established, definite right the ACP will not be listened to and the consumer interest will not, in fact, be treated on a par with other interests.

3. The right to initiate or participate (also Section 6) in a review or appeal of a decision made by another Federal agency which the ACP finds to have failed to treat the consumer interest properly is an essential integral part of the right to participate and to intervene. It is the consumer agency's right of appeal which will have the greatest positive impact on the government decisionmaking process and which will ensure effective consideration of the consumer interest, whether or not the agency actually participates in a specific proceeding. When all but one of the possible interests in a decision can appeal, the decisionmaking will, of necessity, pay more heed to the arguments and data of the party who has the power to appeal and reverse the decision. By granting the Agency for Consumer Protection the right to appeal, Congress ensures the type of equitable weighing of all issues and balanced decisionmaking which government must pursue.

The ACP must be empowered to gather information "required to protect the health or safety of consumers or to discover consumer fraud or substantial economic injury to consumers." The right to obtain data from existing sources, or to develop specialized data where needed, is crucial if the ACP's representation of the consumer interest is to be effective and is to make a genuine, substantive, high-quality contribution to the decisionmaking process. Expertise based on analyzed data and considered judgment, rather than argumentation and advocacy alone, must distinguish the ACP and to this end, the agency must have data gathering powers.

Thus, what we believe Congress intends for the ACP and what we as the oldest consumer organization support is a small, effective, tightly organized agency which cuts through—not adds to—the bureaucratic layers and reaches the core issues affecting consumers.

The ACP is clearly not a regulatory agency; no one who reads your legislation can come to such a conclusion. It will not restrict the efficient working of any responsive organization, firm or agency in either the public or private sector. Instead, it is an innovation in regulatory reform, in careful and selective intervention, and in the long overdue opening up of government.

The ACP is small and its authorizing legislation provides only a bare minimum budget. In fact, this mechanism for consumer representation, this badly-needed consumer voice, this instrument of government reform will cost the average taxpaying family $.25—one quarter—per year. Surely, we can support such an investment to obtain essential balanced representation of the major interest group in our society.

In addition to the features and functions of the ACP which the National Consumers League finds to be essential, NCL would also like to comment on the need for each agency to establish citizen communication or citizen participation units at a high level within their agencies, subject to their control and charged with implementing specialized citizen outreach functions as required. During the past two years, some agencies have established internal consumer offices; others have created public participation offices which have taken on the tasks of handling communications with citizens.

These internal citizen comunication or public participation units work from the inside on a full time, day-to-day basis to help their departments respond to citizen groups concerned with particular, individual agency programs. These units can provide important input to staff and can sensitize their agency to

individual citizen concerns. They also can perform important outreach functions to ensure that citizen groups, including small businesses and farmers, are aware of the various departmental activities affecting them. These offices can serve the Agency for Consumer Protection in the same way by identifying the programs and decisionmaking stages of the proceedings within their departments in which the ACP may have an interest. Thus, these internal units in no way duplicate the purpose envisaged for the Agency for Consumer Protection which is to ensure that the consumer viewpoint is adequately represented in departmental and agency decisions on major programs. Indeed, internal citizen units will make it possible for the Agency for Consumer Protection to remain a small, tightly organized agency whose primary job will be to mount selected interventions and appeals in major government departmental proceedings.

In conclusion, we would like to stress that the bill to establish the Agency for Consumer Protection, (S. 1262) H.R. 6118 is, in our judgment, the capstone of the democratic process. It is the 1977 answer to the complexity of the technological society in which we find ourselves today. It provides the mechanism for ensuring that the views of our citizens are clearly heard, considered and acted upon in the Federal executive branch of the government.

The National Consumers League urges you to pass this critical piece of legislation as quickly as possible.

Mr. BROOKS. We now call on Ms. Gregg, executive director of the Montgomery County Office of Consumer Affairs.

STATEMENT OF BARBARA B. GREGG, EXECUTIVE DIRECTOR, MONTGOMERY COUNTY OFFICE OF CONSUMER AFFAIRS

Ms. GREGG. I am Barbara Gregg, the director of the Montgomery County, Md., Office of Consumer Affairs, but I am testifying today on behalf of the National Association of Consumer Agency Administrators, urging you to pass the Consumer Protection Act of 1977.

The National Association of Consumer Agency Administrators is comprised of the directors of county, city, and State consumer protection offices around the country from Hawaii to Florida, from Wisconsin to Texas.

The association speaks with a common voice on behalf of consumer legislation that its members believe will be beneficial. At the association's January meeting here in Washington, the group was unanimous in its support of establishing an independent Federal agency for consumer advocacy.

Consumer problems are numerous, legitimate, and serious. All local and State offices of consumer affairs regularly receive complaints from consumers. Last year, they handled literally hundreds of thousands of individual consumer complaints.

In the experience of association members, most of the complaints filed are real and substantial. They are not imagined or petty as many businessmen would have you believe.

Complainants to these local offices come from all age groups and walks of life, from all income brackets and geographic locations, from farms, city centers, and suburbia.

The need for a consumer advocate within the Federal Government and the advantages of such advocacy have been testified to on many occasions. The Federal regulatory agencies hear regularly from industry, but only rarely from the general public.

These agencies are frequently called upon to balance the interests before making decisions, yet one vital interest is usually underrepresented.

The right of individual consumers to participate in agency decision-making is a hollow one when the consumer does not have the resources to avail himself of that right. It is much like saying that an individual criminal defendant has the right to trial while, at the same time, depriving the defendant of counsel to conduct that trial.

The Agency for Consumer Advocacy would be that counsel for the consumers' interests.

State and local regulatory agencies—which I represent— have problems similar to those of their Federal counterparts, and the creation of special consumer agencies to intervene on behalf of the public in States and local governments is increasingly common.

Consumer representatives appreciate your concern that an independent, nonregulatory agency should intervene in the activities of other agencies only in an orderly and responsible manner.

This bill before you is drafted in such a way that it will insure that the Agency for Consumer Advocacy will intervene in an orderly and responsible way.

The idea of intervention by one agency into the procedures of another is not so unique as one might be led to believe by the anguished cries from opponents to this bill. Some of the association's own members serve in such a capacity, regularly intervening in hearings before State and regulatory bodies.

Such activity has not adversely affected the smooth operation of governments in the counties, cities, and States.

In closing, I would like to briefly add two points. First, State and local offices look forward to a close working relationship with the new Agency. In some versions of this bill over the years, there was provision for grant-in-aid programs for State and local agencies.

Like my colleague from the Attorney General's Office, I will say—and it is needless to say, perhaps—that the Association of Consumer Agency Administrators recommends that support for such agencies be included in 1977.

Finally, as a complaint handler, I am sorry to see section 7 in the present bill with its elaborate requirement of individual complaint handling. I suggest that this will take away from the new Agency a major thrust which should be to present the consumers' viewpoint before Federal regulatory agencies.

With these minor reservations, the National Association of Consumer Agency Administrators enthusiastically supports the bill before you, and urges its support.

Thank you very much.

Mr. BROOKS. Thank you very much.

Without objection, we will include your written statement in the record.

[Ms. Gregg's prepared statement follows:]

PREPARED STATEMENT OF BARBARA B. GREGG, EXECUTIVE DIRECTOR, MONTGOMERY COUNTY OFFICE OF CONSUMER AFFAIRS

On behalf of the National Association of Consumer Agency Administrators, I am here to urge you to pass H.6118, the Consumer Protection Act of 1977. The National Association of Consumer Agency Administrators is comprised of the directors of county, city, and state consumer protection offices around the country, from Hawaii to Florida, from Wisconsin to Texas. The Association speaks with a common voice on behalf of consumer legislation that its members believe will be beneficial. At the Association's January meeting here in Washington, the group was unanimous in its support of establishing an independent federal agency for consumer advocacy and voted to make that position known if and when legislation was once more introduced to accomplish that objective.

Consumers' problems are numerous, legitimate and serious. All local and state offices of consumer affairs regularly receive complaints from consumers; last year they handled literally hundreds of thousands of individual consumer complaints. If we add to this the number of individuals who do not complain because they are unaware of the existence of agencies established to help them, as well as the large number of citizens who may, for example, be eating contaminated food or driving unsafe motor vehicles without knowing the dangers to which they are being exposed, we begin to see the true magnitude of the problem.

In the experience of NACAA members, most of the complaints filed are real and substantial, not imagined or petty as many businessmen would have you believe. Complainants to these local offices come from all age groups and walks of life; from all income brackets and geographic locations; from farms, city centers, and suburbia. Association members are closely and regularly in touch with individual

consumers, and are thus in a good position to know the problems of consumers in the American marketplace. We urge Congress to take necessary steps toward elimination of these problems.

In addition to receiving and acting on individual consumer complaints, local and state consumer protection offices have an important role to play in anticipating and preventing consumer problems. But the federal government also has a responsibility in this field, for there are problem areas that can be most successfully and thoroughly dealt with at the federal level.

Many federal agencies now devote a portion of their time to activities that can be classified as consumer protection; they do so with varying degrees of success. While we support the efforts of these federal agencies which are responsive to consumers' concerns, they cannot take the place of an independent consumer protection agency as proposed by H.6118. Such an independent agency must become part of the strategy for effective consumer protection in this country.

The need for a consumer advocate within the federal government, and the advantages of such advocacy, have been testified to on many occasions. The federal regulatory agencies hear regularly from industry, but only rarely from the general public. These agencies are frequently called upon to balance interests before making decisions, yet one vital interest is usually underrepresented. The right of individual consumers to participate in agency decision-making is a hollow one when the consumer does not have the resources to avail himself of that right. It is much like saying that an individual criminal defendant has a right to trial, while at the same time depriving that defendant of counsel to conduct the trial. The CPA would be that counsel for consumers' interests.

State and local regulatory agencies have problems similar to those of their federal counterparts, and the creation of special consumer agencies to intervene on behalf of the public is increasingly common. Consumer representatives appreciate your concern that an independent nonregulatory agency should intervene in the activities of other agencies only in an orderly and responsible manner. House Bill 6118 is drafted in such a way as to assure that Consumer Protection Agency intervention will be orderly and responsible. The idea of intervention by one agency into the procedures of another is not so unique as one might be led to believe by the anguished cries from opponents to this bill. Some of the Association's members serve in such a capacity, regularly intervening and participating in hearings before state regulatory bodies. Such activity has not adversely affected the smooth operation of government in the counties, cities, and states.

Federal regulatory agencies should welcome the additional help that this new agency will be able to provide. Those agencies which are truly interested in consumer protection should actively seek the cooperation of the new agency, rather than spend their time and the taxpayers' dollars fighting its intervention on behalf of consumer interests.

The Congress, when balancing an interest in the public good and a concern for the possible inconvenience to federal regulatory agencies, must remain mindful of the scope and severity of the problem which the proposed legislation is intended to solve.

The National Association of Consumer Agency Administrators enthusiastically supports the bill before you and urges its swift approval.

Mr. BROOKS. We would like to hear next from Kathleen F. O'Reilly, the executive director of the Consumer Federation of America.

STATEMENT OF KATHLEEN F. O'REILLY, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Ms. O'REILLY. Thank you, Mr. Chairman and members of the committee.

In the interests of time, I will not waste your time telling you what the Consumer Federation is, what our policy resolutions are on this bill, and of the many dozens of examples that have accumulated over the years which show the equitable, the legal, and the logical reasons which dictate the need for this bill.

However, as I prepared my testimony, I felt very much like the mother of eight who, after 8 long years, is trying to tell the last child about the facts of life.

I wish there were a new slant to this issue. I wish there were new twists I could give. Unfortunately, it has been around so long that there is not. Yet I plow forward wishing the brothers and sisters had done my job.

I will simply state today a couple of fresh new issues and new examples which I think show, in a dramatic fashion, how an Agency for Consumer Protection could and would effectively represent the consumer viewpoint.

The first example has to do with home heating oil. A prime reason why homes were colder and budgets tighter during the winter of 1976 and 1977 was because the Federal Energy Administration removed price and allocation controls from home heating oil.

The FEA took this action despite strong evidence that the consequences would be great, and that their underlying assumption—namely, that there would be no natural gas shortage and that competition would lower prices—was unjustified.

In fact, the Federal Power Commission—the agency having jurisdiction over natural gas—had estimated that there would be natural gas shortages, even if the winter were average. It has long been acknowledged, also, that the market for petroleum products is not competitive.

The FEA estimated that with controls the price would rise 2 to 3 cents per gallon over the winter, and that price increases without controls would not exceed that figure.

Further, the FEA projected that, without controls, supplies would be more than adequate.

Finally, the FEA assured the public that prices would be monitored and, if they were excessive, controls would be reimposed.

In actuality, after those price and allocation controls were removed by the FEA, the price of residential home heating oil went up anywhere from 5 to 8 cents a gallon, and oil industry profits soared.

Each 1 cent increase translates into a collective consumer cost of $400 million. Thus, the impact on consumers, over and above the estimates——

Mr. BROOKS. But it is my understanding the price of gasoline might go up as much as a nickel a gallon very shortly.

Ms. O'REILLY. That is very interesting in several considerations, as well.

Mr. BROOKS. It will be interesting if you drive to work.

Ms. O'REILLY. Fortunately, I do not.

Mr. BROOKS. A lot of people do.

Ms. O'REILLY. That is true.

However, in terms of this issue there was an absence of a voice to bring out these important factors. They drive home the reason why we do need an Agency for Consumer Protection because the impact on consumers cannot be lightly dismissed.

A measure of the burden that is placed on consumers is that Congress was compelled to appropriate $200 million in emergency funds to assist low-income consumers in paying their bills.

This action paralleled action taken by many States, and the taxpayer money still will be oil company coffered.

Of no less consequence is the fact that the removal of allocation controls led to shortages and greater distribution inefficiencies. The FEA's monitoring system, which should have protected the public, simply did not.

As is typical, the oil industry had the FEA's undivided attention in the agency proceedings. Consumers and consumer groups did not have, and do not have, the financial resources or the technical expertise to challenge the industry data and arguments which inevitably and conveniently show that decontrol and higher prices are necessary.

An Agency for Consumer Protection could have intervened in those proceedings. With their resources and their clout as a Government agency, they could have argued forcefully that the FEA was underestimating winter demands, that the oil industry is not competitive, and that the FEA should have proceeded with great caution in decontrolling petroleum products.

Further, the Agency could have cross-examined industry witnesses, called its own experts, and made the appropriate legal and economic arguments to rebut industry's data and petitions.

Second, in terms of oral diabetic drugs, the Food and Drug Administration originally planned—back in 1972—to issue a warning label for oral diabetes drugs. Scientific evidence demonstrated that these drugs do little, if anything, to reduce the risks of dying from diabetes.

Indeed, a strong case was made that the drugs cause death from cardiovascular disease.

The FDA's effort was blocked, however, by a group of doctors who obtained an injunction against the proposed labeling. Although the original court injunction was vacated by the court of appeals in July of 1973, the FDA has still not issued a warning label.

The danger inherent in those drugs received renewed public attention in July of 1975 when Morton Mintz reported, in the Washington Post, on its failure to control these dangerous drugs.

That report quoted Dr. Richard Crout, Director of the FDA's Bureau of Drugs, as saying that phenformin, one of the drugs, "has no role in the treatment of diabetes" and is so dangerous that it should be taken off the market. Dr. Crout testified to the Senate Monopoly Subcommittee that this action, however, must come from the FDA's Metabolic and Endocrine Advisory Committee.

That committee conducted hearings in August of 1975 and requested an audit of the university group diabetes program which had come up with the findings. It is now April 1977 and the audit is not complete.

There is no indication as to when, if ever, the FDA will act. Indeed, it is not the Advisory Committee which decides for, as its name suggests, it is an advisory committee. Dr. Crout must decide.

Subcommittee Chairman Senator Gaylord Nelson has said that 10,000 to 15,000 people die every year from cardiovascular disease related to these drugs, and 99 percent of the users should never have them prescribed.

An Agency for Consumer Protection could monitor this program, expose the delays, and push for expeditious action.

The other examples in our testimony give other instances where it is absolutely necessary for an independent, outside force with the legal clout of being a party to the proceedings to make the other agencies act more responsive.

We hope that this is the year for passage because consumers have been waiting impatiently for a long time for the agency they deserve.

Thank you.

Mr. BROOKS. I want to thank you. That was a very excellent statement, Ms. O'Reilly.

Without objection, we will insert the complete text in the record.

[Ms. O'Reilly's prepared statement follows:]

PREPARED STATEMENT OF KATHLEEN F. O'REILLY, EXECUTIVE DIRECTOR, CONSUMER FEDERATION OF AMERICA

Consumer Federation of America is a federation of 220 national, state and local non-profit organizations that have joined together to espouse the consumer viewpoint. CFA and its member organizations represent over 30 million consumers throughout the United States. Among our members are Consumer Union, publisher of Consumer Reports, 17 cooperatives and credit union leagues; 55 state and local consumer organizations; 66 rural electric cooperatives; 27 national and regional organizations ranging from the National Board of the YWCA to the National Education Association; and 16 national labor organizations.

CFA was chartered in 1967 and began operation in 1968. It is frustrating to comprehend that as we approach our 10th anniversary, the independent consumer protection agency which has consistently been CFA's number one priority, is still on the drawing boards. Fortunately, there is every indication that this will be the year of final passage. We take this opportunity to thank Senators Ribicoff, Javits, and Percy for the endless leadership, energy, and enthusiasm they have devoted to this measure and CFA assures you that once again we join with you in redoubling our efforts to secure passage of the strongest possible bill.

At its most recent annual meeting in February of 1977, CFA's membership voted overwhelmingly in support of the following policy resolutions:

AGENCY FOR CONSUMER PROTECTION

1. The creation of an independent Agency for Consumer Protection (ACP) is CFA's number-one priority. The ACP must be capable of representing consumers before government agencies and the courts. The ACP must have

full access to judicial review and maximum independence from the executive branch.

2. We urge that legislation establishing the ACP direct the head of each federal agency to create an Office of Consumer Ombudsman at the level of Assistant Secretary or its equivalent to receive and monitor consumer complaints and to ensure that the complaints are appropriately channeled into the decision-making process of the agency.

3. Each such office shall further be directed to:

a) provide frequent information to consumers concerning rulemaking proceedings and programs which have significant impact on consumers;

b) assist consumers in their inquiries about how to participate in those proceedings and programs;

c) identify stages of decisions in the agency and departmental proceedings and programs which have a significant impact on consumers; and

d) use its expertise to provide these programs with its impact.

4. State and local agencies which now exist to protect consumers suffer uniformly from a critical shortage of financial resources. The shortage is made more critical by the lack of adequate federal funds available to state and local governments for consumer protection.

CFA therefore urges that the legislation establishing the ACP provide grants to states and localities for establishing or expanding such consumer agencies or for programs conducted by such agencies.

- CFA views the Agency for Consumer Protection in the larger context of regulatory reform. In addition to the Agency, consumers deserve public participation reimbursement, class action and standing reform, and the use of higher standards in the agency appointment process. All are addressed in CFA's policy resolutions.

The fact that CFA has become increasingly concerned with regulatory reform is evidenced by the fact that in 1976 it was decided that "Regulatory Reform" was of sufficient importance to merit a separate category of policy resolutions.

The anti-government, anti-Washington mood across the country in recent years has intensified, not lessened. Consumers in growing numbers are demanding reform. It is no secret, however, that the frustrations consumers experience with unresponsive government, cannot be solved by any one bill. Only a comprehensive approach will ultimately be effective. Yet as CFA and it 220 member organizations work toward that comprehensive regulatory reform approach, we will not lose sight of our conviction that the most basic, sensible, and equitable first step is the creation of an Agency for Consumer Protection.

Only that independent agency can correct the structural flow in our regulatory process - a process which unreasonably expects federal agencies to be independent decision-makers in quasi-judicial settings while simultaneously representing one of the parties to the proceeding, namely the consumer. Anyone who has ever been in the courtroom, or ever viewed a few episodes of Perry Mason understands that the adversary process in those agencies can never function effectively if that "wearing two hats" procedure is allowed. Examples of the need for an Agency for Consumer Protection are legion. A few recent ones include:

A, HOME HEATING OIL - A prime reason why homes were colder and budgets tighter during the winter of 1976-1977, was because the Federal Energy Administration (FEA) removed price and allocation controls from home heating oil. The FEA took this

action despite strong evidence that the consequences would be great, and that their underlying assumptions (that there would be no natural gas shortage, and that competition would lower prices) were unjustified. In fact, the Federal Power Commission (the agency having jurisdiction over natural gas) had estimated that there would be natural gas shortages even if the winter was average, and it has long been acknowledged that the market for petroleum products is not competitive. The FEA estimated that with controls the price would rise two to three cents per gallon over the winter, and that price increases without controls would not exceed that figure. Further, the FEA projected that without controls supply would be more than adequate. Finally, the FEA assured the public that prices would be monitored, and if excessive, controls would be reimposed.

In actuality, after those price and allocation controls were removed by the FEA, the price of residential home heating oil went up any where from five to eight cents a gallon and oil industry profits soared. Each one cent increase translates into a collective consumer cost of $400 million. Thus the impact on consumers over and above the estimate that prices (with controls) would increase three cents was (as estimated by the Library of Congress) between $800 million and $2 billion. A measure of the burden this placed on consumers is that Congress was compelled to appropriate $200 million in emergency funds to assist low income consumers in paying their bills. This action paralleled action taken by many states. Taxpayer money filled oil company coffers.

Of no less consequence is the fact that the removal of allocation controls led to shortages and great distribution inefficiencies. The FEA's monitoring system which should have protected the public simply did not. As is typical, the oil industry had the FEA's undivided attention in the agency proceedings. Consumers and consumer groups simply did not have the financial resources or the technical expertise to challenge industry data and arguments, which inevitably and conveniently show that decontrol and higher prices are necessary.

An agency for consumer protection could have intervened in those proceedings with their resources and about they could have argued forcefully that the FEA was underestimating winter demand, that the oil industry is not competitive, and that the FEA should proceed with caution in decontrol of petroleum products. Further the Agency could have cross-examined industry's witnesses, called its own experts, and made the appropriate legal and economic arguments to rebut industry's data and position.

B. ORAL DIABETIC DRUGS - The Food and Drug Administration originally planned in 1972 to issue a warning label for oral diabetes drugs. Scientific evidence demonstrated that these drugs do little if anything to reduce the risk of dying from diabetes and indeed a strong case was made that the drugs caused death from cardiovascular disease. The FDA's effort was blocked however, by a group of doctors who obtained an injunction against the proposed label. Although the original court injunction was vacated by an Appeals Court in July, 1973, the FDA has still not issued a warning label.

The danger inherent in the drugs received renewed public attention as on July 10, 1975 when Morton Mintz reported in the Washington Post on the FDA's failure to control these dangerous drugs. The report quoted Dr. J. Richard Crout, director of the FDA's Bureau of Drugs, as saying that phenformin, one of the drugs, "has no role in the treatment of diabetes," and is so dangerous that it should be taken off the market. Dr. Crout testified to the Senate Monopoly Subcommittee that this action however, must come from the FDA's Metabolic and Endocrine Advisory Committee. That committee conducted hearings in August of 1975 and requested an audit of the University Group Diabetes Program which had come up with the findings. It is now April, 1977 and the audit is not complete. There is no indication as to when, if ever, the FDA will act. Indeed it is not the Advisory Committee which decides, for as its name suggests, it is

an advisory committee. Dr. Crout must decide. Subcommittee Chairman Senator Gaylord Nelson has said that 10,000 - 15,000 persons die every year from cardio-vascular disease related to these drugs and 99% of the users should never have them prescribed.

An Agency for Consumer Protection could monitor this program, expose the delays, and push for expeditious action.

C. In 1973 Consumers Union sued the Federal Reserve Board because of its refusal to release information which it already had and which was readily made available to its banking customers, information as to ranges of interest rates among different banks on different categories of consumer loans. In 1975 CU was finally successful in its suit under the Freedom of Information Act, but Arthur Burns refusal in the future to release the information could drive consumers back into court. The Agency for Consumer Protection is expressly directed to make reports on interest rates, information which helps consumers make meaningful comparisons, thus more intelligent market place decisions.

D. Natural Gas Withholding This winter Americans were subjected to the devastating effects of shortages of natural gas: Unemployment and reduction in their standard of living. Much of that hardship could have been avoided if the Department of Interior had exercised its statutory authority to compel holders of federal off-shore natural gas fields to produce with "due diligence."

In abandoning its responsibilities, the Department of Interior ignored evidence that producers were dragging their heels. In spite of studies, by among others the Federal Power Commission, the Library of Congress Congressional Research Service and the Subcommittee on Oversight and Investigations of House Commerce Committee the Department never took any action. Significantly, a recent study by the Subcommittee discovered that just two fields in the Gulf of Mexico 1/2 trillion cubic feet of natural gas was available for production. The actual winter shorage was less than 1.5 trillion cubic feet. Had that gas been in production, factories could have remained open and the economy would not have been so severely impacted. An agency for consumer protection could have taken action to compel the Department to fulfill its responsibilities and compel production.

These examples, together with the dozens of examples accumulated over the years, make a persuasive case for the creation of this agency. Consumers are increasingly impatient with the maneuvers which have stalled creation of the Agency. The time for passage is now!

Mr. BROOKS. Ms. Sullivan?

STATEMENT OF CHRISTINE B. SULLIVAN, SECRETARY OF CONSUMER AFFAIRS, COMMONWEALTH OF MASSACHUSETTS

Ms. SULLIVAN. Thank you, Mr. Chairman and members of the subcommittee.

I am speaking in support of an Agency for Consumer Protection not only for the Commonwealth of Massachusetts, but also for the States of Maine, Connecticut, Rhode Island, and Vermont.

I would like to have the full text of my remarks placed in the record if I may, and I will summarize them.

Mr. BROOKS. Without objection, so ordered.

Ms. SULLIVAN. Thank you.

About 1 month ago at a cabinet meeting in Massachusetts, the Governor said to the cabinet secretaries, "I want you to get to know well your counterparts in Washington, D.C."

As I looked around the room at nine other heads nodding in assent, I realized that I do not have a counterpart in Washington, D.C., to get to know. I think, perhaps, that in a nutshell summarizes the need for an Agency for Consumer Protection.

There are a number of arguments being used against the Agency. One of these is that Federal agencies should now be protecting the interests of consumers and that, therefore, if they are not they should be revamped, and that we do not need an additional agency to protect the rights of consumers.

The problem is that this discussion has now been going on for 8 long years. Nothing is really changing. There are some efforts to have consumer representatives within agencies, but basically the consumer voice is not being heard.

I think the problem is that we need an agency now, and I am very hopeful that the legislation will pass this year.

Others oppose this new Agency because they fear the creation of a bureaucracy that will impede agency action. This particular Agency is not a bureaucracy. It has a budget of approximately $10 million.

When you consider that it costs $20 million to build a single F–14 jet fighter, or it costs almost $1.5 billion to build a standard size nuclear powerplant, $10 million seems very modest, indeed, to protect the interests of so many consumers.

An agency with a $10 million budget must choose its areas of intervention very, very carefully. If, for instance, the Agency were to choose to get involved in questions of utility rate structure—a complex subject which urgently requires consumer representation—most of the budget could be easily spent on that one subject alone.

Since this Agency will not be able to promulgate rules and regulations, its real job should be to untangle and cut through existing rules and regulations which, at this point, delay and obfuscate consumer concerns.

Another example of an area of intervention is in the Carter energy plan. I believe he is going to call for peak pricing for powerplants—electric rates—by 1980 and require that every PUC in the Nation conform to that.

That is one of the most complex areas ever encountered, and consumer groups have a great deal of difficulty dealing with that and getting the funding to do that.

The impact on lifestyle of peak pricing is going to be substantial and a single voice does need to be heard.

Every one of us in the room can think of enough topics off the tops of our heads to keep the ACP going for several years, but what is clear is that this small Agency is going to have to pick and choose its actions carefully and will not arbitrarily or willfully stall procedures or cause delays.

As has been pointed out, we have many Federal agencies who represent the particular points of view. Surely a nation as large as ours can afford, finally, to give true representation to its own consumers.

Thank you very much.

Mr. BROOKS. Thank you.

[Ms. Sullivan's prepared statement follows:]

PREPARED STATEMENT OF CHRISTINE B. SULLIVAN, SECRETARY OF CONSUMER AFFAIRS, COMMONWEALTH OF MASSACHUSETTS

My name is Christine Sullivan, and I am the Massachusetts Secretary of Consumer Affairs. I thank the Subcommittee on Legislation and National Security for allowing me to testify in favor of proposed legislation establishing an Agency for Consumer Protection. Over the past six years, similar bills have been introduced, and by now you have heard all the arguments for and against creating this type of agency. Therefore, instead of rehashing all those arguments, I will keep my statement brief and explain why I believe there is a definite need for a consumer agency on the federal level.

Mr. Chairman, it seems to me that the July 30, 1975 report to the Committee on Government Operations on the bill establishing an Agency for Consumer Protection in that year most eloquently enunciated the need for such an agency.

The report states, and I quote: "The business community has vast resources at its command in dealing with federal departments and agencies. The representation of consumers, on the other hand, is generally weak or nonexistent. Hardly any decision of importance is made by the agencies without an input by the business community. Few decisions are made where consumer interests have been fully and effectively presented. This is a fact of life which few would deny...there is still no comparison between the capabilities and resources of the business community to influence policy and that of inadequately financed consumer groups."

Some would argue that Federal agencies should now be making decisions benefitting consumers, but obviously they are not. Some would say that a reform of these agencies is needed. Perhaps it is, but that kind of argument only means deferring the problem

hese agencies, although they are supposed to be for the people, have a history of aking decisions influenced by business lobbyists. The time for discussing plans to alance the business voice with the consumer's voice has passed. Now is the time to ake action, and the way to insure that the consumer's voice is heard as equally as oud as the business community is by establishing a consumer protection agency on he Federal level.

Others oppose this agency because they fear the creation of another bureaucracy. The ACP is specifically designed not to be a bureaucracy. It has a budget of approximately $10 million. When one considers that it costs $20 million to build one F-14 fighter jet or that it costs $1.4 billion to build a standard-size nuclear power plant, $10 million seems a modest sum indeed to protect the interests of the 200,000,000 consumers of America. An agency with a $10 million budget will have to choose its areas of intervention very, very carefully. If, for instance, the agency were to choose to get involved in questions of utility rate structure--a complex subject which urgently requires consumer representation--most of the budget could easily be used on that subject alone. Since this agency will not be able to promulgate rules and regulations, its real job should be to untangle and cut through existing rules and regulations which at this point delay and obfuscate consumer concerns.

In order to be truly effective, the ACP which is already mandated to take consumer complaints should also be able and willing to act on those complaints. Another possible area of intervention, therefore, would be in regard to this entire problem of finding Chevrolet engines in Oldsmobiles. These engines were inserted in those automobiles with no notification--until recently--to the general public. Complaints about this have been coming steadily into my own consumer office, but the problem is a national one. An ACP could most quickly and effectively work with all parties concerned to unravel this particular mess.

I am sure every one of us in this room could think of enough topics off the top of our heads to keep an ACP going for several years. It is clear, therefore, that this small agency will have to pick and choose its actions very carefully and will not arbitrarily

or willfully stall procedures or cause delays.

Finally, we have many Federal agencies who represent particular points of view. The Defense Department certainly represents the military perspective. The Commerce Department has, at least in the past, clearly represented the business perspective. The Agriculture Department represents farmers, etc. Surely a nation as large as ours can finally afford to give true representation to its own consumers.

Mr. BROOKS. Ms. Haas of the Community Nutrition Institute in Washington, D.C., would you present us with your statement?

STATEMENT OF ELLEN HAAS, COMMUNITY NUTRITION INSTITUTE, WASHINGTON, D.C.

Ms. HAAS. Thank you, Mr. Chairman.

As a caboose in a long train of supporters today before you, I would like to ask that my complete statement be submitted for the record and I will summarize.

Mr. BROOKS. Without objection, so ordered.

Ms. HAAS. Thank you.

It has been a long day, and it has also been a long history in the battle to achieve——

Mr. BROOKS. It has been years, Ms. Haas, that we have been working on this. You should come tomorrow so you can hear why we have been working on this legislation so long.

Ms. HAAS. I think I would like to address some of those reasons and points of those who will be testifying tomorrow, and some of our considerations of that point of view.

I would also say that, not only has it been years—as you well know—it has been thousands of pages of documentation of this hearing record. Hopefully, we will be the last pages and hopefully this will be a happy ending.

Along with these thousands of pages of documentation, as you well know in this committee, this legislation has been sandpapered down, but all through this period of time the consumer interest has been too often ignored in decisionmaking because the regulatory process goes on despite the fact that there is no Agency for Consumer Protection.

That regulatory process has suffered because of the imbalanced input these agencies receive in their proceedings. We believe, again, that H.R. 6118 is a sensible, pragmatic approach to regulatory reform because it addresses this basic flaw.

The fact of life today is that the consumer interest is rarely represented. The examples have just been heard over and over again because consumers lack the time, they lack the organization, they lack the money, they lack the information—technical or expertise—to present their case.

This fundamental problem is specifically addressed in H.R. 6118 by the central authority given the ACP to represent the consumer interests in Federal proceedings in the courts. However, this critically needed function would be unique in the current bureaucratic maze of Federal decisionmaking.

The ACP is not another in the long list of agencies with authority to set standards, impose fines, or otherwise regulate industry. Though we wholeheartedly support attempts to reform the procedural process of regulatory agencies, these are no substitutes for equal representation.

Regulatory reform is supported by business and consumers, alike. However, there is a departure here for some businesses who actively oppose the Agency for Consumer Protection. This is actually and factually uncalled for, and is based on anxiety and emotional misapprehensions in some part of the business communities.

It has been our experience that when the safeguards are underscored and pointed out, the list of business supporters grows and grows, and I would imagine it will continue to grow in the near future.

That is why I would like to very quickly focus on some highlights of how the business interests would be safeguarded against any unnecessary harassment.

The legislation specifically delineates numerous safeguards for business.

The first is the interrogatory authority which is clearly defined so as to avoid excessive burden and harassment of business, and information is specifically prohibited from being gathered from small businesses.

The primary focus, then, of the agency's activities is on large companies whose activities have the greatest impact on the largest number of consumers—not on firms of limited resources.

Businesses are further safeguarded in the public disclosure of confidential information from business and agencies. In addition, several important steps must be taken before the information is disclosed.

So, too, the ACP bears the burden of proof regarding the necessity of the interrogatory.

Businesses are further safeguarded in the public disclosure of consumer complaints by the requirements, in section 7, for prompt notification and opportunity to comment on the complaint in 60 days. Then the firm's response to the complaint will be made publicly available, along with the disclosure of the original complaint.

These and other explicit limitations and protections for business cannot be gone over too many times. They are an integral part of H.R. 6118 and they are a clear demonstration of the intent of the legislation to provide balance in the decisionmaking process without causing undue harassment of the business community.

One final point. Because of our work in the food and nutrition area, the Community Nutrition Institute is most concerned with the role the ACP will play before the Department of Agriculture and the FDA in connection with food and agriculture issues.

While we believe that the interests of the family farmer must not be impaired by any ACP intervention, it is imperative that the ACP not be denied the right to be a party advocate in critical consumer oriented food issues. The decisionmaking process of the Department of Agriculture is in hungry need of effective consumer representation in many proceedings which actually directly impact on our daily sustenance as consumers.

We do not support any exemption which would limit the agency's authority to intervene in such matters as food and nutrition.

I think your example, Congressman Erlenborn, of milk marketing orders is a perfect one of a nutritional vital beverage which has great impact on consumers.

In conclusion, we urge immediate passage of H.R. 6118, and look forward to a time when our regulatory process will reflect the input of all who are part of the marketplace.

Our marketplace, then, will rest on a more equitable and reasonable foundation, and consumers will not be coming up to your committee year after year, except for oversight.

Mr. BROOKS. Thank you very much.

[Ms. Haas' prepared statement follows:]

PREPARED STATEMENT OF ELLEN HAAS, COMMUNITY NUTRITION INSTITUTE, WASHINGTON, D.C.

The Community Nutrition Institute is a non-profit organization that supports the development of a national nutrition policy serving consumer needs at the community level. CNI functions primarily as an educational organization and publishes the CNI Weekly Report with a subscriber list of 4,800.

Thank you for the opportunity to testify before you today in support of the major piece of legislation for consumers in this country. H.R. 6118 is a bill whose time has come. Over the past seven years while thousands of pages of hearings have been documented, and this legislation has been sandpapered down, the consumer's interest has too often been ignored in decision-making of the regulatory agencies.

During this period of time, characterized by neglect of the consumer interest, increased attention has been directed to the problems of our regulatory agencies and the functions they perform have come under critical examination. It has become widely accepted that the regulatory decision-making process suffers because of the imbalance of input these agencies receive in their proceedings. What is needed now is a means to reform the regulatory process so that decisions are made in a more equitable manner.

H.R. 6118 is a sensible, pragmatic approach to regulatory reform because it addresses this basic flaw in the existing regulatory process -- lack of balanced input of diverse interests in an agency proceeding. The fact of life today is that the consumer interest is rarely, adequately represented because consumers lack the resources of time, organization, money, information and available technical expertise to make their case.

This sad state of affairs results in only one side being represented -- more often than not it is the side of the special regulated interest. This fundamental problem is specifically addressed in H. R. 6118 by the authority given to the Agency for Consumer Protection to represent the consumer interest in federal proceedings and the courts. This central function would go a long way in redressing the current imbalance of input by providing some balance of representation.

This critically needed function would be unique in the current bureaucratic maze of federal decision-making. The Agency for Consumer Protection, created by this legislation would not be another in the long list of agencies with authority to set standards, impose fines or otherwise regulate industry. As an anti-bureaucratic non-regulatory ombudsman it can prod the regulatory agencies to perform. Furthermore, the regulatory agencies who act in a quasi-judicial capacity and base their decision on the information before them, would be able to strike a fairer balance between opposing views because capricious accomodation of one part would form the basis for a judicial challenge by the other side. Though we whole heartily support attempts to reform the procedural process of regulatory agencies, these are no substitutes for equal representation of the consumer interest, which would be achieved through enactment of H. R. 6118.

Recent history indicates that while regulatory reform is a concept universally supported by consumers, and business alike, anxiety and misapprehension persists in some parts of the business community regarding the creation of an Agency for Consumer Protection as set out in H. R. 6118 when reacting to authority given to the Agency for Consumer Protection. It is important, therefore, to examine this legislation carefully with the focus on how business is safeguarded against any unnecessary harrassment.

The following list highlights some functions of the ACP which are specifically designed to include safeguards for the business interest:

1. Interrogatory Authority --

The information gathering authority of the ACP is carefully delineated in the bill (Sec. 10) so as to avoid harrassment of business interests. The agency interrogotory authority is tempered by the restrictions which are placed on it. If the ACP seeks information it must 1) be able to prove in court that the information substantially affects consumer health and safety, or 2) that it is necessary to discover consumer fraud, or other unconscionable conduct detrimental to consumers. 3) This power may not be used if the information is already available publicly or from another agency; 4) the information sought must substantially affect interstate commerce; and 5) it will not be enforced if it can be shown to be excessively burdensome. Finally, 6) specific prohibitions are carefully spelled out which would limit the power of the Agency to acquire information from small businesses.

This last limitation places the primary focus of the ACP on large companies whose activities have the greatest impact on the largest number of consumers, not on firms of limited resources which are already constrained by the marketplace. With these built-in restrictions on the information-gathering authority of the ACP, it is doubtful that the Administrator would be prevented from ever engaging in "fishing expeditions."

2. Disclosure of Information ---

Specific prohibitions are written into H.R. 6118 to prevent the ACP from disclosing trade secrets or otherwise confidential information. Prohibitions are also placed on disclosing other information acquired from other agencies if that agency stated that the information is exempt from disclosure under the Freedom of Information Act.

The means by which the Administrator released information is carefully set out in Sec. 11c so as not to be unfair or unjust to business . 1) Where the release of information may cause significant injury to a person, the Administrator must notify the person and permit an opportunity for comment and injunctive relief, unless immediate release is necessary to protect the public health or safety. 2) The information must be determined accurate, as far as possible 3) and tight restrictions are placed on disclosure of product and service names.

3. ACP's Burden of Proof -- on Necessity of Interrogatory

If a private party objects to an interrogatory that ACP serves on it then in such a case in court, the burden will be on the ACP Administrator to prove that the information sought significantly affects the health and safety of consumers or is necessary in the discovery of consumer fraud or substantial economic injury to consumers and is relevant to purposes for which the information is sought. In addition, in situations which are unnecessarily burdensome, the interrogatory need not be answered. These restrictions on the ACP would preclude business firms from answering interrogatories which were superflous, unnecessary or irrelevant.

4. The Public Disclosure of Consumer Complaints

Sec.7 provides safeguards for companies who are complained against. The ACP must promptly notify the company of any notable complaints and the ACP may not make the complaint available until the company complained against has had 60 days to comment and then the response to the complaint must be publicly available along with any disclosure of the original complaint.

5. Judicial review Protection

If any party to a final agency proceeding believes ACP participation in the proceeding resulted in an error prejudicial to the party it may seek judicial review.

6. Limitations on Initiation of Civil Proceedings.

Restraints are placed on the ACP's ability to initiate judicial review of decision by requiring that when the ACP did not participate in a proceeding it must first petition the agency for reconsideration within 60 days, or longer if allowed by agency procedures. This authority is limited further by the requirement for an initial court determination that this action would not impede the interests of justice.

7. Assurance of Fairness

H.R. 6118 requires the Administrator to assure fairness to all affected persons in carrying out its functions.

In summary then, these particular limitations on the authority of the Agency for Consumer Protection clearly indicate the reasoned approach which must be followed to carry out its responsibilities. These explicit protections for business, which are an integral part of H.R. 6118 are a clear demonstration of the intent of the legislation to provide balance in the decision making process without causing undue harassment of the business community.

Agriculture Exemption

Because of its work in the food and nutrition area, the Community Nutrition Institute is most concerned with the role the ACP will play before the Department of Agriculture and the Food and Drug Administration in connection with food and agriculture issues that accept consumers. While we believe that the interests of the family farmer must not be impaired by any intervention of the ACP, it is imperative that the ACP not be denied the right to be a party advocate on critical consumer-oriented food issues.

Over the past few years, while consumers experienced a continuing crisis at the supermarket counter and watched helplessly as their grocery bills skyrocketed, rising nearly 50% since 1972, the consumer voice was

virtually silent in any proceedings of the Department of Agriculture. Yet, the regulatory process of the Department encompasses many programs which directly impact on consumers and relate to their every day sustenance. For example, under the Agriculture Agreements Act, the Department of Agriculture regulates the sale and distribution of fluid milk. The agency sets a minimum price in each of 62 market orders, which must be accepted by a 2/3 majority of producers serving a market and the price then must be paid by bottlers and producers. Consumers have no advocate to speak for them in this regulatory process which affects the price of a nutritionally vital food.

The decision-making process of the Department of Agriculture is in hungry need of an effective consumer voice in all of its many proceedings, so that its decisions would be made on the basis of balanced input. We do not support any exemption which would limit the Agency's authority to intervene in matters of food and nutrition.

In conclusion, we urge passage of H.R. 6118 with deliberate speed, and look forward to a time when our regulatory process will reflect the input of all who are a part of the marketplace. Our marketplace then will rest on a more equitable and reasonable foundation.

CONTINUED

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Mr. BROOKS. I have several questions. Each of you might want to answer them, or one of you may want to answer to represent a joint view.

Why can't private consumer-oriented groups adequately protect consumer interests?

Ms. O'REILLY. We wish that private consumer groups had the resources, both in terms of money and personnel, to be able to take on the hundreds and hundreds of issues that come before the various Federal agencies every year. That is a physical impossibility.

Also, we recognize that there is really a need for a two-fold approach to citizen advancement in terms of a viewpoint before Government agencies. We need a Federal agency, such as the Agency for Consumer Protection, for the broad issues that touch all consumers.

We also need public participation reimbursement for those issues which touch on segments of society where consumers can be their own best advocate and their own best witness.

When senior citizens, for example, want to testify in a hearing, they should be reimbursed for that. That would not be a logical participation for the Agency for Consumer Protection. We need both.

Anyone who thinks that private consumer groups have the financial resources to represent the consumer viewpoint really does not know much about our financial situation. As the largest consumer group in the country, we have an annual budget of under $300,000.

By way of comparison with the chamber of commerce, their budget is about $20 million. The American Petroleum Institute has a budget of about $18 million. We are David and Goliath, day in and day out.

Mr. BROOKS. Little David.

Ms. O'REILLY. Little David with an occasional stone.

Mr. BROOKS. Do you agree, ladies, that the creation of an Agency for Consumer Protection is the best way to insure that regulatory agencies take into consideration the views of consumers before making important decisions which can have enormous impact on consumers?

Ms. HAAS. Yes, certainly. We certainly do agree with that.

Other efforts have been tried in the past. In-house consumer affairs offices were suggested last year with a consumer representation plan. There is no way that an in-house person would have the independence, the authority, and the backup to provide that consumer voice.

The only way that the interests can be represented equally would be with the independence that the Agency for Consumer Protection would achieve.

Ms. GREGG. As I said, the intervention on the part of other agencies into regulatory agencies' activities is not uncommon on the State level. I am sure that our public service commission in Maryland is most pleased with the voice that it hears from our people's council when they are really sitting as a judicial body, and hearing very heavily, of course, from the utilities in Maryland.

The people's council does give them that balance. I would think we would find the same thing on the Federal level.

Ms. SULLIVAN. We have a situation in Massachusetts in which we have a consumers' council. This is part of my secretariat, and it makes an effort at interventions in various State agencies.

It is State-funded, and it is small-funded. That is the cost coherent consumer voice in Massachusetts at any given time.

I think that an agency on the Federal level will be extremely effective because it will be independent, as you have said.

It seems to me that when an individual works for an agency, if they like their job, they end up in an advocacy role, oftentimes, for their agency. It is an almost mutually exclusive mind pattern to ask them to be attacking or making an effort to change something in their agency at the same time that they are increasingly becoming advocates for that agency.

Mr. BROOKS. Thank you.

From your contacts with consumers throughout the United States, do you feel that the average American is aware of the impact on their personal lives and pocketbooks of decisions that are made in Washington by the regulatory agencies?

Ms. O'REILLY. I think there is a lot of misunderstanding. We cannot underestimate the monetary impact of regulation, but I think it is important to bear in mind that there is a lot of misinformation that needs to be corrected.

For example, President Ford repeatedly talked about the $2,000 figure per average American family for the cost of regulation. The House Commerce Committee, Permanent Investigations Subcommittee, in their report, really put that figure to rest by showing that it was based on many false calculations, overlapping figures, coming out of three columns at the same time, not differentiating between the various kinds of regulation which are really there to promote industry, as opposed to those which are really in the consumer interest.

There are really two broad kinds of Government regulations. One is that type of Government regulation which essentially creates or maintains monopoly power, which is often evidenced at the ICC, the CAB, and the Maritime Commission. It often does not serve the consumer interest well, and should be scrutinized in terms of potential abandonment or serious modification.

However, when you talk about regulation that gets to health, safety, and equality of opportunity, consumers left to their own devices simply do not have the resources to determine what the price should be of natural gas, whether a certain produce should be taken off the market, and what is equality of opportunity in terms of credit.

They logically can and must depend on the Government to protect their interests.

I think that when it is explained to them in those terms, repeatedly, it has been my experience in talking to groups—citizen groups, senior citizen groups, high school groups—that they want that kind of regulation.

It should be good regulation, efficient, and very responsive.

Ms. WILLETT. Mr. Chairman, I would add to Ms. O'Reilly's comments.

National Consumers League is a membership organization. We have two strong State affiliates. What we hear from our members is not their concern about costly regulation in areas where they know, as individuals, they cannot protect themselves—namely, in the health and critical safety areas—but the cost of regulation in duplicative areas such as, perhaps, the interstate airline fares—which we have found—add to the cost of the consumer of the goods or the services.

Our members are telling us to do exactly what the ACP would be empowered to do. That is to cut through some of the regulations that

end up costing consumers more, and to find the consumer interest in those regulations which ought to be, perhaps, lessened or done away with.

The second concern we hear from our members is the need for increased regulations in areas which are—as we have noted earlier—beyond the individual's control. Our members are telling us, in other words, "Help. We desperately need to have a voice in Washington which will provide, in a regular institutionalized pattern, the authentic voice of the consumer as other interests—those of business, labor, farmers, and so forth—are weighed before the decisionmaker in Washington."

Ms. HAAS. Mr. Chairman, I would like to give one different perspective.

I was, at one time, the founding president of the Maryland Citizens' Council. It is a typical consumer organization. It is a voluntary organization.

They know that they are affected by Government regulations, but there is no way that any voluntary consumer group or, particularly any individual consumer—in Dubuque, Iowa, for example—knows when a proceeding is taking place.

They only know it after the fact. They only know it after the regulation has come out or the law has been passed.

Therefore, to answer your question, probably no one knows about proceedings. Probably no one knows about regulations as they are just coming out. They know only as their prices go up.

That is the importance of the Consumer Agency. It would have that ability to monitor, to intervene when necessary, to take all those steps that the average citizen cannot take.

Ms. SULLIVAN. I would like to give one other example in addition to that—with which I totally agree.

We discovered, in January, that the Federal Power Commission sets 50 percent of the electric rates for the citizens of the Commonwealth of Massachusetts and 70 percent of the electric rates for the citizens of Rhode Island.

No one in those States had really understood the impact of FPC decisionmaking on electric rates until we began to ask those questions. The FPC is in the process of reorganization now so this is a moot point.

However, no one for years had looked at the impact of FPC decisions in Massachusetts on the electric rates and understood how serious the impact was. Everyone has blamed the DPU or the PUC's in Massachusetts and assumed that they set all the electric rates. They do not.

Had we known that, had we had some agency in Washington to work with, we could perhaps have begun to effect something along the lines of change.

You know, the FPC was letting rates get set and then going back, years later, and decided whether that was, in fact, a correct rate that was set and reimbursing consumers.

I think it would have made a substantial difference on Massachusetts' electric rates, but we did not know and we did not have anywhere to really ask. When we first asked the question about the FPC, we spent weeks trying to get anyone who could even begin to tackle the problem and answer it for us.

I think it could have a substantial impact, particularly in some of these hidden areas where it is not apparent, immediately, what the Federal agency is doing.

Mr. BROOKS. Thank you very much, Ms. Sullivan.

I want to say I appreciate your coming down. You have all made a major contribution to the evaluation and study we are now making on consumer protection. You have added a lot to it. We appreciate your being here.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Let me also thank the panel for being here. I have only a few questions.

I think there is a popular misconception—not necessarily universal, but a popular misconception—among some of the people across the country that the Agency for Consumer Protection will hire an army of tire kickers to go out into the used-car lots of the United States.

I know that you are familiar enough with the legislation to know that is not its function—that it is representation in the decisionmaking process of the Federal Government where the consumer interests would be affected, seriously affected.

Would you agree that is the basic concept of this legislation?

Ms. O'REILLY. That is right.

[General consensus.]

Mr. ERLENBORN. I think also some have viewed this as representation only in independent regulatory agency proceedings, but it does go well beyond that, I believe. Someone—I think it was Ms. Willett—mentioned safety and health decisions of the Federal Government.

You would want this Agency to represent consumer interests in OSHA decisionmaking, I should believe, would you not?

Ms. WILLETT. I think that the value of the Agency would be on a very, very selective basis, following the procedures that are outlined in your good legislation. The Agency would pick and choose those areas that seemed to be of primary importance to major consumer concerns.

If a problem came up in the workplace, then we would certainly want the independent consumer agency to gather the facts, to hear from consumers, and—on the basis of weighing one tradeoff against the other—take a look at the particular issue.

Mr. ERLENBORN. I think your answer, therefore, is that you believe OSHA to be one of those agencies before which the consumer advocate could appear?

Ms. O'REILLY. As a matter of practicalities, that is very unlikely because the legislation is very clear that the Agency for Consumer Protection will participate only where the consumer viewpoint is not already being adequately represented.

As a practical matter, in an OSHA hearing, the consumer viewpoint is logically usually advanced by the very employees affected by it. On the other hand, industry is coming in and advancing their viewpoint in terms of the cost impact and so forth.

Therefore, from my, admittedly limited, knowledge of OSHA proceedings, I do not envision that as a day-to-day proceeding in which this Agency would be very actively involved because it would appear that the consumer viewpoint is being adequately represented.

That kind of decision will have to be made at every proceeding in every agency. If Consumers Union or Ralph Nader's health research

group, a senior citizen group or a consumer group from San Francisco is already in the proceeding and is effectively advancing the consumer viewpoint, the Agency will not be allowed to be in that proceeding to duplicate that effort.

Mr. ERLENBORN. Do you relate the employees' interest in an OSHA proceeding to the consumer interest?

Ms. O'REILLY. In terms of the safety conditions in a particular plant or industry, it is the employees that are obviously being affected by those regulations.

Mr. ERLENBORN. The consumer would also be affected by the cost of implementing the regulations.

Ms. O'REILLY. And industry will be there, day in and day out, advancing that viewpoint.

Mr. ERLENBORN. Let's look at a few other agencies, the Food and Drug Administration. What about that?

Ms. O'REILLY. I would like to use the scenario of the saccharin case, which I imagine brings many questions to mind.

I would not be surprised to find that the consumer viewpoint, in terms of the heart patients and the diabetics, would be advanced by those associations that are exclusively devoted to those viewpoints, and that the viewpoint in terms of other consumers may be advanced by the health research group.

If there is a consumer viewpoint not being advanced which is significant and which should be advanced, that would be the role of the Agency for Consumer Protection.

But it is not to go in there and duplicate.

Mr. ERLENBORN. The Environmental Protection Agency—I would think that their proceedings would certainly have an impact on consumers.

Ms. O'REILLY. Absolutely. Again, if there is a particular proceeding where environmentalist groups or other organizations are not advancing the consumer viewpoint, it would be the role of the ACP—of course, comparing all the other agency proceedings in front of it—to make that kind of a value judgment.

Mr. ERLENBORN. We do not have wage and price controls now and, God willing, we will not again in the foreseeable future. However, if we did have wage and price controls, and we had a governmental agency—say called the Council on Wage and Price Controls—would you think the consumers' interests should be advocated there by this agency?

Ms. O'REILLY. To the extent that any party is advancing a viewpoint. Again, we cannot overemphasize that the Agency for Consumer Protection will not be the ultimate decisionmaker, that it will be presenting evidence and it will present those kinds of arguments that the ultimate decisionmaker should have before him or her before that decision is made.

That is very healthy and totally consistent with the adversary process.

Mr. ERLENBORN. The Department of Agriculture and its various marketing orders, not just the milk marketing order—which, I understand, is exempt under this bill?

Ms. O'REILLY. We do not support that exemption.

Mr. ERLENBORN. You think that agriculture should be covered?

Ms. O'REILLY. I do. I speak for Consumer Federation on that; yes.

Mr. ERLENBORN. How about the exemption for labor-related issues?

Ms. O'REILLY. That exemption is a misnomer in the extreme. That is very much a clarification of existent law because—as those who have looked into it over the years realize—it is a very narrowly drawn piece of language which really states that, when we are talking about the National Labor Relations Board and the National Mediation Service, we are restating what the Supreme Court has said in a number of cases—namely, that it is not and cannot be the role of these boards to get into the specific terms of a collective-bargaining contract.

If the Congress should determine—the Congress which created the National Labor Relations Board and the National Mediation Service, and gave them that limited role—now to reexamine that public policy decision, then legislation to that point should be introduced.

It should be referred to the appropriate committees, hearings held, and you may well find consumers looking at that issue very separate from the Agency for Consumer Protection.

However, minimally, it is administratively sloppy to tack that policy deviation onto this bill. Therefore, what this provision is really doing is to restate what the Supreme Court has already said—namely, that if, for example, the UAW and Ford Motor Co., are sitting down and hammering out the terms of that contract, there is no Federal agency that can step in and scrutinize and argue the consumer impact.

They are there for the very limited role of making sure that the procedures of the collective-bargaining process are respected by both sides, and that should continue under this bill and a separate examination should be in a different bill, if at all.

Mr. ERLENBORN. I have heard it said that public officials, government officials, should not get involved in the collective-bargaining process.

Ms. O'REILLY. Congress has said that.

Mr. ERLENBORN. I guess nobody told Mayor Bilandic when he got into that meatcutters' dispute so that consumers in the Chicago area could buy meat after 6 p.m., because he definitely did get involved.

However, to go on down the list—I will go through this very quickly—the Federal Energy Administration, the Department of Justice in antitrust matters, the Department of Energy, if they get the economic regulatory function from the Federal Power Commission, the Department of Transportation in the highway safety decisions that they make, the Department of State in the International Coffee Agreement.

Now, there is an interesting one. I do not know if the consumer advocate that we are talking about here could even get into that process. Consumers, I guess, are interested in coffee prices today. I don't know if their voice is going to be heard in that International Coffee Agreement under this proposal.

Ms. O'REILLY. Have you talked to Joan Braden?

Mr. ERLENBORN. No, I have not.

Ms. O'REILLY. I think that Joan Braden has been an articulate voice in expressing the frustration of consumer advisors in the past, that they can make a position known to the agency but they do not have the clout to advance that and to make a real difference.

Much as she has tried, on issue after issue, that she has recognized the need for the dual role and for the need of an independent agency that can have that presence.

Mr. ERLENBORN. But, will the advocate involve itself in the International Coffee Agreement?

Ms. O'REILLY. I do not know that. The Administrator has not been named.

Mr. ERLENBORN. I am asking, of course, if he would have the authority. I am not asking what decision he will make. Will he have the authority?

Ms. O'REILLY. As I understand it, yes.

Mr. ERLENBORN. He will? There are public proceedings that he and other parties could intervene in?

Ms. O'REILLY. The bill calls also for submission of information orally or in writing on informal proceedings. Again, from my reading of the popular press, the consumer viewpoint has been addressed by a number of consumer groups. With the limited size of that Agency, I, for one, would be distressed if it did not get involved in that issue, rather than devoting its limited resources to those issues where the consumer viewpoint has not been advanced.

Mr. ERLENBORN. I was interested in Ms. Willett's observation about safety and health, and I would add to that environmental regulatory functions.

I think, all too often, consumers today complain about inflation. Not all of the increase in prices at the marketplace is necessarily caused by inflation, if I understand the definition of the term.

OSHA, EPA, the Department of Transportation in its highway and auto safety controls, and so forth, all have added immeasurably to the cost of the production of the items that are being utilized by consumers, and have increased the cost of these items to the consumers.

I do not think that this is a matter of inflation. It is a matter of paying for the regulatory function that has been authorized by Congress.

We say to the auto maker, "You must bring down emissions. You must be able to withstand the 5 or 10 mile crash into the wall." We make decisions like this—decisions for every workplace complying with OSHA, the emission controls of EPA, and clean water controls.

All of these add costs to the production of everything that we consume.

I think if the consumer advocate did nothing else but make the public aware that there is a consumer interest in the additional cost of production that these various regulatory agencies impose on industry, we would be going a great way toward educating the public to understand that not all price increases are the result of inflation.

I think there is a popular misconception: Whenever you pay more for something the old devil inflation has caused it.

Ms. O'REILLY. Let us hope, though, that the Agency would also recognize, in that consumer education function, the fact that, traditionally, many industries have—when faced with a regulation—actually pumped up the cost of that regulation.

For example, the cost of interlocking, which may cost industry $73, suddenly becomes translated into $143 in terms of their cost justification. That is why Consumer Federation has repeatedly supported the legislation introduced by Congressman Rosenthal which, in essence,

would say that when industry cites Government regulation as the cause for price increase, it has to justify that the price increase actually parallels the actual cost of implementation—that it is not used as a scapegoat method of padding cost increases.

I think that is very important to know. It is also important to know the price that consumers pay in the marketplace because of monopoly and oligopoly power, as is being demonstrated on a regular basis in study after study.

I could not agree with you more, that inflation is not the only villain—that we need to be educated on the various facets, and that that role would be very important from the vantage point of the Agency for Consumer Protection.

Mr. ERLENBORN. I trust that your organization, then, would also support proposals to require an economic impact statement from these regulatory agencies when they propose new environmental safety or health regulations, so that we would know what the costs of these regulations are and can make a value judgment without having blinders on.

That is what bothers me so often about this. When we get so hepped up on one subject, we find people operating with blinders.

I gave the example the other day that, in this very committee a couple of years ago, we were worried about the putrefaction of lakes because of phosphates and detergents. One of our subcommittees made a recommendation. It was adopted in a report by the full committee. It was that we should, by law, remove phosphate from detergents, and we had a handy substitute—some collection of letters—DES or OFC, or something. We found out, a few years later, that it may not have harmed the lakes, but when it got into the water supply, it caused birth defects.

I think of Tris, which we heard about recently. People are worried about children being burned and did not worry sufficiently about the possible side effects of the flame retardant chemicals.

I would hope that you would support the concept of full and complete information, open Government, letting people know what the cost of regulation is, and then make a value judgment. Is this regulation worth the price?

Ms. O'REILLY. Cost-benefit cannot be lightly dismissed or oversimplified.

On the Tris issue, let us not forget that when the Flammable Fabric Act was passed and when the Consumer Products Safety Commission finally, after years, developed standards, industry came to them and said, "Don't tell us how to implement the law. Just tell us we have to."

They would have no part of the Consumer Products Safety Commission mucking around in terms of what chemicals were to be used. I think it is most unfair to suggest that, somehow, the regulations implemented under the Flammable Fabric Act were responsible for Tris having been selected as one of the implementations.

On cost-benefit, you must also have assurances that, though it is very prudent to have all of the agencies consider cost-benefit before the regulations, to handicap them and cripple them and not allow them to act until there is a very detailed analysis is to actually put them in a state of limbo because it is impossible, often, to determine the cost, for example, of lives saved.

What dollar figure do you put on the release of that kind of anguish. There are issues after issues where cost-benefit studies, for example, would have required to keep the interlock system, but it was the pressure from consumers—based on misconception of propaganda—that led to the change on that.

Mr. ERLENBORN. You agree with consumers, do you not?

Ms. O'REILLY. The interlock system was not the brainchild of the consumer movement. It was industry's reaction because they did not want passive restraints.

On the 55-mile-an-hour speed limit, despite the documentation of the lives that saved, you could have a cost-benefit study delivered to Congress tomorrow where the benefits far exceed the cost. Yet you will find that it is not being enforced efficiently at the State level.

In terms of cost-benefit of credit protection, the National Science Foundation, economists at Harvard and Columbia, and industry have been trying for years to come up with an actual figure on bill after bill which have been deemed in the public interest.

Consumer Federation would certainly oppose any provision in the bill that would strap and really bridle other agencies from advancing until they had provided a definitive cost-benefit statement, but would applaud a movement in the direction of forcing them to consider that impact to the extent practicable before they go in that direction.

Mr. ERLENBORN. Ms. O'Reilly, I find that you are a very articulate spokesman of a particular point of view, rivaling Ralph Nader. I would say that, in your antibusiness bias, you do rival Ralph.

Ms. O'REILLY. Let's be fair. I used to represent business.

Mr. ERLENBORN. I hope you take that as a compliment.

Ms. O'REILLY. Thank you.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. BROOKS. Thank you, Mr. Erlenborn.

Ladies, it is a pleasure to have all of you here.

The committee will stand adjourned until 10 o'clock in the morning when we will have an interesting day with some of our colleagues—Ms. Holt, Mr. Grassley, Mr. Schulze, Mr. Bergland, Mr. Hagedorn.

This will be followed up by the cleanup pitcher, Mr. John Riehm of the U.S. Chamber of Commerce, Richard Levton of the Grocery Manufacturers, and Dr. Allan Heyman of the Heritage Foundation. That will be the morning fare.

In the afternoon, we will have Mr. Weller of the National Council of Farmer Co-ops, William Crook, National Association of Retail Grocers, James McKevitt, Federation of Independent Business, John Datt, American Farm Bureau, Ms. Margaret Cox Sullivan, president of Stockholders of America, Inc., and Mrs. Barbara Keating of the American Conservative Union.

I wish you all well until tomorrow at 10 a.m.

[Whereupon, at 4:20 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, April 21, 1977.]

AGENCY FOR CONSUMER PROTECTION

THURSDAY, APRIL 21, 1977

HOUSE OF REPRESENTATIVES,
LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2154, Rayburn House Office Building, Hon. Jack Brooks (chairman of the subcommittee) presiding.

Present: Representatives Jack Brooks, Benjamin S. Rosenthal, Don Fuqua, Frank Horton, John N. Erlenborn, Joel Pritchard, and Paul N. McCloskey.

Also present: Elmer W. Henderson, staff director; William M. Jones, general counsel; Craig J. Gehring, Guadalupe Flores, and Joy Chambers, professional staff members; Susan E. Phillips, secretary; Richard L. Thompson, minority staff director; James L. McInerney, minority professional staff; and J. P. Carlson, minority counsel, Committee on Government Operations.

Mr. BROOKS. The hearing will come to order.

This morning we continue our hearings on H.R. 6118, the Consumer Protection Act.

Yesterday we heard from a number of witnesses, including a representative of the administration, who favored the bill. Today we will hear from those who may not be in full support of the legislation.

We had scheduled Mrs. Marjorie Holt, a Member of Congress from the State of Maryland.

Without objection, we will insert her statement in the record.

[Mrs. Holt's prepared statement follows:]

PREPARED STATEMENT OF HON. MARJORIE S. HOLT A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. Chairman, it is with the utmost concern that I appear before this Committee today to speak in opposition to H.R. 6118, a bill to create the so-called Agency for Consumer Protection.

Which one of us in Congress has not heard the cries from constituents, especially in recent years, demanding that the federal bureaucracy be streamlined, that over-regulation be stopped before it bankrupts our economy, that tentacles of government be clipped before they squeeze out the life-blood of our system of free enterprise? Which one of us has not agreed with these sentiments? Yet, here we are today, faced with a bill to create yet another costly agency which will neither "protect the consumer" nor "save him money," as proponents have claimed.

Those of us who oppose this bill are said to be anti-consumer. What nonsense! We, too, are consumers. We, too, would like to feel that our rights are protected, that our welfare is being carefully tended to. If for one minute I believed that an agency of the type proposed would really promote the interests of the people of these United States as consumers of goods and services, I would be the first

to pick up the banner. However, I have no illusion that the bureaucratic monster to be created by H.R. 6118 would improve my lot or the lot of my fellow consumers, the American people. On the contrary, I submit that the existence of such an agency would be detrimental to all of us, not only in terms of the tremendous cost involved, but also in terms of further restrictions and restraints upon the individual freedom of choice.

Mr. Chairman, in two hundred years, our country has grown from being a former British colony to being one of the richest, most powerful nations in the world One of the prime reasons for this rapid growth, I believe, is the system of free enterprise which we have chosen to adopt. For two hundred years, the American people have participated in a free market society where they buy what they want and reject what they do not. Both buyer and seller have prospered and all without the help of a bureaucracy to determine for them a fair price for the value of goods and services. Now, however, the consumer is being told that he is a gullible idiot incapable of coping with the business world and thus has to be protected from his own gullibility by the infallible government.

Mr. Chairman, as a consumer, I feel insulted. As a public servant, I have served long enough to know that government is far from being infallible. Admittedly, the consumer needs protection from charlatans and dishonest economic practices. Anti-trust laws have been passed to prevent the formation of monopolies and regulatory agencies have been created to regulate industries to assure the consumers of fair treatment; however, a super agency envisioned to protect all consumers will serve neither purpose.

The truth is that no government agency can protect all consumers since consumer interests are as varied and diverse as the 200-million plus citizens living within these shores. How can one possibly define consumer interest? One group of consumers may prefer lower prices; another may want durability; yet another may buy a product for its beauty. How, then, is the Consumer Protection Agency to decide which interest to protect? Mr. Chairman, I submit that the proposed agency will not serve the purposes for which it is created. From the practical standpoint, the Consumer Protection Agency can add nothing functional to the rights consumers now enjoy. No new horizons of economic freedom will be opened. No elements of personal freedom will be reinforced. What we will end up with will be a superfluous monstrosity that will eat up much of our hard-earned money.

Mr. Chairman, proponents of the bill have claimed that the Agency for Consumer Protection will cost the taxpayers little or nothing. I do not consider a $32 million budget for the first two years nothing. Nor do I believe that the cost will not rise astronomically in the years after. Judging from previous records, we see that the following points are true of all existing agencies:

1. They outgrew their most extravagant budget projections.
2. Not one person who voted for any of them could say on the basis of hindsight that he had accurately foreseen the scope and size of these agencies or their full effects on the economic life of this country.
3. No permanent agency, once established, ever ceased to grow.
4. Agencies often become lobbying instruments for the very groups they were established to regulate.

The greatest burden on the consumer is the cost of government, and this legislation to create a new government agency would only add to that terrible burden.

History has shown us that none of the agencies ever limited themselves to the original restrictions intended by Congress and expressly stated in the authorizing legislation any more than they have limited themselves to their budgets.

There is one final point I would like to make.

Claims have been made that the Agency for Consumer Protection will make the existing regulatory agencies more amenable to consumer interest. I submit that the concept of setting up one super agency with absolute power to intervene in the affairs of other agencies and to call their decisions into question is unsound, for it would disrupt the workings of virtually all governmental agencies and would hinder, not help, effective representation of consumer interests within the government.

Once the Consumer Protection Agency entered a case, it would oppose official actions and appeal to the courts from decisions of the Federal Trade Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Interior Department, the Agriculture Department, and so on ad infinitum.

The Consumer Protection Agency could force one thousand and one federal offices to subpoena books, papers and witnesses; force them to give up their own records and data; ask that they conduct product performance tests; require them

to report on the conduct of their affairs; compel cooperation on publicizing any information deemed "useful to consumers," in short spend their time trying to please the Consumer Protection Agency Administrator instead of protecting the interests of the consumers.

Already there are enough—some say more than enough—agencies throughout the Executive Branch which are at work on consumer concerns of all kinds: the Federal Trade Commission, the President's Consumer Advisor, the Food and Drug Administration, the Consumer Product Safety Commission, to name but a few.

Unavoidably, a new Consumer Protection Agency, with the absolute right of intervention, will complicate and confuse efforts to respond to genuine consumer needs and lead to a constant in-house competition as to which can be the most militant and the most visible consumer champion.

The new agency could be counted on to become a constant critic, not only of business but also of competing activities within government, greatly hindering genuine efforts to solve problems which affect consumers.

As a power unto itself, the Consumer Protection Agency can decide that a certain course or position is "in the best interest of consumers" without anyone being able to call that decision into question. It would have the power to operate independently of the wishes of both the Executive Branch and of Congress itself.

Mr. Chairman, early this year I polled my constituents to find out if they would favor the creation of a new consumer protection agency. Over 70 percent of those responding resoundingly opposed such an agency.

In conclusion, then, I submit that the basic assumptions underlying the proposal to create an Agency for Consumer Protection are fallacious, that consumers are not fools, that not all businessmen are criminals, and that government is not infallible. Instead of creating another bureaucracy, we should work toward improving the work of the existing agencies so that they will truly reflect the needs of the consumers. I believe that it is our responsibility, that is, the responsibility of the Congress, to see to it that consumer interests are protected. As elected officials, we have better and more regular contact with consumers than non-elected bureaucrats. We have adequate input into authority over federal institutions which were established to protect the public interest. If they are not doing an adequate job, neither are we.

I contend that the passage of H.R. 6118 would be a disastrous injustice to our constituents and ourselves. The men and women who have elected us have a right to expect us to do our job—not to delegate it to superfluous bureaucracy.

Thank you, Mr. Chairman.

Mr. BROOKS. The Honorable Charles Grassley from Iowa has asked to be heard this afternoon, and we will hear from him then.

The Honorable Richard Schulze from the State of Pennsylvania has asked to be heard this afternoon, and we will hear from him then.

The Honorable Clair Burgener has submitted a statement for the record and, without objection, it will be made a part of the record.

[Mr. Burgener's prepared statement follows:]

PREPARED STATEMENT OF HON. CLAIR W. BURGENER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I come here today to speak in favor of consumer protection. I come here to oppose the creation of an Agency for Consumer Protection. Such an agency would cost the taxpayers millions, if not ultimately billions, of dollars, without guaranteeing that the "consumers' interest" would be any better protected than it already is.

For eight years, Congress has been presented with a proposed consumer advocacy agency. This year, the proponents of such a plan are back in force, and the prognosis is for a close and hard-fought battle. It is difficult to vote against what the media calls the "consumer interest". It is therefore quite a testiment to the inadequacy of the "Consumer Protection Act of 1977", H.R. 6118, that so many of my colleagues have voted in the past against just such a bill.

Mr. Chairman, this legislation is superfluous. There already exist countless state, federal and voluntary organizations which monitor business and government activities on behalf of consumers. The Federal Trade Commission acts as a watchdog for fair business practices. The Consumer Product Safety Commission analyzes consumer products to insure that the public is protected from products which might be defective or harmful. The Environmental Protection Agency looks out after another consumer interest.

This list could go on for pages. Indeed, whenever any federal policy is arrived at, the Congress and President have ostensibly considered its effect on the American people, that is, the American consumers.

If it is true that these bureaucracies, this Congress and President are incapable of protecting consumers' interests, that they are lax in carrying out their responsibilities -- and I do not subscribe to such a view -- it is beyond my power to understand why another layer of bureaucracy would not also be prone to these same inadequacies.

The Agency for Consumer Advocacy is a misnomer because there is no one consumer interest. Consumers are not a nebulous mass, all with the same needs and desires. All Americans are consumers and we are all very different, with disparate needs and desires. We are individuals and proud of it. To say that a bureaucratic agency can ascertain a single consumer interest is an insult to every American who prides himself on independent thought and action.

Are better safety features, or lower prices for automobiles in the consumer interest? Is elimination of gas price controls in order to insure an adequate supply of fuel, or lower prices in the short-term, in the consumer interest? Thoughtful Americans disagree on such matters. Yet, the Agency for Consumer Protection would pretend to represent all consumers and advocate but one of the consumer protections.

The new agency would cost $32 million over the first two years of its operation. Given the incremental growth which seems to be inherent in bureaucracy, there is no telling to what amount that figure might some day rise.

In addition to the strict budgetary costs, the Agency would cost consumers in terms of inflation and increasing the budgets of other federal agencies.

By adding another layer of bureaucracy to harass business, costs of consumer goods would undoubtedly be increased. In addition to dealing with the Consumer Product Safety Commission, Federal Trade Commission and a myriad of other federal and state agencies, business would have to deal with and report to an additional set of lawyers and bureaucrats.

According to Yale Professor Ralph K. Winter, Jr., another consumer agency would decrease output and the production of cheaper goods. High-income consumers could afford the increased prices but those in the lower income brackets, who are the hardest hit by inflation, would suffer.

The final point I would like to make against H.R. 6118, Mr. Chairman, is that the Agency for Consumer Protection is a direct attack upon our free enterprise system. Voluntary trade associations, for example, would grow less effective, as the government, through its new agency, would probably be displeased with about any action such a voluntary group might take. Mandatory government regulations would usurp the role of voluntary free market decisions.

The Agency for Consumer Protection is the product of a "Big Brother" mentality which says that government can solve all our problems. It is an outgrowth of a belief that the free market, given the current extensive government regulations, is inherently incapable of meeting consumer needs.

I take strong exception to such a view. Our free enterprise economy has brought the United States the highest standard of living of any nation in the history of the world. Our competitive economic system guarantees that consumers can protect their interests through "dollar votes" in the free marketplace. Certainly, our system is not perfect. It does not always function ideally. That is why there are so many federal agencies which monitor business practices and enforce laws to protect consumers against unfair practices. However, to reject our system and add another bureaucracy to protect the consumer would be an unwise maneuver.

The consumer interests are too diverse to leave their protection to a group of independent lawyers and bureaucrats.

Mr. BROOKS. The Honorable Tom Hagedorn has also submitted a statement which, without objection, will be put in the record at this point.

[Mr. Hagedorn's prepared statement follows:]

PREPARED STATEMENT OF HON. TOM HAGEDORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, may I first thank the committee for giving me this opportunity to present my views on HR 6118, a bill which, if passed, will work substantial harm to the legitimate consumer interest.

In these unsteady times when consumers are buffeted by higher prices, shortages, and inflation, the siren call of legislation labeled "consumer protection" beckons each of them.

I am for the consumer's interest. Who among us isn't? We are all consumers. We all wish to have our rights protected. But I seriously doubt that by ordaining an elite cadre in Washington to speak for us, the voices of the U.S. consuming population of 200-million-plus men, women, and children will be heard. Quite the contrary, I see the establishment of a Consumer Protection Agency as actually working against the orderly process of the government, working against the consumer's best interest, and working against the consumer's sorely tested pocketbook in these inflationary times. As desirable as it may sound, I submit that the proposed concept of a Consumer Protection Agency contains more good will than common sense.

It is beyond my comprehension how the proposed agency with 50–100 lawyers can divine the will of millions of consumers. Average consumers readily express their desires and needs each day in the market place . . . voting as it were . . . with their not so hard dollars and cents. In addition, in trying to respond to the consumers' wishes, companies annually conduct millions of interviews, analyze tens of thousands of personal letters, and carefully test market new and improved products over extended periods of time. And now we are saying that one agency that, in reality, will only be responsive to vocal minorities, can indeed know and represent his wants, needs and desires.

The hard fact is that consumer interest is broad, and varied, as complex is the entire U.S. economy or the entire U.S. population. The great bulk of producers of consumer goods exist to serve an infinite variety of consumer interests in an infinite variety of circumstances. What is in the interests of one consumer in one set of circumstances may well be contrary to the interests of another consumer in another set of circumstances. Each consumer has his own needs, his own desires, his own standards of satisfaction.

We in the Congress have recognized this fact by delegating to specific federal agencies the responsibility for representing certain consumer interests in certain circumstances. The Food and Drug Administration looks after the consumer's interest in the safety of food and drugs. The Federal Trade Commission protects the consumer from unfair trade practices. The Securities and Exchange Commission protects the consumer in the investment of his funds, and so forth.

To superimpose over all of this a single agency with the authority to speak for all consumers in all of their interests and in all circumstances is a fallacious and unworkable concept. The entire idea of speaking for the "consumer interest" breaks down when put into practice as a single government function.

Which consumers will the omniscient agency represent? It likely will favor lower prices, but oppose labor views in wages, tariffs, and other matters; favor low utility rates, but deny expanded electric service to other consumers; demand low farm prices, but reduce income of farmers. A particular "consumer interest" is not necessarily synonomous with the "public interest"—it is only one part of the public interest and hence may conflict with it.

Thus, the Consumer Protection Agency would lead to minority rule in matters affecting consumers. The well-intentioned but overly ambitious Consumer Protection Agency would compound the very problem it is attempting to eliminate—inadequate, unrealistic advocacy for all consumers.

As a political force in Washington, the so-called consumer movement is a broad spectrum of vocal minority views on a great variety of issues. Each consumer group has its own platform which it represents as the overriding consumer interest and which it advocates in preference to all other consumer interests. Each consumer group has its own "issue." For example:

—Where foods are concerned, the alleged consumer interest is in nutrition (not cost, or taste, or variety of foods, etc.),

—Where automobiles are concerned, the alleged consumer interest is in safety (not cost, or reliable operation, or comfort, or style, etc.),

—Where packaging is concerned, the alleged consumer interest is in standardization of packages (not convenience in use, or proper protection of the product, or cost, or eye appeal, etc.).

The great majority of American consumers do not espouse any one of these particular issues. Yet inevitably issues such as these would be the stock in trade of the Consumer Protection Agency. The most aggressive minority consumer groups would now have a vehicle, in the form of the Consumer Protection Agency, to enforce their views before the various branches of the federal government and to impose those views on the public at large.

In this way, the majority interests of the great mass of American consumers, who do not seek representation in these "activist" political groups, will be overridden by the minority view which will actively be represented via the Consumer Protection Agency and we will then have minority instead of majority rule.

This country does not need—or should it tolerate—an agency that is legally empowered to force its subjective view of consumer interest on the many agencies which are already charged to protect consumers. Recognizing that the taxpayers already have a heavy burden in supporting other existing agencies, a new, largely duplicative, super agency, with a price tag of $32 million for the first two years would be a very poor bargain indeed.

Before we spend all that money legislating nirvana for the consumer, we should also recognize that the concept of a Consumer Protection Agency conflicts unnecessarily with our free market system.

This system, while far from perfect—and sometimes in need of a steadying hand from government—is nonetheless the most effective system man has devised in response to true consumer interest.

The Consumer Protection Agency seeks to represent a monolithic consumer interest which simply does not exist. Time and time again, the Agency will find itself representing one consumer's interest at the expense of another.

Which consumer will get the Agency's nod? How many other consumers would actually be represented by the strident plaintiff who has been so fortunate as to have been granted an audience by the Consumer Protection Agency's omnipotent tribunal?

Take, for example, the issues of safety, quality, and durability of a given product. As the degree of safety, or quality, or durability of a product increases, so usually does its price. There is an obvious trade-off in each case. One consumer may wish to pay a higher price for increased quality; another may wish to accept lesser quality in return for a lower price.

Within our free market system, different consumers will reach different conclusions as to what constitutes an acceptable trade-off and make their purchases accordingly. Thus, the free market system neatly eliminates a possible dilemma. In similar circumstances, a Consumer Protection Agency would probably choke on its own profundity.

Granted, the public interest may require that a certain minimum safety standard be met. But this is the function of a regulatory agency such as the Consumer Product Safety Commission, which is specifically charged with balancing all the competing interests involved. On the other hand, a Consumer Protection Agency would not have a trifle with such balancing. Conceivably, in a proceeding before the Product Safety Commission, the Consumer Protection Agency could press for the highest standard of safety achievable regardless of cost. It could do this with complete disregard of previously acceptable standards, frustrate the free market system and cut off economic choices for many more consumers than those few it represents in any one proceeding.

I contend that there are already ample Federal agencies to protect the consumers' interests. Congress' job is not to proliferate these agencies, but to see that they discharge their duties in the interests of consumers, and others.

Moreover, there are existing State and local agencies more able to deal with local complaints than the Federal government will ever be. The local authorities, the local accrediting agencies, and, in large measure, the action columns of local newspapers are all available to an increasingly aware consuming public. I cite specifically the work of the National Business Council for Consumer Affairs and the Council of Better Business Bureaus.

The National Business Council for Consumer Affairs has produced a series of guidelines which amount to codes of conduct in such areas as promotion and advertising, advertising substantiation, and packaging and labeling. Congressional endorsement and specific requests to trade associations and corporate offi-

cials to implement these codes might produce a higher level of concern for consumer interests among producers of goods and services and a greater degree of consumer satisfaction than would the presumptious voice of a Consumer Protection Agency bureaucrat claiming to represent all mankind.

The Council of Better Business Bureaus already has established consumer arbitration facilities in two-thirds of its more than one hundred thirty branches, and many of us in Congress already are referring complaints from consumer constituents to the Council for investigation and resolution. I see this kind of activity as far more constructive than establishing another layer of bureaucratic supervision. Certainly the individual consumer seeking protection against deceptive practices and prompt resolution of his complaints can best be served by the voluntary steps of the private sector which exists and thrives in direct relations to its ability to serve consumers.

The cure, then, does not lie in the creation of a super agency, or the appointment of an arbiter of elegance after the fashion of Ancient Rome; the cure lies in reform of those existing agencies which are not living up to their charge from Congress and the Executive Branch to be responsive to consumers. The cure lies in encouraging the free market system to function as it alone can in the consumer interest.

Working with existing agencies and the private sector are tangible, workable, result-oriented goals. I think our attention has been diverted too long from these achievable goals by wistful rhapsodizing over the creation of a burdensome, restrictive, costly, and ill-fated super-solution, super agency.

I submit that our efforts would be better spent in cranking up existing mechanisms on behalf of consumers than trying to legislate a fairy godmother or guardian angel for them.

Mr. BROOKS. We will now hear from Mr. John W. Riehm, representing the U.S. Chamber of Commerce.

He is the director, vice president, and secretary of the Thomas Lipton Co., of Englewood Cliffs, N.J. Previously, he was vice president of the Matthew Bender Co., and is a former dean of the Southern Methodist University Law School.

He currently serves on the Consumer Affairs Committee of the U.S. Chamber of Commerce.

Mr. Riehm, we are delighted to have you here and would accept your statement in full for the record and ask you to make any comments you wish at this point.

STATEMENT OF JOHN W. RIEHM, CONSUMER AFFAIRS COMMITTEE, U.S. CHAMBER OF COMMERCE; ACCOMPANIED BY JEFFREY H. JOSEPH, DIRECTOR OF GOVERNMENT AND CONSUMER AFFAIRS

Mr. RIEHM. Thank you, Mr. Chairman.

I am accompanied by Mr. Jeff Joseph, of the chamber staff, who has been associated with me in this work and is the staff committee director for government and consumer affairs.

Mr. BROOKS. We welcome you also to the meeting.

Mr. JOSEPH. Thank you, Mr. Chairman.

Mr. RIEHM. Noting, Mr. Chairman, that our material has been placed in the record, I shall attempt to summarize our comments very briefly.

I would say at the outset that I am sure all of us, in connection with this matter, feel rather like Horatio at the Bridge. We've been here before and had the pleasure of testifying before you.

Mr. BROOKS. It pays so well though.

[Laughter.]

Mr. RIEHM. Members of this committee have publicly stated that this legislation has been considered, discussed, debated, and analyzed

to an unprecedented degree, and that now there is not much more to explore.

We don't believe that is true, and in a moment we want to raise a serious constitutional question with you respecting this particular language of this particular bill.

First, I want to express our concern about the manner in which the hearings are being conducted. We must respectfully protest the committee's policy of allowing opponents only 5 minutes to testify.

Mr. BROOKS. What opponents have been limited to 5 minutes?

Mr. RIEHM. I'm sorry, sir, but we were very rigidly informed by the staff that we were to be limited to 5 minutes.

Mr. BROOKS. Mr. Riehm, I will have to disappoint you. You may take as much time as you need, because at this point we have only you and Mr. Richard Leighton, from the Grocery Manufacturers of America and Dr. Allen Hyman, from the Heritage Foundation.

I would be delighted to have you read your entire statement if you desire to do so. So please proceed with your statement, professor.

I would like to make that clear to the other witnesses appearing here today also. If you have something to say, please elucidate. We would be delighted to have you instruct us.

Mr. RIEHM. Thank you, sir. We appreciate the relief from the pressures of the time, and trust that all the other individuals who have requested an opportunity to testify, be given an equal length of time to do so.

We do express concern that this matter should not be rushed through these hearings.

Accepting your gracious indication of time to testify, I would like to allude to some of the other matters that we spoke about before.

I think what we should do first is point out to you that we believe this bill does contain serious constitutional problems as it is presently drafted. These problems arise in connection with the powers that have been granted to the APC to seek judicial review of executive branch decisions.

In more specific legal terms, the constitutional issue would be posed by a suit by the APC against another executive branch agency, such as the FDA in the current saccharine proceedings.

The question would be whether or not the suit constituted what would be an intrabranch proceeding kind of dispute rather than a true case or controversy which must, as you know, constitutionally exist before the judicial branch can take jurisdiction.

The President, with ultimate control over both the Secretary of HEW and his designate, the FDA Commissioner, on the one hand, and the APC, on the other hand, has the authority to resolve the dispute himself within the grant of power given the Executive under article II of the Constitution.

Accordingly, an APC suit against the FDA would be the equivalent of the President suing himself in order to ask the judiciary for an advisory opinion as to his proper course of action.

In this regard, you may recall the case of *Muskrat* v. *the United States*.

You may also recall that in the *United States* v. *Nixon*, the Supreme Court permitted an intraexecutive branch suit only after taking great pains to point out that the regulation establishing the

independence of the Special Prosecutor's Office clearly placed the Special Prosecutor beyond the direction and control of the President or the Attorney General.

As the Supreme Court observed, the regulation giving the Special Prosecutor explicit power to contest the invoking of Executive privilege in the process of seeking evidence was relevant to the performance of these specifically delegated duties.

The Supreme Court also emphasized those parts of the regulation which precluded the Attorney General from countermanding any decision by the Special Prosecutor and which precluded the President from discharging the Special Prosecutor or limiting his independence, except for gross, extraordinary improprieties. No such provisions are found in the APC bill.

Thus, in "Nixon," the Special Prosecutor's authorizing regulations completely isolated the Prosecutor from Presidential control. The APC bill, as I see it now, would clearly not have the same measure of independence under the House bill. Even the independent provisions of the Senate bill do not go as far as the Special Prosecutor's regulation, so the constitionality of that bill is also in doubt.

Finally, we are aware of no regulations isolating any other executive branch agency from Presidential control. Accordingly, by permitting the APC to sue other executive agencies, where both parties are subject to Presidential control, the House departs from the standards applied in the *Nixon* case. And I believe it would be unconstitutional.

This problem does not exist with respect to the APC's relationship to independent regulatory agencies, since those agencies themselves are not under Presidential control. Thus, a suit against them by the President's agent does not amount to the Executive suing himself.

For example, the provisions of section 7 of the United States Code which authorize the Secretary of Agriculture to sue the ICC with regard to issues affecting farm products.

In summary, I want to suggest that if you adhere to your intent to make the APC directly accountable to the President, you will have some very serious constitutional problems to resolve.

If you couple that dilemma with the other inherent defects that have been carried over from the old bill, which we have pointed out in our testimony in the earlier bills, I believe you have a piece of hastily enacted legislation that will do the consumer more harm than good.

I would be very happy to answer any questions that you might have in this respect.

Mr. BROOKS. Is there anything further that you would want to add at this point? Would your associate care to make any remarks?

Mr. JOSEPH. Thank you, Mr. Chairman.

I want to thank the chairman for his generosity in allowing us to read the entire statement as we prepared it.

We were under the impression from dealing with members of your staff that opponents of this bill would be limited to a strict 5 minutes—if allowed to testify at all.

We know of a number of highly qualified witnesses who tried to seek time from this committee and were not accommodated, such as Attorney Leon Jaworski.

Mr. BROOKS. Mr. Jaworski would have been accommodated, but he withdrew his request to appear here.

Mr. JOSEPH. If you would like to contact his partner in Washington, Mr. Peter White, he will inform you.

Mr. BROOKS. Mr. Jaworski's office called my office and said he did not want to testify. I am a personal friend of his and would have been pleased to have him testify.

So, for the record, let it be clearly stated that he was asked to testify and has decided not to.

Mr. JOSEPH. As of 5 o'clock last night, his office informed me he still wanted to testify and was waiting to hear from the committee.

Mr. BROOKS. I think you are incorrect.

Mr. JOSEPH. I think the problem bears research by the committee.

Are you afraid of the adverse publicity?

Mr. BROOKS. Not in the least.

Mr. HORTON. Mr. Chairman, I have been on this committee for 14 years, and I have been on this subcommittee for that same period of time.

Under the leadership of Mr. Holifield and now Mr. Brooks, I have never experienced the committee cutting off any witnesses. We have always given witnesses ample time to testify, regardless of whether they are for or against a bill.

As far as the minority is concerned, I am perfectly willing to sit here and listen to witness after witness—regardless of their positions.

This is an important bill. This is not the first hearing we've held on this bill. We've had hearings on it in every Congress, I think, for the last five Congresses, including this one, which would be the sixth.

I have sat through all those hearings, and I am perfectly willing to sit through more hearings. And the chairman, as far as I know, even in instances in which he is opposed to the legislation, has been perfectly willing to hold hearings and call witnesses to present their views—whatever they might happen to be.

I think your statement is an unfair criticism.

If you have some comments to make with regard to this legislation, I think you should state them.

If there are other witnesses who want to be heard, they can get in touch with the chairman or with me, and we will be happy to accommodate them and have them present their views however they would like.

We do have a time problem. The House is going into session at 11 a.m. We have a large number of witnesses. We do not have a hearing tomorrow, but as far as I'm concerned we could hold hearings next week or the week after. I see no need to drag it out, however, because we've been over it time after time.

I think your statement is a very unfair criticism of the chairman and this committee.

As the ranking minority member, I'm perfectly willing to sit here—as I have done on many, many occasions—and listen to witnesses testify.

Most of us try to read the testimony before we come in here if we receive it in time. I try to do that, and so do the other members.

Sometimes it is good to summarize your statement, put it in the record, and then extemporaneously comment on the views you have on that particular piece of legislation.

But I think it is very much out of order for you to say that this committee is not willing to listen to witnesses.

Mr. RIEHM. Mr. Chairman, if I may go back to the substantive subject matter?

Mr. BROOKS. Mr. Erlenborn is recognized.

Mr. ERLENBORN. I don't intend to lecture my fellow members of the committee or the witnesses.

Let me just say that I understand that a new question has been raised here as to the constitutionality of an executive branch agency being empowered to sue other executive branch agencies.

I think Mr. Jaworski has a unique understanding of this particular problem, having been involved in the lawsuit as Special Prosecutor against the President.

I would like to have Mr. Jaworski invited by this committee to testify.

I haven't talked to Mr. Jaworski, and I don't know personally whether he felt he was not being accommodated or if he decided that he didn't care to testify.

I understand, under the rules, the minority does have the right to call witnesses. I would like to exercise that right by properly making the request under the rules and then personally invite Mr. Jaworski.

I haven't talked with Mr. Simpson and I don't know what the facts are, but I understand he felt he was not being accommodated. If we have another day of hearings, I would like to personally extend an invitation to Mr. Simpson to testify before our committee.

I don't know what the chairman's schedule is. I do know the bill was introduced before we went for our district work period.

The printed bill was not available until sometime during last week when members were not here.

We had many witnesses who were accommodated by having 2 days of hearings, with about 15 to 20 witnesses each day.

I think that this subject, particularly with the new issue relative to the constitutionality, deserves more time. And I will ask the chairman to schedule at least one more day of hearings.

Mr. BROOKS. This is the first I heard of your wanting to have any other witnesses than the one you requested—Dr. Allen Hyman of the Heritage Foundation—who is to testify this morning.

Mr. Richard Simpson is scheduled to appear this afternoon.

You might well want to call Leon Jaworski and see if he would like to come tomorrow. I would be delighted to have hearings all day tomorrow also.

Gentlemen, do you have anything further to tell the committee, preferably in the way of testimony on the legislation?

Mr. RIEHM. Back to the substance of the matter, Mr. Chairman, I think the point I really want to leave with you gentlemen is—viewed in what we would say in old legal terms of the four corners of the instrument—when you take the relationship that exists between the Administrator of the Agency as it is spelled out in the bill and his relationship and control through the Office of the President, you find yourself in this predicament—that's the only way I can put it—with respect to whether his activities, particularly when he functions under the provisions of article VI relating to the judicial review, may well not constitute a case or controversy but simply be charged as an interagency dispute with the net result that you then have a serious constitutional problem.

Thank you very much, Mr. Chairman.

Mr. BROOKS. Thank you.

Mr. Rosenthal?

Mr. ROSENTHAL. I have no questions.

Mr. BROOKS. Mr. Horton?

Mr. HORTON. Thank you, Mr. Chairman.

Mr. Riehm, I guess you have been over this legislation rather carefully, have you not?

Mr. RIEHM. Yes, sir.

Mr. HORTON. There is some publicity being put out by different organizations which are opposed to the bill making it appear that this is a regulatory agency. Is it a regulatory agency?

Mr. RIEHM. No; I do not consider it as a regulatory agency.

Mr. HORTON. What do you consider it to be?

Mr. RIEHM. I consider it to be as simply what the bill states—an agency for advocacy.

Mr. HORTON. It certainly cannot be construed to be a regulatory agency. Is that correct?

Mr. RIEHM. You mean in the sense in which we normally speak of it?

Mr. HORTON. Such as OSHA or EPA.

Mr. RIEHM. As an independent regulatory body; that is correct.

Mr. HORTON. It has no regulatory powers according to the bill?

Mr. RIEHM. Correct.

I should qualify that slightly, sir, by the question of whether you would say they were explicit regulatory powers or by their ability to influence what is an ultimate decision of another agency. You could say by indirection they may have some regulatory influence or influence on the form in which final regulation is drafted.

Mr. HORTON. But if you had to label it regulatory or nonregulatory agency, what would you call it?

Mr. RIEHM. I would call it a nonregulatory agency.

Mr. HORTON. There has been some criticism—and I don't know whether the chamber makes that same criticism—that this is an additional layer of bureaucracy. What do you think about that?

Mr. RIEHM. I wouldn't call it an additional layer of bureaucracy.

The fundamental problem created by the presence of the Agency is one which, in effect, offers an opportunity of second-guessing judgments which may have been formulated by a particular agency. If the Administrator is not satisfied with the outcome proposed by the regulatory agency, he may intervene and seek change. Obviously, under the provisions of article VI, if he does not like that, he may appeal it to the court.

Mr. HORTON. That right is no different from the right of any other party to the action; isn't that correct?

Mr. RIEHM. For other parties to the action, that is true.

Mr. HORTON. Or to the proceedings.

Mr. RIEHM. Except that by the very nature of the legislation he may literally come in after everybody else has had their say and thus engage in an extended stretchout of the period of time which is in contention.

Mr. HORTON. Would it be the chamber's position that in order to have that right of appeal, the Agency should appear in every one of these proceedings?

Mr. RIEHM. Yes; I believe with respect to that facet of the problems of the organization we feel they should have no advantage over others.

In our view, there are other objections to the concept.

Mr. HORTON. I understand. I'm just talking about that narrow point.

The reason that was put in is a very simple reason. It sometimes gets taken out of context.

But the point was to obviate the necessity for the agency to appear in every proceeding, which would cut down on paperwork and all the other regulations involved and time spent to appear in every proceeding—formal and informal—in order to protect that right.

If you were the head of this Agency and that requirement were not in there, you would feel it would be necessary—would you not—that you would have to appear in all these proceedings to protect your rights?

Mr. RIEHM. In the strict sense of the word, the answer would be yes. But I would believe that there could be preliminary screening.

Mr. HORTON. Certainly.

Mr. RIEHM. I submit, sir, that the problem we are faced with——

Mr. HORTON. How would you resolve it if you had a choice of resolving it?

If you were sitting on this side of the table and you had that problem before you in a piece of legislation similar to this, how would you resolve it?

Mr. RIEHM. Looking at the narrow issue——

Mr. HORTON. I'm not talking about anything else—just that narrow issue.

Mr. RIEHM. I would be inclined to force him to appear early or keep quiet.

Mr. HORTON. Even recognizing that that would take a lot of time and effort and probably more people and certainly more paperwork?

Mr. RIEHM. Right.

What we are confronted with, as you have posed for me, is the perfect dilemma.

On the one hand, you can avoid the paperwork by giving him the opportunity to come in late. On the other hand, I am sorry to say that you create an opportunity for mischief. He could sit and wait and, in effect, have the last shot after everyone else is done.

If I were in your position and forced to be confronted with the choice, I would have to go for the side that said make him come in early or be quiet.

Mr. HORTON. Now let's go back to the other point I was asking about—again, on a very narrow point.

That is, the question of whether or not this Agency is in any different position as a result of this legislation than any other party to a proceeding.

Is it not a fact that that basically is what's involved here? This Agency would be a party and have the same rights, with the exception of what we're talking about there. It would have basically the same rights as any other party to a proceeding.

Mr. RIEHM. In the strict legal sense of the word, that is correct. But it is with respect to the manner in which that legal right is exercised that we come to our fundamental difficulty.

That is, first, it continues to be our contention that consumers are not a homogeneous body. Second, when there are varying consumer interests, this advocate is placed in the position of being able to make a choice of what consumer interest he is going to exercise.

Third, having made that choice, he speaks with the force and authority of an agency of the Government. This puts him in a far more powerful position than many other individual consumers who might like to come in and have their voices heard.

Mr. HORTON. One of the points I've made in discussions about this bill in the past has been that a consumer is not necessarily just an individual. A consumer can be a company. It can be a partnership, industry or business.

Mr. RIEHM. That's right.

Mr. HORTON. I can envision instances in which the consumer interest might very well be the interest of a farm group or industry or business.

Can you envision that same point?

Mr. RIEHM. Very much so, sir.

Mr. ERLENBORN. Would the gentleman yield?

Mr. HORTON. Yes.

Mr. ERLENBORN. I haven't read the bill on that point, but I recall legislation in the past has specifically defined consumer so that it would exclude representation of anything but individual consumers. It would exclude representation of farm groups, business groups, corporations, and partnerships.

I presume this bill has that same differentiation between the individual household consumer and the industrial or business consumer.

Mr. RIEHM. That is correct, sir.

Then, of course, we find ourselves in the problems that you gentlemen must ultimately be confronted with of distinctions between the form of your bill and the Senate bill, in which sometimes it's one way and sometimes it's another.

If I may amplify that, in our particular industry the question of consumer interest in food products may very well vary considerably. It can vary with respect to packaging, sizes, and weights, for example.

You can have a situation in which the large family or the rural family wants to buy in very large packages. The individual or the retired person or the apartment dweller living in an efficiency apartment in the city may want to deal in small packages. Here you can get a conflict.

Mr. ERLENBORN. I would call your attention to page 29 of the bill, definitions, section 16(3), beginning on line 19, where it says:

The term "consumer" means any person who uses for personal, family, or household purposes goods and services offered or furnished for a consideration.

I think this did conform with my recollection of the bills in the past which would exclude the area Congressman Horton was inquiring about.

Mr. RIEHM. Correct.

Mr. ERLENBORN. Thank you.

Mr. ROSENTHAL [presiding]. Are there any further questions?

Mr. HORTON. Yes.

The next definition is the term, "interest of consumers." It means any concerns of consumers involving the cost, quality, purity, safety, et cetera.

I still think that even though the term refers to goods and services for family, personal, or household purposes, it would still cover the farmer or any business group.

So I think that the Agency would still have the authority to represent those interests. They would be consumer interests as far as I am personally concerned. I think that would come under the definition of what we've talked about.

Mr. ROSENTHAL. The time of the gentleman has expired.

Mr. Fuqua?

Mr. FUQUA. Thank you, Mr. Chairman.

I notice in section 18, page 31, the Swiss cheese part of the bill.

Do you have anybody else you think needs to be exempted from this?

Mr. RIEHM. No, sir, on the contrary, I am rather disturbed by the number of exemptions that do exist. Because in large measure if there are problems that exist, oftentimes they will be in categories such as those referred to here.

Mr. FUQUA. So you don't think there should be any exemptions?

Mr. RIEHM. I would prefer to see none at all.

Mr. FUQUA. It was represented here yesterday, and Mr. Horton has mentioned this several times in previous years, that the business group recommended the labor exemption.

If the chamber of commerce hasn't changed in the last few years, I assume it represents primarily business interests. Do you support exemption of labor, or do you think that everybody should be included?

Mr. RIEHM. I do not support the exemption of labor nor does the chamber.

I would want to have your permission to go back and file a further statement of clarification with respect to this, because the allegation has been made on a number of occasions by the principal proponent of the legislation, Mr. Nader, that this was something initiated by business to exempt labor. I think we can submit a detailed brief to you which will demonstrate that that was not the case.

Mr. FUQUA. I would hope that you would, because it has been represented many times. I was not aware of it, nor do I care whether business asked for it or didn't ask for it. But I think if you are going to protect consumers, you should protect all of them and not exempt agriculture and labor—and I assume there might be some more that want to be exempt. I understand the broadcast industry wants to be exempt. I haven't examined it that closely, and I don't think that they are, but I am sure they will be in touch with us about the licensing provisions of the FCC.

Mr. RIEHM. That's the case in the Senate bill.

Mr. FUQUA. I'm sure there are others who want to be exempt, so we should get our list—if we're going to have one—that is either all-exclusive or all-inclusive of the bill.

Mr. RIEHM. I would concur completely with you, sir.

Mr. FUQUA. What do you think would be the consumer interest in an issue such as the President was faced with recently about imports of television sets and shoes? I think those were the two issues.

If we import a lot, the consumer gets a lower price for the product. But it also affects a number of jobs in this country. What would the consumer interest be in an issue such as that?

If you were the consumer advocate, what position do you think would be the appropriate one to take?

Mr. RIEHM. I would find myself in a very difficult circumstance.

I am reminded of the Pogo cartoon: We have met the enemy and he is us. On the one hand, we are workers and we seek jobs. On the other hand, we are consumers and we are thus in the position of wanting to buy the best at the least price we can.

This is the very kind of problem that suggests to me that if the consumer advocate is in a position—and he has under these bills very broad authority to make his own independent decision as to what he can advocate—he will find himself, I am sure, on many occasions acting in a position directly contrary to the executive branch's determinations as to what should be done. For example, the using of the antidumping law.

Mr. ROSENTHAL. The time of the gentleman has expired.

Mr. FUQUA. May I have 1 more minute?

Mr. ROSENTHAL. Proceed.

Mr. FUQUA. Is there anything in the bill, except for those that are exempt, to protect the consumer against the bad television set or a button that comes off his suit or his automobile door will not close and squeaks? Is there anything to help a consumer along those lines?

Mr. RIEHM. Nothing other than the power of the advocate to appear before other agencies.

Mr. FUQUA. Who would he complain to about a button coming off his shirt?

Mr. RIEHM. I'm sure there is something in that vast legislation with respect to fabrics and manufacturing processes.

Mr. FUQUA. If I, as an individual, or you complained about shoddy workmanship—perhaps on a shirt—is there any place in here where he can get relief?

Mr. RIEHM. Under the provisions of the act, he may go to the party that manufactured the goods and say: We have received a complaint. What are you going to do about it? That's all he can do with respect to that specific transaction.

Mr. FUQUA. Thank you, sir.

Mr. ROSENTHAL. Are there further questions?

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Riehm, for your testimony.

Let me correct you, first of all, because I think you referred in your presentation to the APC. As I recall from my days in the Navy that was the "all purpose cure." I don't think that the bill before us is an all-purpose cure. I think it is the ACP.

Mr. RIEHM. That may have been a Freudian slip, sir, on my part.

Mr. ERLENBORN. That's possible.

I am interested in your testimony concerning the constitutional question. I think it is one that has not been raised in the long history of this legislation, and I think it's a very important one.

Before getting to that question, I would like to follow up on the line of questioning that my colleague from Florida began concerning the powers of the consumer advocate—or whatever we might finally call him.

I know in discussions with my constituents, who are in favor of a consumer advocate at the Federal level, that they constantly refer to problems as consumers which they think would be resolved by the creation of this Agency.

They say, for instance, that they don't know if the television repairman or the auto repairman, has done the job right or charged them properly or that the electrical appliance didn't work and then wasn't repaired properly.

The day-by-day consumer problems they face make them feel frustrated. They feel the passage of this bill is going to solve all of those problems. My own personal feeling is that this, again, is one of those things that has been oversold in the minds of the public, although not intentionally oversold.

If we do create this Agency as you've suggested, they will have no authority to resolve these real day-by-day consumer problems. Would you agree?

Mr. RIEHM. I concur completely in your observation, sir. In large measure, these things are problems at the local level.

Far be it for me to try to give someone a definition of what constitutes interstate commerce today, or affecting interstate commerce. But I would think very many of the kinds of things you were suggesting—repair of a toaster by a little local merchant—would take a terrible stretch to say that he is engaged in interstate commerce. Even assuming there was anything in the bill, that the Administrator could do anything about it.

Mr. ERLENBORN. Even if we gave him that authority, and constitutionally we could, we can't possibly provide that kind of service to every consumer. It is without the capabilities of the Federal Government to provide that kind of detailed service.

But I do fear that the overpromise, express or implied, that is then unfulfilled after the legislation is passed will add to the disenchantment the people already feel about government.

We've had a war on poverty and poverty still exists. We have said we're going to eliminate discrimination and have passed laws, and discrimination still exists.

The disenchantment with the political process, so obvious in recent years, is based on the express or implied overpromise and underperformance. I'm afraid this is going to be another one of those instances.

Now, as to the question of constitutionality. Mr. Jaworski did have that question before him when, as Special Prosecutor, he tried and did successfully finally sue the President.

As I understand from your testimony, the allegation was that it would be unconstitutional for the Executive to sue the Executive—for one Cabinet-level or other executive branch agency to sue another executive branch agency. Is that the basis?

Mr. RIEHM. Yes, sir. There's no question with respect to that constitutional matter, because that does not constitute a case or controversy.

What I am suggesting is, if we back off and look at this particular bill as drafted from its four corners and the totality of the relationship that exists between the Special Prosecutor and the Executive Office with respect to term and appointment, appropriations, evaluation, and termination, you have a case in which there is not sufficient separateness to avoid the intraexecutive agency dispute.

Mr. ERLENBORN. In the House bill before us: Who appoints the Administrator?

Mr. RIEHM. The President.

Mr. ERLENBORN. For what period?

Mr. RIEHM. There is no limitation stated. Therefore, I would conclude that he is in a position in which he could terminate the appointment at his pleasure.

Mr. ERLENBORN. It is not an appointment, in other words, for a number of years?

Mr. RIEHM. Correct.

Mr. ERLENBORN. It would go beyond the term of the President, but it would be at the pleasure of the President if no term is stated.

Mr. RIEHM. Correct.

Mr. ERLENBORN. Who would submit the budget or appropriation authorization for this Agency?

Mr. RIEHM. It is really unclear from the legislation. Therefore, not being separately and explicitly stated as going to the Congress, I can only assume that it must go through the regular executive branch procedures.

Mr. ERLENBORN. Which would mean submission to the Office of Management and Budget.

Mr. RIEHM. Yes, sir.

Mr. ERLENBORN. Then the ultimate request for appropriation and authorization would come as an administration request and would reflect whatever additions or subtractions they may have desired so that the Congress wouldn't even know what this Administrator might personally have wanted in the way of appropriations as is the case in other executive branch agencies.

Mr. RIEHM. That's the way I read it, sir.

Mr. ROSENTHAL. The time of the gentleman has expired.

Thank you very much, Mr. Riehm.

The committee staff will be in touch, I presume, with either you or Mr. Jaworski so some arrangement can be made for his testimony.

Mr. RIEHM. Thank you very much, sir.

[Mr. Riehm's prepared statement follows:]

PREPARED STATEMENT OF JOHN W. RIEHM, CONSUMER AFFAIRS COMMITTEE, U.S. CHAMBER OF COMMERCE

I am J. W. Riehm, Vice President - External Affairs and Secretary, Thomas J. Lipton, Inc., and a Member of the Consumer Affairs Committee, Chamber of Commerce of the United States. With me is Jeffrey H. Joseph, Director of Government and Consumer Affairs for the National Chamber.

As the world's largest federation of businesspeople and business organizations, the Chamber of Commerce of the United States counts among its members most of the nation's best known manufacturing, retailing and service companies, trade associations and state and local chambers of commerce. Our membership clearly has a vital stake in H.R. 6118, to establish a Federal Agency for Consumer Advocacy (ACA), because of its impact upon the relationship of business and consumers in the marketplace.

We have, on numerous occasions, expressed the belief that legislation should be enacted to provide a stronger program within the federal government for the representation and coordination of the consumer interest.

We have, on numerous occasions, made known our full support for a statutorily created and strengthened office within the executive branch of the government to coordinate existing federal consumer programs.

In addition, we are currently working through our broad membership to improve the structure and increase the accessibility of small claims courts at the state and local government level. This effort has recently been lauded by Attorney General Bell, Chief Justice Burger and the American Bar Association.

But we have steadfastly opposed the creation of an independent Agency for Consumer Advocacy which would be empowered to intervene, at will, in regulatory agency proceedings, and when dissatisfied with the outcome, immediately would take an appeal to the courts. Some members of Congress and

some consumer activists say this stance casts us in an anti-consumer posture. We completely disagree. It is our belief that consumers will be more effectively served, not by establishing a meddlesome new bureaucracy, but by a strongly voiced Congressional commitment to effective oversight of agency programs and to consumer protection embodied in a statutorily established executive office to coordinate and oversee the activities of agencies in the area of consumer protection.

We have consistently made these points as this issue has been debated over the last several years. Some will say that in making them again we have nothing new to offer. Yet, the record shows that support has grown dramatically for our position while those who advocate the legislation have been steadily losing ground.

History shows that members of Congress have become increasingly disenchanted with the idea as they become more educated. The House of Representatives, for example, passed this legislation in 1971 by a vote of 344 to 44, but the margin was razor thin in 1975 -- 208 to 199 -- with over 400 newspapers, representing over 80% of this country's total daily circulation editorializing in opposition.

Members of this Committee have publicly stated that this legislation has been considered, discussed, debated and analyzed to an unprecedented degree and there is not much new to explore. Well, that is true, but only to an extent. The arguments for the bill are the same today as they were seven years ago. Yet, circumstances have changed radically since this legislation was first introduced. For example, a related concept, direct reimbursement to public interest groups who wish to participate in regulatory agency proceedings under certain circumstances is now in full bloom. This session, the House and Senate have already held hearings on legislation which would authorize all federal agencies to reimburse such groups. This concept is currently in place or is being considered in the Federal Trade Commission, the Consumer Product Safety Commission, The National Highway Safety Transportation Agency, Department of Transportation and others. At hearings on S. 2715, last Congress's bill to broaden this concept, Senator Javits stated before this committee that there

was a need for either an Agency for Consumer Advocacy or the direct reimbursement concept of public interest groups, but not both. Yet, no mention is made of this development now and supporters of the ACA again push for the legislation using the same old arguments.

EVALUATION OF THE ACA PROPOSAL

The principal difficulty with this legislation today derives from the fact that Congress has eliminated the major reasons for creating it. The ACA was initially conceived to address two basic problems. First was the enormous gap in governmental authority over wide, substantive areas of consumer protection, such as basic product safety,[1] environmental pollution[2] and consumer fraud.[3] Second was the ineffectiveness of existing governmental agencies which were not exercising their existing authority to protect consumers, either because of bureaucratic inertia (such as 20-hour work weeks at the FTC [4]), domination or "capture" by the industries supposedly subject to regulation,[5] information secrecy [6] or a combination of these and related factors adversely affecting performance. It is instructive to review how many of these problems have already been addressed (due largely to the ACA sponsors' efforts) in order to determine whether the ACA is an appropriate or inappropriate response to any problems that remain.

Substantively, there has been a near revolution in the creation of governmental programs and authority to fill the gaps, as the following partial list indicates:

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[1] See, for example, Hearings on S. 860 and S. 2045 before a Subcommittee of the Senate Committee on Government Operations, 91st Congress, 1st Sess. (1969), p. 368 (Ralph Nader), and Hearings on S. 1177 and H.R. 10835 before a Subcommittee of the Senate Committee on Government Operations, 92d Congress, 1st Sess. (1971), p. 29 (Statement of Representative Rosenthal).

[2] See, for example, Hearings on S. 1177, supra, at 65 (Ralph Nader), and "Federal Role in Consumer Affairs" -- Hearings on Numerous Bills Before a Subcommittee of the Senate Committee on Government Operations, 91st Congress, 2d Sess. (1970), p. 296 (Dr. Herbert L. Ley).

[3] See, for example, Hearings on S. 1177, supra, at 348 (Betty Furness), 355 (Senator Ribicoff), and 366 (Ralph Nader).

[4] Hearings on S. 860, supra, at 391 (Ralph Nader).

[5] Hearings on S. 1177, supra, at 24 (Ralph Nader).

[6] Id. at 56 (Ralph Nader); Hearings on S. 860, supra, at 111 (Senator Gurney) and 375 (Ralph Nader).

-- Environmental Protection Agency (EPA) (1970) augmented by NEPA (1969), Clean Air Act Amendments (1970), Water Pollution Control Act Amendments (1972), and most significantly, the Toxic Substances Control Act (1976).

-- Consumer Product Safety Commission (CPSC) (1972)

-- FTC Improvements Act (1974)

-- Occupational Safety and Health Administration (OSHA) (1970)

-- Agriculture and Consumer Protection Act (1973)

-- Federal Energy Administration Act (FEA) (1974)

-- Medical Device Amendments (1976) (giving the FDA the equivalent of new drug control over medical devices)

-- the Antitrust Penalties and Procedures Act (1974) and the Antitrust Improvements Act of 1976 (for the Antitrust Division and the FTC). 7/

There have also been significant procedural efforts to make existing agencies and programs more responsive to consumers and the public generally. The FTC, for example, has become highly activist on behalf of consumers, in large part as a result of a critical Ralph Nader study in 1969, the new authority granted by the legislation cited above and the consumer movement generally. The Antitrust Division now often intervenes before the regulatory agencies to ensure that the consumer interest in competition is not sacrificed more than minimally necessary.8/ Many agencies have begun to dispense funds to public interest consumer groups for intervention in proceedings. The Freedom of Information Act Amendments of 1974 and the "Government in the Sunshine Act" of 1976 have radically opened agency proceedings to public scrutiny.

7/ See also the Fair Credit Reporting Act (1970), Fair Credit Billing Act (1974), Consumer Goods Pricing Act (1975), Home Mortgage Disclosure Act (1975), Consumer Leasing Act (1976), Federal Boat Safety Act (1971), Safe Drinking Water Act (1974) and Noise Control Act (1972).

8/ See testimony of Thomas Kauper, Assistant Attorney General, Hearings on S. 2028 Before a Subcommittee of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. (1976), pp. 18-36.

The principal remaining problem is the perceived domination of federal agencies by, and their identification with, the industries they regulate.[9] The two reasons for this preceived domination -- often called the "capture" theory -- appear to be inadequate appointments and lax Congressional oversight.[10] Many invariably go back into industry for better financial rewards as part of the "revolving-door" syndrome. This creates troublesome conflict-of-interest problems and deprives the government of sufficiently long -- and disinterested -- service. Many in Congress have admitted that it has contributed to a politicization of the appointments process and that it has failed to monitor the enforcement and implementation of legislation it enacts. As ACA sponsor Representative Rosenthal once stated in 1971 in an ACA hearing, "(I)f the Congress had the opportunity, the inclination and the time, the motivation, to oversee all these agencies and to monitor them the way they should be, we wouldn't have to be here today."[11]

The current steps to finish the process of eliminating the possibility of excessive industry influence to make agencies more responsive are numerous and well-known. Both the House and the Senate Reports have urged appointment of more independent and qualified administrators, along the lines proposed by President Carter and recently followed by Governor Brown in California. President Carter has already made consumer-oriented appointments to the Federal Trade Commission, the Department of Agriculture and the National Highway Transportation Safety Agency. The Peterson Commission's executive

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[9] See the Senate Report on the CPA bill, S. Rep. No. 94-66, 94th Cong., 1st Sess., pp. 9-10. See also "Federal Regulation and Regulatory Reform," Report by the Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce, House of Representatives, 94th Cong., 2d Sess., October 1976, p. 474.

[10] See, in addition to the reports noted above, the first and second volumes of the Study of Federal Regulation, prepared pursuant to S. Res. 71, Committee on Government Operations, United States Senate, February 1977.

[11] Hearings on S. 1177, supra, at 27.

pay and ethics recommendations should enhance the ability of agencies to attract and retain qualified personnel, in addition to reinforcing President Carter's proposals regarding financial disclosure, four-year commitments to office, the "revolving-door" syndrome and the adoption of strict conflict rules.

Regulatory reform should complete the process, begun nearly a decade ago, of making government more accessible, accountable and responsible. Both the executive and the legislative branches should learn as a byproduct of the reform exercise precisely how to institute effective ongoing oversight with respect to the widely varying governmental activities affecting consumers and the public generally.

The ACA, however, would contribute little to the fundamental need for oversight and accountability. It would more likely perpetuate the underlying problems by permitting (and perhaps requiring) the President and Congress thereafter to ignore consumer interests and regulatory oversight. Moreover, the ACA's purpose is not in fact to assist the President or the Congress in identifying bureaucratic bottlenecks, but rather to help create them by costly and time-consuming litigation. Nor is the ACA's purpose to help the individual agencies themselves identify the consumer interest, but rather to threaten them with litigation after they have acted. Finally, the ACA assumes that its powers are just as applicable to and required for the State Department and the conduct of foreign policy as the prosecution of fraudulent advertising. As Ralph Nader himself described the ACA, it is to be a "strike agency" designed to "revolutionize" the government.[12/] As noted above, there already has been something of a revolution. But the job that remains can surely be accomplished better directly than indirectly by the creation of yet another agency that is itself no more accountable to the public than the agencies it is to harass and by definition a great deal less expert:

-- Instead of instructing its own committees to seek information from agencies to evaluate their performance and ensure their accountability to the public, Congress would delegate this task to yet another agency by granting it the right to unrestricted access to the files of all of government without making that agency accountable to the President or anyone but itself.

[12/] Hearings on H.R. 6037 and Related Bills Before the Executive and Legislative Reorganization Subcommittee of the House Committee on Government Operations, 91st Cong., 1st Sess., pp. 175-76.

-- Instead of urging or enabling agencies to cooperate in obtaining more complete data from industry, Congress would create yet another agency to issue its own subpoenas, forms, and requests for reports.

-- Instead of trying to ensure the framework for responsive decisions that need not be reviewed and litigated in the courts, Congress would create another agency whose principal purpose is not to eliminate the need for time-consuming court review, but rather to subject as many governmental decisions as possible to court review.

Quite apart from the propriety of delegating to the overburdened judiciary increasing day-to-day control over Executive Branch operations, "adversary" government conducted by lawyers under threat of litigation and subpoena is simply not good government. The problem is even worse if the lawyers are accountable to no one, let alone the consumer. Yet, the ACA is such an unaccountable creature. Neither consumers nor even the President could question the ACA's activities, and it could decide solely on its own what position to espouse before the government and what decisions to take to court. The smaller the ACA, the less expertise it can possibly have as to responsible positions to take, and therefore the more irresponsible its actions are likely to be. To give the ACA sufficient expertise, on the other hand, would require the creation of an agency sufficiently large to constitute a shadow government. Put another way, if the ACA were to be large enough to represent all the relevant interests of consumers in all relevant activities, then it might help influence agency decisions so that no appeal to the courts would be necessary -- but at a cost that would be prohibitive. But because in fact the ACA will be too small to appear in more than a very few proceedings, it will necessarily be unable to participate in most initial decisions and therefore will have to litigate later in court to vindicate its peculiar view of the consumer interest.

One of the most interesting cited examples of the need for an ACA -- the Soviet grain sale of 1973[13/] -- is also one of the best examples of the utter futility of entrusting the goal of "consumer" protection and responsive government to one unaccountable and inexpert agency. Even if artificially low food

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13/ Hearings on S. 200 Before the Senate Committee on Government Operations, 94th Cong., 1st Sess. (1975), p. 73 (Carol Tucker Foreman), and p. 108 (Ralph Nader).

prices were clearly more important than foreign exchange earnings to consumers in an increasingly interdependent world economy, an effort by an ACA to block a foreign wheat sale would still not guarantee that farmers, in the future, would not reduce supply in response to lower prices. How can any President have consistent control over foreign policy or honor campaign promises of no further grain embargoes, if another part of government can -- with total abandon -- effectively nullify any trade decision by taking the issue to the courts?

Agencies are created as agents of the President or Congress to lend expert judgment in carrying out agreed-upon policies in a complex society. The establishment of an ACA with sufficient expertise to second-guess every governmental decision in the courts means that either the government or the ACA is redundant; on the other hand, if grain sales are beyond the competence of a lean ACA because of its limited resources and expertise, then it is hard to understand why every other governmental issue is within the ACA's competence.

It is true, of course, that as amended on the floor, the Senate ACA bill last session would exempt governmental decisions involving farmers from the ACA, notwithstanding the criticized Soviet grain deal. The importance of this and other exemptions is not so much that they are unfair, but that they reveal the total inadequacy and irrationality of dealing nonselectively with the myriad problems of consumers and regulatory reform by creating one monolithic agency to litigate with the rest of government agencies over what it thinks is in the interests of all consumers.

The plain fact is that if the regulated industries dominate agencies to exclude consideration of other legitimate concerns, the answer is to try to eliminate the factors which account for the domination before creating another agency. If, after these factors are addressed, there is still an underrepresentation of legitimate consumer and other public interests, it is then possible to make corrections on a rational, selective and targeted basis.

However, any viable consumer protection proposal must address the varied needs of consumers in the context of the different types of governmental activities involved. It is impossible to view a trade decision by the State Department or a loan agreement by the Exim Bank as presenting the same kind of decision-making problems as a Federal Reserve Board decision on the money supply, a Federal Trade Commission deceptive advertising case, or a

Federal Communication Commission COMSAT rate decision. While no effort to categorize agencies in terms of the need for and ability to accommodate consumer representation can ever be fully successful, almost any effort to do so is better than the sweeping "strike-force" litigation concept of the ACA.

To assert the need to create an independent new agency to make the rest of government more responsive to the public is by definition to ignore the varied needs of actual consumers and the bureaucracy entirely. It is to assert the failure or irrelevance of all of the consumer legislation of the last ten years, as well as current attention on regulatory reform, a stricter code of ethics and financial disclosure, rules against the "revolving-door," more careful appointments, simpler regulations, more open government and higher salaries for the civil service. Finally, it is to assert that the President cannot represent the public, for the ACA would indeed vest the interests of 210 million consumers in an agency over which the President could have no control.

CONCLUSION

Since the ACA was first proposed eight years ago there have been sweeping changes in government -- including the change in Administrations -- which render the ACA concept wholly irrelevant, obsolete, and in fact disruptive of the current Administration's goals.

The ACA was originally conceived by Ralph Nader as an "agency strike-force" for regulatory reform, and its open-ended litigation powers would permit the ACA to challenge virtually any governmental decision in the courts -- from environmental policy to transportation policy to energy.

The election of a Democratic and consumer-oriented President now makes possible a joint Presidential and Congressional program of government reorganization and regulatory reform. A litigation strike-force is thus wholly unnecessary and in fact is completely inconsistent with any rational reorganization and reform program. The ACA treats all of government alike -- lumping the State and Treasury Departments together with OMB, the CAB and the FTC. Yet, the very premise of reorganization is the need for selective approaches -- such as, for example, consolidation of agencies in the energy fields.

The litigation and subpoena strike-force concept of the CPA is also inconsistent with the President's reorganization efforts to reduce governmental dependence upon lawyers' writing and litigating floods of complex regulations and report forms. Asked if the new energy reorganization would reduce the work of lawyers, James Schlesinger answered, "that is a consummation devoutly to be wished." The ACA, on the other hand, is a government-by-lawyers bill, a codification of Dickens' Bleak House and the lawyer's prayer, "God bless the man who sues my client."

Appended to this statement is an index of 400 newspapers from around the country which have editorialized in opposition to the concept of more government, more lawyers and more complex regulatory mechanisms disrupting the government. Also attached are copies of the most recent editorials written in the last several days. It is apparent that public opposition to this concept continues to grow.

This legislation should be defeated one more time and put to rest for good.

Chicago Daily News

An Independent Newspaper Founded December 23, 1875
Winner of 15 Pulitzer Prizes for Meritorious Public Service and Excellence

10 MONDAY, APRIL 11, 1977

Wrong way to aid consumers

It is hard to reconcile President Carter's pledge to reduce the federal bureaucracy with his support of a bill to create a powerful new consumer agency within the government. But even during the campaign, Carter followed this contradictory line, once boasting that he hoped to challenge Ralph Nader "for the title of top consumer advocate of this country." His backing for bills that would establish an Agency for Consumer Protection (ACP) thus comes as no surprise.

Congress has been down this road before. The push for ACP began in 1970, and in 1975 both houses passed bills to create the agency. The margin in the House was too small to override a promised veto by President Ford, and the measures were allowed to die. This year could be different.

But the objections to such a specialized agency remain, beginning with the effrontery of the assumption that consumers are a breed apart. The plain fact is that all Americans are consumers, but their needs and wants will not always coincide. There are many who would rather not have the federal government — or Ralph Nader — as their sole spokesman on all consumer matters.

As conceived by the consumer advocates, the ACP would be able to intervene in the proceedings of other federal regulatory agencies, and haul an agency into court if a decision failed to please it. The opportunities for meddling, conflict and delay would be almost endless. The ACP could also demand business records to a degree that would amount to "fishing expeditions," placing added burdens on businesses already awash in a sea of paperwork required by the federal bureaucracy.

Protection of the consumer against fraud and chicanery of all kinds is of course essential. But there is already a body of law to provide that protection. If these laws need strengthening, let them be strengthened. Reform of the existing regulatory agencies is also of prime concern; plainly, they have not always served the consumer well. Some steps were taken by the Ford administration to safeguard consumer interests within the agencies. These efforts would be abandoned under the plan to consolidate consumer advocacy within a separate agency.

Carter's message proposed a spending limit of $15 million a year for the ACP, and added the vow that it "will not be another regulatory agency." But it is interesting to note that the 1975 bill carried a price tag of only $10 million for the first year. Already the price has risen by 50 per cent. And anyone who supposes that a federal agency, once it's born, will just lie there without growing has not been keeping track of the goings-on in Washington.

With this President committed to signing a bill creating an Agency for Consumer Protection, any hope of blocking it lies with Congress. We wish the opposition well.

The Dallas Morning News

The News, oldest business institution in Texas, was established in 1842 while Texas was a Republic

Editorial Page

Dick West, Editorial Director

TUESDAY, APRIL 12, 1977

Such a Nerve

TO CONTEMPLATE the frustration of those who style themselves "consumer activists" is to enjoy a kind of perverse satisfaction. Seven years have the consumerists labored to bring forth a federal Consumer Protection Agency, and there is not, we rejoice to say, such an agency yet in existence.

The problem is that we may have one by the end of the year.

Where his two predecessors were loathe to give a Consumer Protection Agency sweeping powers to "speak for" consumers, Jimmy Carter is heartily in favor of the notion. The agency he proposes to create would be called the Agency for Consumer Advocacy, but the distinction between it and the Consumer Protection Agency would likely prove a fine one "Advocates" always see themselves as protectors anyway.

Protectors of whom? Of all of us —rich, poor, smart, dumb, old, young, white, black. To the consumer activists we are all "consumers." We all think alike. We have the same interests.

This is of course the most impudent kind of nonsense, but it is the orthodoxy of the consumer advocacy movement. It is the orthodoxy that the massively Democratic Congress may be expected to engrave on tablets of stone once it gets around to acting on Carter's proposal.

What makes this sort of thinking nonsensical? Let us dwell on just one example—energy prices.

Consumerist—or, if you prefer, Naderite—orthodoxy holds that the lowest prices are the best prices. You see consumerists therefore crusading against rate increases for utilities and lobbying against deregulation of natural gas prices. Viscerally, many of us want to cheer them on, the prospect of higher, ever higher, prices being no pretty one.

But then arises the question: Where is the realistic alternative to price increases? The utilities must cover their costs, and so they must raise their rates. The natural gas producers need the spur of higher prices to get them looking for and producing new supplies of natural gas. Is this not plain to us by now? For 23 years interstate natural gas prices have been regulated at a rate too low to encourage long-term replacement of supplies. In consequence, we are running out of natural gas.

Besides affording economic incentives, higher prices encourage conservation. We are told that utility bills this summer will be ghastly Very well: we raise our windows, and turn on the buzz fans.

In fine, the matter of low prices is not so simple as the Naderite zealots suppose it to be. Which means there are widely divergent views on how the federal government should proceed with regard to energy prices. This being the case, it makes no sense to endow any bureaucrat, or any bureaucracy, with the power to represent the "consumer viewpoint" on this matter. There is no one consumer viewpoint, and the consumerist who pretends there is, is talking through his hat.

Of course this scarcely means that the consumer agency bill will not pass, and that various consumerists will not thereafter try to fob themselves off on us as our "spokesmen." No, the point is that they will be imposters. And we all know just how carefully imposters are to be listened to.

THE DALLAS TIMES HERALD
EDITORIALS
2—E**** Friday, April 8, 1977, DALLAS TIMES HERALD

Protecting consumers

PRESIDENT CARTER pledged during his campaign that one of his principal goals would be the reduction of the number of government agencies and an attack on bureaucratic red tape which frustrates citizens and adds billions to the cost of government.

Ignoring these promises, President Carter has now asked Congress to create an "Agency for Consumer Advocacy," an unguided missile which can create havoc in the functioning of government — all in the name of protecting the consumer.

It is our view that consumers are not a unique group standing apart from the rest of the citizenry. All of us are consumers; all of us are affected by the activities of all levels of government. The federal government is not an enemy of the people, nor a monster out to maul the consuming public.

The President and most governmental agencies may indeed need consumer advisers to insure that adequate attention is given consumer interests, but the creation of another bureaucratic conglomeration with vague powers and guidelines is an unnecessary and potentially dangerous move.

The Congress itself is, or ought to be, an "agency for consumer advocacy." Its members can make certain that consumers are heard during consideration of legislation and existing federal agencies can be instructed to be more sensitive to consumer needs.

But the Carter program, already embodied in legislation now before Congress, would establish an agency with a budget of $15 million, charged with advocating the views of consumers before other federal agencies. It could, for example, urge the Federal Communications Commission to set telephone rates that benefit consumers, take a position on whether the Food and Drug Administration should ban saccharin, advise the State Department and the White House about actions in regard to coffee agreements or shoe tariffs that might help hold prices down, and lobby for or against grain sales to foreign countries.

It could take another agency to court if it thought a given decision ignored consumer views. Exactly how the agency would operate would depend on the decisions, or whims, of the President and the person he names to head the consumer agency. The legislation does not define consumer interests nor provide any predictability as to the government's attitude when different groups of "consumers" have conflicting interests.

President Carter's special message to Congress also urged legislation giving citizens more of a right to sue the government, more chances to file class action suits and more help in making their views known to federal agencies and in court suits. The measures he recommends, the President said, will "enhance the consumer's influence within the government without creating another unwieldy bureaucracy."

We fail to see how the consumer agency could be kept small, given the comprehensive scope of consumer interests. But small or large, a consumer advocacy agency could gum up the works of all other departments and load the courts down with thousands of suits.

We believe deeply in the need to protect consumers, but we think that it is a job for President Carter, all of his cabinet officers and executive department administrators, all regulatory agencies and all the members of Congress.

Specific problems of consumers can be answered by specific legislation or specific regulations issued by governmental agencies. Creating a special agency with a vague charter will solve few problems but will, in all likelihood, cause needless conflicts and confusions.

DISPATCH
Henderson, North Carolina
February 19, 1977

Protecting People From Their Government

In America in these latter times, it has come to the point that the individual thinks he needs help in protecting himself from his own government. In more common sense years such a thing was unthinkable. What would the Founding Fathers have thought of such a monstrosity?

This is the reason for the long agitation for the so-called Consumer Protective Agency. It ought not be be necessary, and would not but for the maze of bureaucracy which throws its weight around in imposing decrees, restrictions and restraints upon the individual.

This Consumer idea has been repeatedly rejected by Congress and the administration. It did get by House and Senate but was vetoed by the President. It would only add another layer of bureaucratic harassment and creation of unlimited jobs and payrolls to increase government costs.

Congress created these agencies but lacks the confidence that they will function properly, and hence a watchdog must be provided in every office to assure proper treatment for citizens. These sleuths would hear consumer complaints and seek to make adjustments in fairness to those involved.

President Carter has said he wants to reduce the labyrinth of agencies which regulate the lives and privileges of citizens. He has not expressed an opinion on the proposed Consumer Protective Agency in particular. If he goes for it, Congress will follow. Then the American people will have an additional haltar around the neck. It's a poor brand of democracy, or freedom, if you please.

The Washington Star
FRIDAY, APRIL 8, 1977

Clothing the consumer

The Ralph Nader appreciation bill has begun its journey through Congress again, this time propelled by a jet stream of White House rhetoric.

It would establish the Agency for Consumer Advocacy, nee the Consumer Protection Agency, that Mr. Nader and others among the vocal consumer groups have been pushing for nearly a decade. Its alleged purpose is to protect the consumers who, Mr. Nader would have us believe, stand naked in the marketplace before greedy, abusive, insensitive merchants.

The ACA (we've never really understood why they changed it from CPA — perhaps it sounded too bookkeeperish) would not, President Carter vowed, be a "regulatory agency." Its purpose, he said, "is to improve the way rules, regulations and decisions are made and carried out, rather than issuing new rules itself."

That suggests what critics have been saying all along: It's going to be a "super" agency — a watchdog over the watchdogs — that will insinuate itself into the business of nearly every other agency in town and before long may be telling them all what to do.

Mr Carter said the agency will not cost more than $15 million a year. Maybe that's all it will cost in the beginning but it's a gross misreading, we suspect, of what it will cost eventually.

Playing to consumer interests is usually good politics. But is a consumer protection agency really all that important to the American public? An opinion poll a couple of years ago indicated that a large majority of people don't want such an agency.

Is Mr. Carter's advocacy of another layer of bureaucracy likely to be interpreted as contrary to his pledge to reduce government?

Where's the savings in a consumer protection agency? Any saving that the agency produces very likely will be offset, even outweighed, by the the cost to the taxpayers of operating the agency and the cost to business of complying with the additional red tape it's bound to create — a cost that will be passed on to consumers.

Mr. Carter would do more for the consumer by holding down inflation.

He would do more by putting the government to work finding cheaper sources of energy.

He would do more by reducing the cost of government, which in turn would reduce the tax burden.

He would do more by seeing that existing agencies do a better job. There are enough agencies that are supposed to look out for the public interest; there's no need for another Naderesque super-watchdog unit.

We had hoped Mr. Carter would not fall victim to that Washington syndrome that makes too many officials hereabouts think that the only way to solve a problem is to create another government agency.

Wall Street Journal
April 8, 1977

The Sugar and Cream Boycott

We support the idea of a coffee boycott; if the price goes up consumers should buy less. What puzzles us, though, is the lack of a similar organized squawk over the price of sugar and cream.

The prices of both these products would be artificially boosted by measures the Carter administration has taken or is being urged to take. For the sake of 225,000 commercial dairy farmers, President Carter and his Agriculture Secretary Bob Bergland have boosted milk-price supports by a hefty 9%. Consumers will shortly be paying up to six cents more a gallon. President Carter is now mulling over recommendations from his International Trade Commission to reduce quotas for sugar imports, to boost domestic prices and protect some 22,000 United States sugar growers.

Mr. Bergland makes some feeble arguments about steadying swings in the free market price, but he's determined to even them out for the benefit of sellers, not buyers. Even though we can remember when the milk lobby was a dirty word, he quite frankly admits that milk prices are going up to pay off a campaign promise Jimmy Carter made to Wisconsin dairy farmers.

The proposed sugar boosts would benefit an even narrower interest group, beet sugar growers whose costs are inherently higher than cane sugar. (Some of these beet farmers, incidentally, used to be former Congressman Bergland's constituents.) In short, both these measures are classical examples of squeezing the general public for the sake of special interests.

So where are the consumer advocates? Joan Braden, the State Department's resident consumerist, has written several "impact" statements on the sugar question, but her superiors have filed them away, and with a few exceptions, most private groups have failed to connect talk of "import quotas" with rising prices. The only concerted lobbying against the sugar restrictions has come from the large sugar refining companies, which rely on imported cane sugar. The milk boosts, says Secretary Bergland, actually had the approval of Carol Foreman, the consumerist recently appointed Assistant Agriculture Secretary for food and nutrition.

President Carter is parading his support for consumers by proposing a new Agency for Consumer Advocacy, but we can't see how this new bureaucratic outpost would do more than these present appointees to reverse politically inspired presidential decisions like the milk price increase.

Rarely has such a large slap in the face for consumers been so lightly passed over by their professional defenders. The "consumer movement" seems to be indifferent when prices are being pushed up not by the market or a real or imagined foreign cartel, but by our own government in Washington, D.C.

The Boston Herald American

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No need for super snoops

Ralph Nader's hopes of achieving official federal power are rising again with the imminent introduction of new Capitol Hill legislation which would establish the Consumer Protection Agency he conceived eight years ago and has been battling for ever since. It is a proposal which Congress, this time, should reject beyond the possibility of further consideration.

As envisioned by the nation's buzziest consumer gadfly and his supporters, the CPA would be a tax-financed, independent agency whose function would be to protect consumers by representing their interests in government. The idea sounds good enough in theory, and its adoption may once even have been desirable, but today it has become irrelevant, obsolete and potentially disruptive.

In the past eight years there has been a revolution in consumer protection legislation and reorganization. Currently, the federal government has 33 agencies and approximately 400 bureaus and subagencies operating more than 1,000 consumer-oriented programs. In addition, Congress has created a dozen special regulatory agencies to ride herd on the others.

The nation, in sum, simply no longer has any need of a super agency whose chief intended function — as proposed — would be to argue the consumer cause in court actions involving federal regulatory agencies. How this purpose would work out in practice, moreover, is as doubtful as it would be expensive.

It would cost a minimum of $60 million to get up the CPA and run it for three years. Far more onerous to the taxpayer would be the incalculable added costs of other agencies responding to the demands of the proposed super agency — or acting even more slowly than usual through fear of CPA interference.

There would be plenty of that because the CPA, in practical operation, would in fact be little more than an official agency constantly looking for places to interfere. It would have absolute power to meddle in the affairs of other agencies — from Defense Department procurement to foreign trade — and to second guess actions through its open-ended litigation authority to challenge and possibly overturn any government decision.

The clearly inherent danger of giving such vast authority to one group, especially one which would be operating independently of the executive branch and Congress, always has been the most potent argument against the CPA. Today, when there no longer is a demonstrable need for such an agency, the argument should be overwhelming and irrefutable.

Government admittedly cannot protect everyone from everything. In this case, however, Congress can protect all taxpayers by emphatically defeating the idea of creating a costly, unnecessary and probably despotic new bureaucracy of Nader rite super snoops.

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SUNDAY, APRIL 10, 1977

Protection for motherhood

Voicing support for the consumers of America is akin to speaking out in defense of motherhood. Therefore U.S. Sen. Abraham A. Ribicoff and others have no compunction about hailing the proposed Consumer Protection Agency. He and others are almost daring opponents to admit they are "anti-consumer."

The proposal will permit Ralph Nader to dust off his slightly tarnished armor and sally forth again as the protector of the innocent consumer.

Neither Ribicoff nor Nader nor the others who favor the creation of the new bureaucracy predict the cost to the consumer. Sen. Charles Percy, Illinois Republican, has estimated the cost at $15 million the first year, $20 million the second and $25 million the third. Wanna bet!

If Ribicoff and the others would be honest with the public, then his bill could be assessed more fairly. But he ignores the countless governmental agencies—some estimates exceed 400—presently operating programs designed to benefit consumers. There are more than 1,000 different consumer-oriented programs at present.

Who does OSHA protect, if not consumers? Was the Federal Drug Administration created to protect drug manufacturers? What about the Federal Communications Commission, the enforcers of anti-trust laws, the Food and Drug Administration, the Employment Standards Administration, and the host of other alphabetical units with staffs paid for by taxpayers?

Let's not deceive the public into thinking that every one of the existing governmental agencies was created merely to protect the industry and to oppress the consumer.

There is already fighting among agencies with some, for example, proposing that more coal be used to reduce oil imports and others prohibiting the use of coal to avoid air pollution.

Just imagine what will happen when the Consumer Protection Agency starts fighting with consumer protection bureaucrats already on other agency payrolls. The end result will be court cases which will negate all progress because the courts today are not noted for speedy decisions.

Meanwhile the consumers will pay the bill for federal employes in two different departments with two sets of opinions, for court staffs to evaluate them, and for the extra expense imposed on industry. The $25 million cost estimate by Sen. Percy is the tip of the iceberg.

Look at the controversy over saccharin. The pending prohibition is supposed to be in the interest of consumers. But the consumers of this nation won't abide by the decision and have told their congressmen so in no uncertain terms. Even Cancer Society authorities question the merits of the restrictions.

Yes, opposing consumer protection is like opposing motherhood. But medical experts will agree that there are times when motherhood can be harmful to health.

The Consumer Protection Agency backed by Ribicoff and others will cost consumers more than they will save—if they save anything.

San Antonio Light

FIRST IN TEXAS COMMUNITY SERVICE

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THURSDAY, MARCH 31, 1977 Page 8-F

Super Snoopers Not Warranted

RALPH NADER'S hopes of achieving official federal power are rising again with the imminent introduction of new Capitol Hill legislation which would establish the Consumer Protection Agency he conceived eight years ago and has been battling for ever since. It is a proposal which Congress, this time, should reject beyond the possibility of further consideration.

As envisioned by the nation's buzziest consumer gadfly and his supporters, the CPA would be a tax-financed, independent agency whose function would be to protect consumers by representing their interests in government. The idea sounds good enough in theory, and its adoption may once even have been desirable, but today it has become irrelevant, obsolete and potentially disruptive.

In the past eight years, there has been a revolution in consumer protection legislation and reorganization. Currently, the federal government has 33 agencies and approximately 400 bureaus and sub-agencies operating more than 1,000 consumer-oriented programs. In addition, Congress has created a dozen special regulatory agencies to ride herd on the others.

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There would be plenty of that because the CPA, in practical operation, would in fact be little more than an official agency constantly looking for places to interfere. It would have absolute power to meddle in the affairs of other agencies — from Defense Department procurement to foreign trade — and to second guess actions through its open-ended litigation authority to challenge and possibly overturn any government decision.

The clearly inherent danger of giving such vast authority to one group, especially one which would be operating independently of the Executive Branch and Congress, always has been the most potent argument against the CPA. Today, when there no longer is a demonstrable need for such an agency, the argument should be overwhelming and irrefutable.

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Sentinel Star

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Orlando, Florida, Wednesday, April 6, 1977

Protect or vex consumers?

AN EIGHT-year-old bill to create a Consumer Protection Agency is alive and well in Congress and shows no significant signs of aging despite the lapse of years. It is scheduled for committee hearings this month, probably in the House first.

CPA supporters contend federal regulatory agencies do not adequately represent consumers; that a consumer or representative groups could not possibly attend all the hearings necessary for effective oversight of government action as it related to them; that a new agency is the only effective remedy.

CRITICS claim the proposed new super-agency is scaled to the interests of organized consumer activists rather than to individuals; that consumers can be better served with existing agencies such as the Federal Trade Commission, Consumer Product Safety Commission and others with broad protection power and responsibility; and that if the agencies are not performing properly Congress should intercede, not create another sprawling bureaucracy.

While arguments on each side are valid, zealous CPA sponsors are overlooking the new administration's rapid implementation of its promise of a more efficient and open government.

President Carter has said he will personally represent the consumer and is working with the Congress toward government reorganization and regulatory reform.

At present, the federal government has more than 1,000 consumer oriented programs operating within 33 agencies, 400 bureaus and sub-agencies, and at least a dozen separate regulatory commissions established by Congress to protect consumers.

A MASSIVE CPA with absolute power to interfere with the current conglomerate, as the legislation proposes, would clog federal courts, inconvenience firms and individuals who must then deal with two agencies instead of one, and cost taxpayers a minimum of $60 million its first two years of operation. And that doesn't include the additional costs of other agencies forced to respond to CPA intervention.

That's consumer vexation, not protection, and certainly more government than this country needs, wants or can afford.

CPA should be tabled until the Carter administration has fulfilled its pledge of rational reorganization and regulation reform.

SUNDAY News American
The Award Winning Newspaper
4B Sunday, April 3, 1977 THE NEWS AMERICAN •

Editorials

Nader's Power Play

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Fort Wayne News-Sentinel, September 11, 1975
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Richmond Palladium, December 8, 1975
"Unwanted"

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"Most people don't favor new agency"

Sioux City Journal, May 18, 1975
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Des Moines Tribune, May 20, 1975
"Consumer's advocate"

Grundy Center Spokesman, June 7, 1975
"We don't need another layer of bureaucracy"

Davenport Times-Democrat, June 8, 1975
"Hey, What's With ACA?"

Keokuk Gate City, August 4, 1975
"Unneeded bureaucracy"

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El Dorado Times, April 16, 1975
"Does Ralph Nader know best?"

Atchison Globe, April 24, 1975
"Who Knows Best?"

Manhattan Mercury, May 18, 1975
"Consumer Advocacy"

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"Another federal panacea"

Great Bend Tribune, November 25, 1975
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"Such Protecting!"

Glasgow Times, May 1, 1975
"Consumers Prefer to do it Themselves"

Murray Ledger and Times, May 1, 1975
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"Consumer 'Protectors' Again"

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"Consumers Want No Super Advocate"

Alexandria Daily Town Talk, May 29, 1975
"Another Agency We Don't Need"

MAINE:

Damariscotta News, May 8, 1975
"Is This Something We Need?"

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Salisbury Times, April 18, 1975
"Do It Themselves"

Frederick Post, April 21, 1975
"Consumers prefer to do it themselves"

The Baltimore Evening Sun, June 3, 1975
"I can't decide whether we can best protect the consumer by creating an agency, or by doing away with some of the agencies we already have" (cartoon)

MASSACHUSETTS:

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"Breaking a Bad Habit"

Boston Commercial Bulletin, April 18, 1975
"Who Knows Best? The People or Ralph Nader?"

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"Naderism Rampant"

Boston Herald American, May 27, 1975
"Consumers: Too Much Protection?"

Westfield News, June 3, 1975
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Lynn Item, June 24, 1975
"Agency for whose protection?"

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Detroit Investor, March 22, 1975
"The Consumer Deception Act of 1975"

Adrian Telegram, April 10, 1975
"More Costly "Protection""

Owosso Argus Press, April 15, 1975
"We prefer do-it-yourself"

Detroit Investor, April 19, 1975
"Who Knows Best? The People or Ralph Nader?"

Hillsdale News, April 25, 1975
"Doing it Themselves"

Detroit News, April 30, 1975
"A case of overkill"

Detroit News, May 13, 1975
"Why is it needed?"

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"Consumers Prefer Own Way"

Charlevoix Courier, May 21, 1975
"Is This Something We Need?"

Royal Oak Daily Tribune, July 5, 1975
"Protecting the Consumer"

Edmore Times, August 7, 1975
"Guess Who'll Be Boomeranged?"

Detroit News, August 25, 1975
"A plague of frogs"

Flint Journal, November 24, 1975
"Consumer bill veto would be justified"

Marquette Mining Journal, December 4, 1975
"Illusion of protection"

Iron Mountain News, December 6, 1975
"Illusion of protection"

Cadillac News, December 18, 1975
"Consumer protection"

Alpena News, December 17, 1975
"Reform protects consumer"

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"Deception bill"

Thief River Falls Times, April 16, 1975
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International Falls Journal, May 16, 1975
"Taxpayer is one to help"

Rochester Bulletin, May 29, 1975
"U.S. Senate Votes to Increase Prices and Taxes"

St. Paul Cereal Foods World, July, 1975
"Consumer Protective Advocacy (Formerly the Consumer Protection Act)"

Warren Sheaf, July 9, 1975
"More Consumer Laws!"

Minneapolis Star, July 30, 1975
"Consumerism—with loopholes"

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Starkville News, April 18, 1975
"Little Support"

Natchez Democrat, April 21, 1975
"Consumer bureau may be shelved"

West Point Times Leader, April 21, 1975
"Is This Something We Need?"

Vicksburg Post, April 26, 1975
"Consumers Prefer To Do It Themselves"

Biloxi-Gulfport Herald, July 4, 1975
"Labor power in the Senate"

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St. Louis Globe-Democrat, ??
"Anti-Consumer Agency"

Kansas City Star, April 9, 1975
"Another Federal Agency?"

Cape Girardeau Southeast Missourian, April 14, 1975
"Public says forget it"

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"Business Better Than Government"

Hermann Advertiser-Courier, April 23, 1975
"Do We Need This?"

The Kansas City Star, April 29, 1975
"The President's Long List of Things to Do"

Sikeston Standard, May 23, 1975
"Who Knows Best?"

Fulton Sun-Gazette, May 30, 1975
"New Bureaucracy"

Oscedlaco Herald (Reed City), July 24, 1975
"Farmers fear forming of CPA"

Cape Girardeau Southeast Missourian, August 21, 1975
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Temperance Courier Monroe Adventure, September 11, 1975
"The Consumer Protection Agency and Farmers"

MONTANA:

Helena Independent-Record, October 15, 1975
"Baucus backing a rotten consumer bill"

Helera Independent-Record, November 13, 1975
"Consumer agency bill very much alive"

NEBRASKA:

Omaha Morning World Herald, May 22, 1975
"Conflict and Consumer Interest"

Columbus Telegram, June 5, 1975
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Orchard News, June 20, 1975
"There is still talk of creating a Consumer Agency"

Fairbury Journal-News, July 22, 1975
"Thoughts while shaving"

The Neligh News and Leader, July 31, 1975
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Elko Daily Free Press, August 23, 1975
"Dangerous Bills Poorly Conceived"

Ely Times, August 26, 1975
"Against creation of consumer agency"

NEW HAMPSHIRE:

Nashua Telegraph, May 3, 1975
"A Super Agency?"

NEW JERSEY:

Camden Courier-Post, February 25, 1975
"More Bureaucracy?"

Montclair Times, April 17, 1975
"Little Support"

Woodbridge News Tribune, April 30, 1975
"Questionable 'protection'"

Bridgeton South Jersey Star-Advertiser Press, May 8, 1975
"Help We Can Do Without!" (Cartoon)
"Is This Something We Need?"

Woodbridge News Tribune, June 6, 1975
"Unsound 'protection'"

Wyckoff News, November 19, 1975
"Is This Something We Need?"

Newton New Jersey Herald, November 27, 1975
"Another agency"

NEW MEXICO:

Las Cruces, New Mexico Farm & Ranch, May 1975
"Consumer bill is a deception on the public"
"Congressional report"

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The New York Times, March 14, 1975
"Consumerism, Limited"

New York Daily News, April 5, 1975
"Do Us No Favors"

Cheektowaga Times, April 24, 1975
"Help We Can Do Without!"

Wellsville Shopping Wise, April 24, 1975
"Is This Something We Need?"

Syracuse Herald-Journal, April 30, 1975
"A waste"

Briarcliff Manor Wholesaler, May, 1975
"How It Looks From Here"

Buffalo Evening News, May 9, 1975
"Bad Idea Whose Time Has Gone"

Corning Leader, May 9, 1975
"Existing Agencies Able To Protect The Public"

New York Daily News, May 17, 1975
"A Costly Mistake"

Buffalo Courier-Express, May 18, 1975
"Another Consumer Agency Not Needed"

Kingston Daily Freeman, July 18, 1975
"Bureaucratic Layers"

New York Sunday News, July 20, 1975
"Guest Editorial"

(New York) National Review Bulletin, July 25, 1975
"At Home"

Horseheads Reporter, July 31, 1975
"Guess Who'll Be Boomeranged?"

Ellenville Journal, July 31, 1975
"Lord Help the Consumer!"

Vestal Tempo, August 27, 1975
"Engulfed by Government"

NORTH CAROLINA:

Monroe Enquirer-Journal, April 23, 1975
"Americans say no to new federal consumer agency"

The Wilson Daily Times, May 14, 1975
"Reduce Business Regulations"

Aberdeen Sandhill Citizen, May 15, 1975
"Is This Something We Need?"

Rocky Mount Telegram, May 18, 1975
"Reduce Business Regulations"

Charlotte Southern Textile, May 19, 1975
"Yet Another?"

Granite Falls Press, May 29, 1975
"Public Is 75% Opposed To New Consumer Agency"

Jacksonville News, June 3, 1975
"Unneeded bureaucracy"

Burlington Times-News, June 4, 1975
"Ignoring the Public"

Lenoir News-Topic, June 23, 1975
"Political Magic"

Henderson Dispatch, June 24, 1975
"Is Congress So Bling It Cannot See?"

Albemarle Stanly News & Press, June 27, 1975
"CPA Not Needed"

Monroe Enquirer Journal, July 28, 1975
"Guess who is paying bill for consumer protection?"

Wilson Times, August 19, 1975
"Consumer Protection Is Bad Bill"

Henderson Dispatch, August 21, 1975
"Protection From The Protectors"

Henderson Dispatch, August 23, 1975
"Proposed Protection Agency Is Bad Buy For Consumers"

Henderson Dispatch, November 20, 1975
"Consumer Agency Another Bureaucracy"

Wilson Times, November 24, 1975
"No Need For Consumer Agency"

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Salem Farm & Dairy, April 10, 1975
"Public Is 75% Opposed To New Consumer Agency"

Warren Tribune Chronicle, April 12, 1975
"Little Support"

Zanesville Times Recorder, April 17, 1975
"Congress: Please Take Note"

Cincinnati Enquirer, April 18, 1975
"Better, Not More"

Sabina Advertiser, April 23, 1975
"Help We Can Do Without!" (Cartoon)
"Is This Something We Need?"

Barnesville Whetstone, April 24, 1975
"Is This Something We Need?"

Mansfield News-Journal, May 5, 1975
"Battle Lines Drawn On Consumer Agency"

Kent-Ravenna Record-Courier, May 14, 1975
"Most consumers don't want advocacy agency"

Dayton Journal Herald, May 19, 1975
"Consumer Bill...we doubt that public will be protected"

Athens Messenger, May 21, 1975
"Protecting Consumers"

Columbus Citizen-Journal, May 21, 1975
"Some watchdog"

Salem Farm & Dairy, May 22, 1975
"Help We Can Do Without!" (Cartoon)
"Is This Something We Need?"

Youngstown Vindicator, May 22, 1975
"Consumer Agency Needed?"

Akron Beacon Journal, May 24, 1975
"Consumer's Own Alertness Would Serve Him Better"

Cincinnati Enquirer, May 28, 1975
"First, Make The Old Laws Work"

North Canton Sun, May 28, 1975
"Public Opposed To New Consumer Agency"

OHIO (Continued):

Cincinnati Enquirer, June 4, 1975
"A Consumer 'Aggravacy' Agency?"

Columbus Dispatch, June 5, 1975
"Consumer Advocacy: Just Who Needs It?"

Cincinnati Enquirer, June 9, 1975
"There's A Better Way"

Salem News, June 24, 1975
"More Bureaucracy?"

Toledo Blade, July 23, 1975
"Another Consumer Boondoggle"

Columbus Dispatch, August 21, 1975
"Superagency Bill Lacks Groundswell"

Cincinnati Post, September 10, 1975
"A plague of frogs"

Geauga Times Leader, December 4, 1975
"Superfluous"

Painesville Telegraph, December 16, 1975
"Consumer agency unnecessary"

Lima News, December 19, 1975
"Reform overdue in consumerism"

Cincinnati Enquirer, August 4, 1976
"The Carter-Nader Alliance"

OKLAHOMA:

Oklahoma City Journal, April 12, 1975
"Consumers Favor 'As Is'"

Tulsa World, April 23, 1975
"Measuring The Cost"

Oklahoma City Oklahoman, May 15, 1975
"For Should Veto ACA"

Tulsa World, June 3, 1975
"The Loaded Question"

OKLAHOMA (Continued):

Tulsa World, September 2, 1975
"New Plague Of Frogs"

OREGON:

Ontario Daily Argus Observer, April 19, 1975
"Consumers Prefer to do it Themselves"

Albany Democrat-Herald, May 1, 1975
"Are gains worth costs?"

Nyssa Gate City Journal, May 8, 1975
"Is This Something We Need?"

Portland Oregonian, May 22, 1975
"Regulatory mistake"

Junction City Times, July 10, 1975
"Today the adversary approach..."

Bend Bulletin, August 23, 1975
"...on the other hand"

Mill City Enterprise, September 4, 1975
"Guess Who Will Be Boomeranged?"

Ontario Argus Observer, September 26, 1975
"George Meany" The Consumer's Friend"

Gresham Outlook, November 17, 1975
"A Reply To Mr. Nader"

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St. Mary's Press, April 22, 1975
"Consumer Agencies Not Doing The Job"

Monessen Valley Independent, April 23, 1975
"For the consumers?"

Ridgway Record, April 23, 1975
"Who needs it?"

Souderton Independent, April 23, 1975
"Is This Something We Need?"

PENNSYLVANIA (Continued):

Titusville Herald, April 24, 1975
"New Consumer Agency Needed?"

Corry Journal, April 24, 1975
"Two more bureaus needed?"

Shippenburg News-Chronicle, April 25, 1975
"Not another bureau, please!"

Reading Times, April 25, 1975
"Little support"

Uniontown Herald, April 26, 1975
"Do It Themselves"

Punxsutawney Spirit, April 26, 1975
"Two More Bureaus Needed?"

Irwin Standard-Observer, May 5, 1975
"New agency is unpopular"

Mount Joy Merchandiser, May 14, 1975
"Public Is 75% Opposed To New Consumer Agency"

Beaver Falls News Tribune, May 15, 1975
"Is a new agency needed?"

Irwin Standard-Observer, May 19, 1975
"Consumer Bureaus"

Altoona Mirror, May 20, 1975
"An Insidious Bill"

Pittsburgh Press, May 21, 1975
"Some Watchdog"

Pittsburgh Post-Gazette, May 27, 1975
"Not Another Federal Agency"

Oil City Derrick, June 5, 1975
"Another Superagency?"

Elizabethtown Chronicle, June 12, 1975
"Let the Consumer Beware"

Philadelphia Inquirer, November 9, 1975
"Congress gets the message on still more bureaucracy"

Pittsburgh Press, November 18, 1975
"Dead In The Water"

PENNSYLVANIA (Continued):

Hazelton Standard-Speaker, November 28, 1975
"Another agency superfluous"

Hazelton Standard-Speaker, December 20, 1975
"Reform protects consumer"

Philadelphia Inquirer, August 31, 1976
"Carter-Nader Blimpworks" (Cartoon)

SOUTH CAROLINA:

Spartanburg Herald, May 13, 1975
"Consumers Don't Want New Agency"

Columbia State, May 18, 1975
"Federal Consumer Advocates Not Needed"

Rock Hill Herald, June 10, 1975
"Unneeded bureaucracy"

Greenville News, December 21, 1975
"Genuine Protection"

SOUTH DAKOTA:

Mitchell Republic, April 10, 1975
"A $60 Million Agency"

Pierre Capital Journal, May 16, 1975
"More Regulation Of Everybody"

Brookings Register, May 20, 1975
"Where more tax dollars are headed"

Wilmot Enterprise, June 12, 1975
"Is This Something We Need???"

Watertown Public Opinion, July 24, 1975
"Another federal agency? You'll pay the bill"

Watertown Public Opinion, November 20, 1975
"Another consumer agency -- do we need it?"

TENNESSEE:

Greeneville Sun, March 21, 1975
"The Consumer Deception Act of 1975"

Kingsport Times, April 14, 1975
"Do-it-yourself consumerism"

Mt. Pleasant Record, April 24, 1975
"Is This Something We Need?"

The Nashville Tennessean, May 5, 1975
"Antipathy for Consumers"

Chattanooga News-Free Press, May 22, 1975
"Avoid A Consumer Dictator"

Memphis Commercial Appeal, June 6, 1975
"Listening To Complaints"

Union Messenger, June 10, 1975
"Consumers Have A Better Idea!"

Chattanooga News-Free Press, July 18, 1975
"Warning Ahead Of Error"

Chattanooga News-Free Press, December 11, 1975
"Freedom Can Protect Consumers"

TEXAS:

Gainesville Register & Messenger, March 24, 1975
"'75 Consumer Deception Act"

San Antonio Light, April 1, 1975
"Protection Agency's Not Needed Here"

Waco Tribune-Herald, April 9, 1975
"Consumers Not Asking For This 'Protection'"

Gainesville Register & Messenger, April 11, 1975
"Who Knows Best For You?"

Kilgore News Herald, April 16, 1975
"Who Knows Best: People or Nader?"

Lufkin News, April 16, 1975
"Consumer self-protection"

Abilene Reporter-News, April 17, 1975
"Most Citizens Are Opposed To Federal Consumer Agency"

TEXAS (Continued):

Cleburne Times-Review, April 20, 1975
"Consumers Prefer To Do It Themselves"

Vidor Vidorian, April 24, 1975
"Is This Something We Need?"

Princeton Herald, April 24, 1975
"Nader Nadir"

Farmersville Times, April 24, 1975
"Nader Nadir"

Plainview Herald, April 27, 1975
"Other Side Of Coin"

Kermit News, May 1, 1975
"Who Knows Best?"

Amarillo Globe-Times, May 2, 1975
"Untying the Knots"

Austin American Statesman, May 7, 1975
"Unneeded Agency"

Dallas Morning News, May 15, 1975
"Public Busybody"

Dallas Times Herald, May 15, 1975
"Consumer agency"

Amarillo Daily News, May 21, 1975
"Give Daddy Your Hand"

Fort Worth Weekly Livestock Reporter, May 22, 1975
"Maybeth' Consumer Needs Definition..."

Houston Chronicle, May 22, 1975
"This is madness"

Pampa News, May 25, 1975
"Unneeded bureaucracy"

Victoria Advocate, May 27, 1975
"Costly and Unneeded"

Levelland Sun News, June 1, 1975
"Unneeded bureaucracy"

Brownsville Herald, June 4, 1975
"Unneeded Bureaucracy"

TEXAS (Continued):

Pampa News, June 15, 1975
"Loading A Question"

Irving News Texan, June 22, 1975
"Federal controls abuse"

Garland News, June 22, 1975
"Federal controls abuse"

Fort Worth Star Telegram, July 14, 1975
"Let's Not Throw In That Wrench"

Tyler Courier-Times, July 22, 1975
"Consumer Protection Agency Showdown Nearing In House"

Fort Worth Morning Star-Telegram, July 23, 1975
"Consumers need help, not more bureaucracy"

(Houston) Retail Grocer, August, 1975
"Legislation Alert...Consumer Protection Act"

Waco Tribune-Herald, August 24, 1975
"What We Don't Need Is Another Federal Agency"

Dallas Morning News, September 9, 1975
"Consumer Advocacy: A Question of Power"

Houston Chronicle, December 8, 1975
"Consumer agency idea dying"

UTAH:

Ogden Standard-Examiner, April 24, 1975
"Americans Oppose Super-Agency"

Ogden Standard-Examiner, April 29, 1975
"Ford Would Curb Federal Agencies"

Salt Lake City Tribune, April 29, 1975
"Bureaucracy Burgeons"

Salt Lake City Tribune, April 30, 1975
"No Need for Super Bureaucracy To Protect U. S. Consumers"

Gunnison Valley Times, May 8, 1975
"Protect Public From Protectors"

UTAH (Continued):

Salt Lake City Deseret News, May 12, 1975
"Consumers don't need this kind of 'help'"

Salt Lake City Deseret News, May 14, 1975
"Veto the consumer agency bill"

VIRGINIA:

Lynchburg Advance, March 18, 1975
"Consumer deception"

Richmond Times-Dispatch, April 9, 1975
"An Unneeded Agency"

Richmond Times-Dispatch, May 3, 1975
"I'd Just Love Ya to Death!" (Cartoon)

Norfolk Ledger-Star, May 6, 1975
"Dubious consumer aid"

Richmond Times-Dispatch, May 18, 1975
"Sticking the Consumer"

Suffolk News Herald, May 26, 1975
"Sticking The Consumer"

Staunton Leader, July 10, 1975
"Why stomach high cost of red tape?"

Newport News Times-Herald, July 29, 1975
"Consumer nonsense"

Richmond Times-Dispatch, September 1, 1975
"A Plague of Frogs"

Spokane Chronicle, May 16, 1975
"More Bureaucracy Opposed"
"Consumers Vs. People"

Pasco Tri-City Herald, May 27, 1975
"No need for consumer agency"

Vancouver Columbian, November 18, 1975
"Consumer bill veto likely"

Seattle Times, November 20, 1975
"Consumer-protection overdose"

WEST VIRGINIA:

Beckley Post-Herald, April 23, 1975
"Scheme Feared Just Another Bureaucracy"

Clarksburg Telegram, April 29, 1975
"Is This Something New?"

Clarksburg Telegram, June 21, 1975
"The Consumer Choice"

Wheeling News-Register, November 30, 1975
"More Bureaucracy Not Needed"

WISCONSIN:

Antigo Journal, March 22, 1975
"Excessive Power"

Wausau-Merrill Herald, July 7, 1975
"Let's call a halt...Regulation grows and grows"

Janesville Gazette, November 14, 1975
"Milking the Taxpayer"

Mr. ROSENTHAL. Our next witness is Mr. Richard Leighton representing the Grocery Manufacturers of America.

He is a member of the law firm of Leighton & Conklin in Washington, D.C., and the author of three articles on the development of the Agency for Consumer Protection.

STATEMENT OF RICHARD J. LEIGHTON, SPECIAL COUNSEL, GROCERY MANUFACTURERS OF AMERICA, INC.

Mr. LEIGHTON. Thank you, Congressman Rosenthal.

Grocery Manufacturers of America is the trade association of the Nation's leading producers of food and related products sold to consumers in retail outlets. I am special counsel to the association.

Chairman Brooks unfortunately had to leave in the middle of the chamber of commerce's testimony, but I would like to clarify this matter of what the witnesses were told before coming here.

We were informed that we had only 5 minutes within which to deliver prepared remarks. That information was given to us in the name of the chairman.

So we are operating under a chilling effect here. At least we feel that to be so, and we are glad that the chairman has relieved us of this 5-minute burden.

Mr. ERLENBORN. Somebody forgot to set the thermostat up in this room when we switched from heat to air conditioning, and that chilling effect is felt up here today as well. I hope that the chairman can have the thermostat adjusted. Thank you.

[Laughter.]

Mr. LEIGHTON. The underlying concept of this bill is that all identifiable consumer interests that may be affected substantially by Federal agency action deserve to be represented within the decisionmaking process that leads to that action.

GMA supports that concept and has always supported it.

GMA does not object, nor has it ever objected, to the creation of an independent Federal agency to implement that concept; nor does GMA object to the funding of private advocates for that purpose or the housing of consumer advocates in the Federal Trade Commission, in all regulatory agencies, or in the President's office; nor has GMA objected to any of the other various mechanisms that have been suggested to assure adequate consumer representation.

The association feels that the structuring of the consumer representation function under any new Federal plan is best left to Congress and the executive branch. GMA's policy on consumer advocacy proposals has always been result-oriented. It has always focused on the powers proposed.

Stated in the most basic terms, GMA favors the use of additional Government funds, services, or procedures only where necessary to assure a balance of the advocacy of interests and sufficiency of information within Federal decisionmaking.

We oppose any attempt which we feel might create an imbalance of advocacy rights or otherwise work an unreasonable hardship on private persons who must submit information or views to the Government.

We cannot in the span of 5 minutes—and we have only prepared for that span—catalog the many areas of agreement and disagreement we have with respect to the provisions of H.R. 6118.

Suffice it to say, that the bill contains all of the old problem areas which caused many Congressmen to vote against it before.

Among those problem areas of most concern to GMA are the following:

Creating an agency with the power to intervene as a dual prosecutor in adjudications by other agencies of alleged violations of law.

Giving that agency power to require private persons to answer questions and file reports on matters which are not the subject of any Federal regulatory inquiry.

Reducing protections for trade secrets volunteered to Federal agencies.

Granting to Federal employees greater procedural rights than private advocates.

Granting a nonregulatory agency the power to take regulatory agencies to court as a matter of statutory right.

And exempting from the bill procedings and activities that were once cited by bill sponsors, including non-Chairman Rosenthal, as being in need of Federal consumer advocacy, such as NLRB proceedings, because favored special interests fear what those of us who are not as favored also fear.

Even if the subcommittee cannot be persuaded to reevaluate what many consider to be the old, continuing problem areas of the bill, we are surprised to see that little attention is being given to the many new provisions of the bill. Contrary to what some have been led to believe, everything worth saying about this bill has not already been said.

There are many new provisions in the bill that are truly provocative. To our knowledge, no one has taken the time to point out, much less explain, the 15 substantive changes that were made in the bill before it was reintroduced as H.R. 6118.

Perhaps this is because a 5-minute explanation of each of the new major changes would alone take an hour and a quarter and the subcommittee apparently does not have that much time to devote to this subject.

GMA, therefore, appends to its statement a description of the major differences between H.R. 6118 and its ancestor which passed the House in the 94th Congress. We ask that this document, which treats the Senate bill similarly, be included in the hearing record immediately following the GMA testimony.

May we have that, Mr. Chairman?

Mr. ROSENTHAL. Without objection, it will be included at the end of your testimony.

Mr. LEIGHTON. The practice of changing the bills more and more but being willing to hear less and less about them seems to be a recurrent one with consumer advocacy proposals. This may be self-defeating in that it fails to make use of opportunities to gain informed comment and different perspectives at a time when the bills are most easily amended.

For example, one of this year's changes introduces a new concept into the bill that surely is worth discussing in public at the subcommittee level.

The bill proposes, for the first time to our knowledge, the creation of what is best described as an inflatable Federal agency.

Section 14 of the bill directs President Carter to provide for the transfer of countless unnamed, and presumably unknown at this time, Federal activities to the new Agency for Consumer Protection that would be created by the bill.

The Administrator of the new Consumer Agency then would have the authority to re-reorganize these transfer activities to his or her own liking.

The transfer would be accomplished by use of the President's new reorganization plan power. He is mandated by the bill to use his reorganization power for the benefit of the Consumer Agency within 180 days of H.R. 6118's enactment.

This not only raises significant questions with respect to Congress mandating what the President's reorganization priorities must be and how he should divest himself of executive powers, it also may raise serious threats to the viability of the proposed Consumer Agency.

Section 14 of the bill holds the real prospect for doubling, tripling, or quadrupling the size and appropriations of the Consumer Agency 6 months after it is created. It holds the prospect of a future drastic change in the new Agency's mission if the wrong type of function is transferred to the Consumer Agency on the take-it-or-leave-it basis of a reorganization plan.

This is only one of the areas which we believe would be more appropriately discussed openly at the subcommittee level, rather than saved for floor debate. I believe this is also one of the areas even the most ardent proponents of this bill should look long and hard at.

The time limitations imposed on our testimony, however, prohibit a full discussion of this and the other novelties introduced into the bill.

GMA offers, instead, a list of questions which it feels the subcommittee should take the time to answer before reporting this bill.

These need not be read by me now, but we request that they appear in the record as part of our testimony.

Mr. BROOKS [presiding]. We would be pleased to have you read them, or you may include them in the record. It will be your choice.

Mr. LEIGHTON. I think, then, I will read them.

Mr. BROOKS. Please proceed.

Mr. LEIGHTON. One: Why does the bill increase the new proposed Consumer Agency's appropriations by 50 percent and 70 percent over those proposed in the bill of the last Congress for the Agency's first two fully operational years?

Two: Is H.R. 6118, as presently drafted, a threat to the President's energy program or will the President seek to use the proposed Consumer Agency as a tool to implement that program?

Three: Should the proposed Consumer Agency's role in international relations, especially on export-import questions of the type Congressman Fuqua asked today, be more clearly defined?

Four: Should Congress provide more guidelines with respect to the type of consumer activity it deems appropriate for representation?

For example, Consumers Union, which is chartered to represent the consumer interests, has advocated reform of the marijuana laws, a subject of much concern to consumers of that drug, if indeed it is a drug.

Another burning issue is cigarette smoking, the consumers being primarily, I would assume, smokers. Should the Consumer Agency advocate the smoker's interest in smoking or not smoking? Or should the Agency avoid such controversial issues?

Five: Why is it necessary to grant the Consumer Agency the right to appeal to the courts the final decisions of regulatory agencies? Is this done out of a fear that the regulatory agencies would not pay attention to a mere congressional mandate that requires them to listen to the Consumer Agency?

If so, should there not be a similar fear about the Consumer Agency not paying attention to its own congressional mandates?

Six: Why is an adjudication of, or Federal attempts to prevent, an unfair labor practice such as an illegal dock strike of no importance to the millions of consumers potentially affected?

If it is important, why is the Consumer Agency prevented from even issuing a statement of opinion on the matter?

Seven: Do the 1977 changes to section 9(a)(i) in H.R. 6118 indicate a change of policy? Will the proposed Consumer Agency be testing products, or paying for such tests by others, and releasing the results?

Eight: What is the significance of the 1977 changes to section 9(b) in H.R. 6118? Is this another change of policy to allow the Consumer Agency to publish results of a Federal agency products test outside of an agency proceeding?

Nine: Why does the bill no longer provide that a businessman should have a reasonable opportunity to seek a court injunction against the Consumer Agency's access to his trade secrets? (Sec. 10(b)(6), H.R. 7575, 94th Cong.)

Ten: Why does the bill no longer prohibit the Consumer Agency from making public trade secrets? (Sec. 11(a)(1), H.R. 7575, 94th Cong.) It does not do so expressly.

Eleven: What is the significance of the changes made to the prohibition on State and local activity by the proposed Consumer Agency? Does this reflect a change in policy under which the Consumer Agency would become more involved in State and local regulatory activity?

Twelve: The Consumer Agency is expected to enter the regulatory proceedings of other agencies to protect the interests of consumers. Upon its entrance, it will file in those proceedings a statement of the specific consumer interests in need of protection. (Sec. 6(b), H.R. 6118, 95th Cong.)

How is the Consumer Agency going to determine these specific interests in advance of the regulatory proceeding that, itself, is designed to determine such information?

Will the Agency hold its own public proceeding to determine from consumers what protection they need prior to entering the regulatory agency's proceeding which, itself, is designed to determine what protection is needed?

Thirteen: Why are milk marketing order proceedings and other U.S. Department of Agriculture proceedings directly affecting or directly concerning the price of agricultural commodities exempted?

Who determines whether a proceeding has a direct effect or directly concerns the price of a commodity in order to qualify for an exemption from Consumer Agency advocacy? Would USDA make that determination or the ACP?

Since these proceedings are exempted from Consumer Agency advocacy, is USDA relieved of any responsibility to issue a consumer interest statement under section 12 of the bill?

Even though the bill does not authorize Consumer Agency participation in many USDA proceedings, it does not prohibit the Consumer Agency from appealing the results of such proceedings to the courts. Is it intended that the Consumer Agency may take USDA to court on such matters about which it is prohibited from discussing at the lower administrative level?

Thank you, Mr. Chairman. That finishes the questions.

[The material referred to follows:]

Grocery Manufacturers of America, Inc.

April 13, 1977

DIFFERENCES BETWEEN PROPOSED CONSUMER PROTECTION ACTS OF 1975 AND 1977

I. CHANGES IN SENATE BILL

II. CHANGES IN HOUSE BILL

II. CHANGES IN HOUSE BILL (continued)

April 13, 1977

DIFFERENCES BETWEEN PROPOSED
CONSUMER PROTECTION ACTS OF 1975 AND 1977

Bills to create an independent consumer protection agency to advocate the interests of consumers were again introduced during this 95th Congress. They are S.1262 in the Senate and H.R. 6118 in the House.

Similar bills passed the Senate as S.200 and the House of Representatives as H.R. 7575 during the 94th Congress.* Those bills were not brought to a conference committee to resolve differences because proponents felt that a threatened veto by then-President Gerald R. Ford likely would have been sustained.

This analysis identifies the major differences between the Senate bill of this Congress and the Senate bill of the last Congress and the differences between the House bill of this Congress and its predecessor in that chamber.

I. CHANGES IN SENATE BILL

A. Certain Special Interest Exemptions Deleted

The proposed Consumer Protection Act of 1977, S.1262, does not contain the following exemptions which were placed in the 1975 Senate bill before it passed that chamber:

1. Farmers and Fishermen -- Exempted from the consumer agency's advocacy authority were any federal agency proceeding or activity directly affecting producers of livestock, poultry, agricultural crops or raw fish (S.200, 94th Cong., Sec. 16(b));

2. Firearms and Ammunition -- The consumer agency was expressly prohibited from using its advocacy powers to restrict or limit the manufacture, sale, or possession of firearms or ammunition (S.200, 94th Cong., Sec. 6(k));

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* Technically, H.R. 7575 passed the House as a substituted S.200.

3. Alaska Pipeline -- The consumer agency was expressly prohibited from using its advocacy powers with respect to matters affecting the routing or construction of oil or natural gas pipeline systems located in Alaska (S.200, 94th Cong., Sec. 16(c)).

B. Promotion of Farmer Interest Deleted

One of the functions of the consumer agency under the bill last Congress was to "promote the consumer interests of farmers in obtaining a full supply of goods and services at a fair and equitable price" (S.200, 94th Cong., Sec. 5(b)(14); 14(7)). This is not found in the 1977 version, although new provisions on family farming interests were added. (See E below)

C. Safeguard Against Burdensome Information Demands Deleted

The bill last Congress would have required the Comptroller General to review all consumer agency information requests to assure that they would not impose an undue burden upon the person receiving them.(S.200, 94th Cong., Sec. 10(a)(1)) This safeguard does not appear in the 1977 bill.

D. Special Recognition of Small Business Administration Advocacy Status Deleted

The bill last Congress expressly recognized that "the Small Business Administration remains the sole executive advocate for the interests of small business concerns".(S.200, 94th Cong., Sec. 13(d)) This provision does not appear in the 1977 bill.

E. Recognition of Family Farmer Interests Added

Added to the 1977 bill are provisions requiring the consumer agency to give due consideration to the unique problems of family farming and to respond expeditiously to family farmer requests and views. (S.1262, 95th Cong., Sec. 18)

In addition, the U.S. Department of Agriculture must provide family farmers with information about procedures and activities arising under the consumer agency act which affect such farmers. U.S.D.A. must also provide Congress with an annual summary of the actions taken under the consumer act which particularly have affected family farmers.(S.1262, 95th Cong., Sec. 18)

F. Presidential Reorganization Plan Requirement Added; CPICC Transfer Deleted

The bill last Congress would have transferred to the consumer agency the personnel and functions of the Consumer Product Information Coordinating Center in the General Services Administration.(S.200, 94th Cong., Sec. 22) That provision is not in the 1977 proposal.

The new bill directs the President to submit a reorganization plan within 120 days of enactment of the consumer agency bill. The plan would provide for the transfer to the consumer agency of existing federal consumer programs that could be performed more appropriately or efficiently by the new agency.(S.1262, 95th Cong., Sec.22)

G. Consumer Advocacy Budget Estimates Requirement Deleted

The bill last Congress would have required the Office of Management and Budget and the Congressional Budget Office to give Congress annual estimates of the amount of funds expected to be allocated for consumer representation by agencies other than the new Agency for Consumer Advocacy. (S.200, 94th Cong., Sec. 25) This provision is not in the 1977 proposal.

II. CHANGES IN HOUSE BILL

A. Conflict of Interest Provision Added

Former top officials of the consumer agency would be prohibited from representing or professionally advising a regulated party or association representing a regulated party concerning issues on which the officials acted in a decisionmaking capacity while they served at the consumer agency. Further, these former officials would be prohibited, for a 2-year period, from representing any such party or association concerning any matter in which the consumer agency was involved at the court or administrative agency level during their employment. (H.R. 6118, 95th Cong., Sec. 3(d)) No similar provision was in the prior House bill.

B. Authority to Establish Regional Offices Added

The 1977 bill also expressly grants the consumer agency authority to establish such regional offices as it deems necessary (H.R. 6118, 95th Cong., Sec. 4(b)(10)).

C. Amicus Curiae Court Status Deleted

The 1975 bill provided that the consumer agency, on its own motion, could transmit to attorneys representing the federal government in court information and evidence thought relevant; additionally, the bill provided that the courts would have discretion to recognize the consumer agency as an amicus curiae (friend of the court) to present written or oral argument to them. (H.R. 7575, 94th Cong., Sec. 6(c)) The 1977 bill no longer provides for these, although the deletion overlooks several references to court proceedings which now remain as drafting errors.

D. Judicial Review Safeguard Diluted

With respect to the consumer agency's appealing to the courts another agency's action, when the consumer agency did not participate in the agency proceeding out of which that action arose, the 1975 bill required that the court make a preliminary finding that the consumer agency's "institution of the judicial proceeding would be necessary to the interest of justice." (H.R. 7575, 94th Cong., Sec. 6(d))

The 1977 bill makes the preliminary finding discretionary, rather than mandatory, with the court, and shifts the finding criterion from one of necessity to the less rigorous question of whether the consumer agency's action "would impede the interests of justice." (H.R. 6118, 95th Cong., Sec. 6(d))

E. Consumer Agency Subpoena Rights Broadened

The 1975 bill provided that the consumer agency could take advantage of another federal agency's subpoena powers if the consumer agency were a "party" in one of that agency's proceedings. (H.R. 7575, 94th Cong., Sec. 6(g))

The 1977 bill would allow the consumer agency to take advantage of such subpoena powers even if the consumer agency did not have the status of a party in a proceeding; in fact, the consumer agency could take advantage of such powers as a mere participant in a notice and comment rulemaking proceeding where no other participants had such an opportunity. (H.R. 6118, 95th Cong., Sec. 6(g))

F. State Activity Prohibition Diluted

The 1975 bill and the 1977 bill both prohibit the consumer agency from intervening in proceedings or actions before state or local agencies and courts. (Sec. 6(h), both bills)

However, the 1975 bill expressly provided that the prohibition should not be construed as prohibiting the consumer agency from "communicating" with state or local agencies, while courts were not mentioned. (H.R. 7575, 94th Cong., Sec. 6(i))

The 1977 bill would allow the consumer agency not only to communicate with state and local agencies, but to provide them with information and analyses under their rules (in many state and local proceedings, that is all any participant can do); it also would allow the consumer agency to do the same with state or local courts. (H.R.6118, 95th Cong., Sec. 6(i))

G. Product Testing Role Added

The 1975 bill directed the consumer agency to encourage and support others in the development and application of testing methods for consumer products and services. (H.R. 7575, 94th Cong., Sec. 9(a)(1))

The new bill also directs the consumer agency to encourage and support the development and application of product testing and its resulting information. (H.R. 6118, 95th Cong., Sec. 9(a)(1))

H. Feasibility Report on "Tel-Tag" Deleted

The 1975 bill directed the consumer agency to report to Congress on the feasibility of establishing a National Consumer Information Foundation to administer a voluntary information tag system similar to "Tel-Tag" in Great Britain. (H.R. 7575, 94th Cong., Sec. 9(a)(3)) This provision is not in the 1977 bill.

I. Use of Product Testing Results Expanded

The 1975 bill authorized and directed all federal agencies with consumer product testing capabilities to perform for the consumer agency such tests as the agency requested to assist in its consumer advocacy functions. Use by the consumer agency of the results of these tests, however, was limited -- "such tests may be used or published only in proceedings" of other agencies in which ACP is participating. (H.R.7575, 94th Cong., Sec.9(b))

The 1977 bill would allow the consumer agency to use or publish product test results outside a proceeding in which it is appearing, so long as this is done "in connection with" such a proceeding. (H.R. 6118, 95th Cong., Sec. 9(b))

J. Statutory Trade Secret Protection Reduced

1. No Opportunity to Seek Court Protection -- The 1975 bill allowed the consumer agency to request other federal agencies to disclose to it trade secrets and other confidential commercial or financial information. However, the bill required these other agencies to give the person who provided them the sensitive information notice of their intent to give the consumer agency access to it and "a reasonable opportunity to comment or seek injunctive relief." (H.R. 7575, 94th Cong., Sec. 10(b)(6))

The 1977 bill does not contain the words "or seek injunctive relief," thereby limiting the statutory guaranty to the opportunity to make a mere comment to the agency holding the information.

2. No Prohibition on Disclosure -- The 1975 bill expressly prohibited the consumer agency from revealing to the public trade secrets or other confidential commercial or financial information received from a person and considered privileged or confidential. (H.R. 7575, 94th Cong., Sec. 11(a)(1)). No such prohibition appears in the 1977 bill.

3. No Prohibition on Disclosing Legally Protected Information-- The 1975 bill expressly allowed other federal agencies to withhold from the consumer agency any information the disclosure of which is prohibited by law. (H.R. 7575, 94th Cong., Sec. 11(b)) No such provision appears in the 1977 bill.

K. Consumer Agency Reports to Congress Limited

The 1975 bill required the consumer agency to keep the appropriate Congressional committees currently informed with respect to the nature and status of all interrogatories or other mandatory information demands issued by the agency; also, the consumer agency was required to transmit to such committees copies of all communications alleging abuse of that information demand authority or stating reasons for noncompliance with it. (H.R. 7575, 94th Cong., Sec. 10(e))

The 1977 bill would require the consumer agency to report to its Congressional oversight committees on allegations of abuse of its information demand powers only if requested by them to do so, and the bill would not expressly require the consumer agency to keep such committees informed of all its information demands, but just such demands generally. (H.R. 6118, 95th Cong., Sec. 10(e))

L. Information Release Fairness Rules Deleted

The 1975 bill required the consumer agency to issue in a public proceeding, and be bound by, rules that would assure fairness to all persons affected by the agency's use of its information gathering, development and dissemination powers and which provided persons with an opportunity to comment on the proposed release of product test data containing product names, prior to such release (H.R. 7575, 94th Cong., Sec. 12).

That provision does not appear in the 1977 bill, although the bill does provide that the consumer agency promulgate rules to assure fairness to all persons affected by its actions (H.R. 6118, 95th Cong., Sec. 4(b)(4)).

M. Presidential Reorganization Plan Requirement Added

The new bill directs the President to submit a reorganization plan within 180 days of enactment of the consumer agency bill. The plan would provide for the transfer to the consumer agency of duplicative federal consumer programs that could be performed more appropriately by the new agency (H.R. 6118, 95th Cong., Sec. 14).

N. Cost-Benefit Statements Deleted

The 1975 bill would have required federal agencies to issue and consider cost and benefit assessment statements with respect to rules which likely would have a substantial economic impact (H.R. 7575, 94th Cong., Sec. 22). This provision does not appear in the 1977 bill.

O. Appropriations Increased

The 1975 bill called for $10 million per year for the consumer agency's first two fully operational years. (H.R. 7575, 94th Cong., Sec. 21) The 1977 bill calls for $15 million and $17 million for the first two such years. (H.R. 6118, 95th Cong., Sec. 20)

Mr. BROOKS. Mr. Leighton, is there anything else that you would like to put in the record or say about this legislation?

Mr. LEIGHTON. May we have the right to rebut some of the statements or at least comment on some of the statements that were made to the previous witness and to respond in writing before the record is closed?

Mr. BROOKS. You want to submit an additional statement?

Mr. LEIGHTON. We would like the opportunity to. I don't want to commit to do that.

Mr. BROOKS. You will have the opportunity to submit an additional statement. I wouldn't dally, because we will be completing this record fairly soon.

Mr. LEIGHTON. I'll find out when the deadline is.

Mr. BROOKS. I don't have any particular questions. We were delighted to have you here, and we hope you have enjoyed your tour here in the House of Representatives.

I yield to my distinguished friend, Mr. Horton.

Mr. HORTON. I don't have any questions, Mr. Chairman.

Mr. BROOKS. Mr. Rosenthal?

Mr. ROSENTHAL. Mr. Chairman, I don't have any questions other than that I want the record to indicate that Mr. Leighton's testimony began at 10:53 and it is now 11:10 a.m. He has been before us 17 minutes, notwithstanding the fact that three times in his prepared statement he indicated that he had been restrained in the nature of his presentation.

I have no further comments.

Mr. BROOKS. I want to thank the gentleman. Let the record reflect that, and also that he apparently has no further comment to make on the legislation although I have invited him to do so.

We will continue with the questions by the members.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

I want to state for the record that the generosity of the chairman and the gentleman from New York is practically unprecedented, giving so much time to these witnesses this morning after telling them they only had 5 minutes.

Mr. Leighton, I am interested in your comment about section 14, just one of the changes in the bill this year over last year's. I think this provision was in the bill as it passed the House, if this is what I recall as being referred to as the McCloskey amendment which was adopted on the floor. It seems to be similar at least.

Mr. LEIGHTON. I don't think that same provision was in the bill last year.

Mr. ERLENBORN. Something quite similar was offered by Representative McCloskey on the floor.

I recall, in passing judgment on it personally at that time, that it had some shortcomings. I would think that this provision does as well.

It says that the President "may provide for the transfer of programs, operations, and activities of Federal agencies which are duplicative and can be more appropriately performed by the Administrator."

It does not provide for the transfer of personnel, desks, typewriters, and equipment or of budget authority.

So we have the program—operation and activity—transferred, but it would leave the budget authority and personnel in the existing agency.

I find it quite amazing that the President would recommend this. He is probably not personally aware of this section. I'm sure he doesn't read these bills. He has to take somebody's judgment.

The President has said he wants to cut down on the number of Government agencies. He is proposing a new one here and then proposing we transfer functions and authorities from other agencies but leave the people there and the budget authority there. It seems to me the ultimate effect would not be a lean and smaller Federal Government but a larger and more expensive Federal Government. Would you agree?

Mr. LEIGHTON. I would agree that the effect of this provision would be a bloated agency, and that we cannot predict what would happen; yes.

Mr. ERLENBORN. I have been continually surprised at the President's idea of cutting down Government which results in his recommending a new Department of Energy which does not supplant any others. So that's a new one. And a new Agency for Consumer Protection, which is an additional agency.

We understand he may suggest the formation of another Cabinet-level department, a Department of Education.

It seems his approach to cutting down and making the Government leaner is to advocate the creation of more and more new agencies.

I recall also that he wanted to simplify our tax structure and reduce taxes. And last night we had a message that was called an energy message, but it seemed to be a tax message. It recommended one additional tax after another. It will obviously further complicate our tax laws, which are already much too complicated.

I want to thank you for your testimony. I think the GMA has had a consistent position of not being opposed in principle to consumer advocacy. You have been critical of some of the authorities that have been suggested.

I thank you for your analysis of this bill. I'm surprised you were able to do it so quickly. Of course, maybe you have the time to devote to it. We Members of Congress have many different obligations, but the bill has not been available all that long.

Thank you, Mr. Chairman.

Mr. BROOKS. It is always a pleasure to have you questioning. I enjoy it.

Mr. Fuqua?

Mr. FUQUA. Thank you, Mr. Chairman.

I was unaware that the witnesses were put under a time constraint. In the last few days, I thought the witnesses had all the time they wanted and were not limited; and I appreciate the generosity of the Chair.

Mr. Leighton, I want to thank you for your testimony. I think it was very thorough and made some very interesting observations.

On page 4, subsection 3 talks about appointing advisory committees. I have been reading that the President is in the process of abolishing advisory committees. You don't have to answer that, but I was wondering how that would fit with his program of trying to cut down on useless and unnecessary advisory committees. I am not saying it would be that.

On question No. 12, you talk about holding public proceedings. I've asked several witnesses—Mr. Nader yesterday, who had a little difficulty with which way it should go, such as on the import question—if you are concerned about jobs or prices that consumers might pay.

We had a gentleman from the Sierra Club the other day before the committee on energy reorganization and the Department of Energy. He said there should be public input as far as environmental questions are concerned.

In the revenue-sharing bill—the one the chairman has been so enthusiastically supporting—we have a requirement of citizen participation.

It seems to me you make a very valid point, that probably we should require this man, in order to determine what is the consumer interest if there is no clearcut area, that there be citizen participation and public hearings so he may be advised as to what type of position should be taken.

People without jobs could feel they're unemployed, since they have no money to buy anything with. They have one interest. Then those people who want to buy something at a lower price feel they should have their interests presented. Perhaps that is a valid point which we should consider—having citizen participation—so the advocate would know what the consumer interest is if it is not clearcut. Is that what you had in mind in that particular suggestion?

Mr. LEIGHTON. That is one of the stickiest parts of this bill. The consumer interest, of course, is not monolithic. And it is rather disturbing to many people to have an agency—in many cases, this will be delegated to one or two people in particular areas—determine what the consumer interests are in a particular regulatory proceeding.

Mr. FUQUA. I was speaking of those interests which were not exempt.

Mr. LEIGHTON. If ACP lawyers are going to determine what the consumer interest is in the back office—three or four lawyers kicking around some ideas and wondering whether they should get involved directly in the President's private discussions with the Japanese on dumping TV sets or issue only a public statement—that is one problem. Another is to determine where are the interests—are they the long-term interests of consumers who need money from jobs in order to consume which is really a producer interest, or are they the short-term interests of consumers who want cheaper goods now, even though it may mean less competition later.

Mr. FUQUA. Deregulation of the airlines. We have some airlines based in Florida, and they are bombarding me with letters. They are concerned about their jobs and what is going to happen if there is complete deregulation.

I'm sure the consumer who wants to take an inexpensive trip to Europe or California would support that.

Now what is the public interest in that if it should come before Congress or the CAB?

Mr. LEIGHTON. Seat belt interlock systems occur to me as an area where one or two people, without consulting real consumers or, say, average consumers, went forth with a regulatory effort and you saw what happened.

Mr. FUQUA. I was probably one of those protesting.

Thank you, Mr. Chairman.

Mr. BROOKS. Are there any further comments?

Mr. LEIGHTON. I would like to make two comments.

You mentioned that for the record I had no further comments to make on the record. That is not quite what I said. I said I would like the opportunity to make further comments. I must consult with my client, since I am here in a representative fashion for GMA and am not self-appointed.

Mr. BROOKS. I didn't think you just volunteered. I understand your position.

I said you would be welcome to make an additional statement. I asked if you had anything more to add now.

Mr. LEIGHTON. Yes; one brief statement.

It was mentioned by Congressman Rosenthal that I had made reference to the 5-minute limitation which we were informed applied here, and yet I went all of 17 minutes. That 5-minute limitation, it was my understanding, was waived by you before you left in the middle of the last witness' testimony. And that is why I went the 17 minutes. The testimony, as intended to be read, is a 5½-minute testimony.

Thank you. That's all I have to say.

Mr. BROOKS. We enjoyed having you. It has been a pleasure, and we look forward to having you again.

The committee will stand in recess until we come back from this vote on the floor.

I hope at that time to hear Mr. Allen Hyman, from the Heritage Foundation.

[Recess taken.]

Mr. BROOKS. The committee will come to order.

I am very pleased to welcome Dr. Allen Hyman, a Ph. D. on economics from the University of Miami and an attorney admitted to both the California and Florida bars.

He recently conducted a series of studies on consumer advocacy and published articles on that subject, three in number. He represents the American Heritage Foundation and is welcomed here by me at the suggestion of Congressman Erlenborn.

We are pleased to have you, Dr. Hyman. We will accept your statement for the record and any comments you want to make, or you may read it into the record.

Please proceed.

STATEMENT OF DR. ALLEN HYMAN, PROFESSOR, LAW AND ECONOMICS CENTER, UNIVERSITY OF MIAMI SCHOOL OF LAW, CORAL GABLES, FLA.

Dr. HYMAN. Thank you very much, Congressman Brooks.

Just for clarification, I do not represent the Heritage Foundation. They were kind enough to arrange for my testimony here today. I represent myself as a professor of law and economics at the University of Miami School of Law.

My thanks to the Heritage Foundation for getting in touch with Congressman Erlenborn and yourself to arrange this opportunity for me to testify. I do not represent the Heritage Foundation.

Mr. BROOKS. Who do you represent?

Dr. HYMAN. I do not represent anyone other than myself, I guess.

Mr. BROOKS. Well, you do that ably.

Dr. HYMAN. Thank you very much.

In fact, I guess if I could claim to represent anybody, it would probably be part of the academic community. I am, I notice, the only representative from the academic community to testify at these hearings. I wonder if that is to the benefit or detriment of this committee. You probably know better than myself.

Mr. BROOKS. Professor, we are always willing to learn.

Dr. HYMAN. So am I.

Mr. BROOKS. I might add we are rather slow.

Dr. HYMAN. I'll make my remarks brief and quite short. I am going to just summarize my statement and hit on what I think are some of the highlights.

I would like to tell you what I like and what I dislike about this bill.

I wholeheartedly, enthusiastically, and without reservation agree with the introductory statement of findings of H.R. 6118, which says that "Congress finds that the interests of consumers are inadequately represented and protected within the Federal Government and that vigorous representation and protection of the interests of consumers is essential to the fair and efficient functioning of a free market economy."

I couldn't agree with you more. I don't know how many times I have repeated that statement to students or written it. In fact, I think we would probably carry it to quite an extent to point out that from the many analyses I have seen which analyze the effects of laws passed by this House on the consumer, that probably in the vast majority of the laws supposedly designed to assist the consumer, I would say far more has been done by laws passed by Congress to harm the consumer than to help him.

There are many scholarly journals which will not even accept a publication which demonstrates that a law passed by Congress, supposedly in the name of the consumer, does considerable harm to the consumer because this is considered such an accepted fact these days that many doubt if it is worthwhile to say it again. But maybe it is here.

While I am pleased that the supporters of this bill realize and are aware of the fact that many laws passed by Congress and that many regulatory agency actions do harm the consumer, I am certainly surprised and dismayed that these same individuals propose this bill which can do nothing to remedy these many harms which have existed over these many years. I honestly feel there is very little, if anything, that this Agency will be able to do to benefit or advance the consumers' interests.

There are three basic things wrong with this bill.

In the first instance, the major difficulty with this bill is found in those areas where we can identify a single consumer interest. There has been a lot of testimony this morning that says you can't identify the consumer interest, but I think that is not true in a lot of cases. I think there is definitely an identifiable consumer interest—a single consumer interest in quite a few cases.

In those debates where we can identify a consumer interest, this proposed legislation and the proposed Agency for Consumer Protection will have little, if any, ability to remedy the harm done to the consumer.

Let me give you some examples. For the past 57 years since the enactment of the Transportation Act of 1920, the consumers—the residents—who live in Hawaii and Alaska have had to pay more for American goods than do foreigners who live overseas. One might find this rather puzzling—why do people who live in Singapore and Hong Kong and Tokyo pay less for American goods than those who live in Alaska and Hawaii?

This sad situation exists because of the restriction enacted by Congress which requires all goods carried between American ports to be carried on American merchant marine vessels.

So the consumers of the islands and Alaska have been suffering under a burden for the last 57 years. The Consumer Protection Agency can do nothing to modify this law.

Since 1936, commercial banks in this country have been prohibited from paying interest on checking accounts. If you go back to the time when this law was passed, everyone said we had too many bank failures, and that we had to do something to protect the consumer. Today we have all kinds of banking regulations to include the Federal Deposit Insurance Corporation. Consumers are totally protected from failures and yet banks are prohibited from competing by paying interest on checking accounts.

If all the bank presidents got together and agreed not to pay interest on checking accounts without legal protection, they would be in jail in violation of the antitrust laws. But they are not in jail today, and the reason they are not is because Congress has allowed by law which individuals could not have done privately.

The Consumer Protection Agency can do nothing about remedying this situation.

I am sure we are all aware of the costs of airline regulation. World Airways 7 years ago wanted to initiate one-way coast-to-coast scheduled air service for $100. The CAB was able, through procedural maneuvering, to avoid even considering their application. Everyone agrees, except the airlines, of course, that deregulation would benefit the consumer, and this fact has been known for many years.

President Johnson's Task Force on Transportation recommended deregulation in 1967. President Johnson was unable to modify the activities and decisions of the CAB. It will apparently take an act of Congress to change the underlying incentive structure of that agency; and yet this bill proposes spending $15 million a year, the lifetime earnings of 50 to 60 families, to let a new agency file some more paperwork before the CAB, an agency with considerable discretionary authority.

While President Carter and this Congress are considering imposing a tax on the consumption of gasoline over the next few years, it has been known for many years that from 30 to 40 percent of all trips made for interstate commerce and regulated by the ICC are made with empty trucks.

This seems rather amazing that we want to impose a tax on the consumer consumption of gasoline at the same time there is a regulatory agency which permits a tremendous number of empty backhauls, which wastes millions of gallons of gasoline per week.

For 40 years the ICC has regulated trucking. There have been empty trucks running around the country for 40 years. Congress, by passing

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this bill, will allow a new agency to file another hundred pieces of paper before the Interstate Commerce Commission. I really do not see how that that is going to do much good.

President Johnson's task force recommended to him—a very powerful President—that he deregulate the trucking industry. President Johnson could not do it; Congress cannot do it. You tell the American people that this new Agency, by filing some paperwork with the ICC which has wide discretion to consider the matters before it, will somehow affect the underlying incentive structure of those who operate that agency.

Everyone here knows what a cartel is. It is a group of competitors that agree to limit supply of their goods and raise prices. A milk cartel operates in this country. Congress created it by law. Consumers pay more for milk than they would if this law did not exist. President Carter just increased the milk price supports. Now consumers have to pay more for milk. This Consumer Protection Agency can do nothing about that price increase. In fact, agricultural products are exempt from coverage of the Agency under this act.

So even in those areas where we could define a simple identifiable consumer interest, this proposed Agency would not appear to have the ability to affect the law in any way. For those cases where there is an identifiable consumer interest there is no question that this Consumer Protection Agency will have no effect whatsoever.

That is one of the difficulties with this bill.

The second difficulty with this bill is found in the fact that in those areas where there may be argument over what the consumer interest is, we are really not sure what this Agency is going to do.

There are numerous cases where the consumer interest is not well defined. What I consider to be the consumer interest is not what someone else thinks is the consumer interest. For these cases, this Agency becomes a captured lobbying group for some other "particular" consumer interest. For these cases Congress will spend $15 million to institutionalize a lobby.

Let me give you a few of those examples:

First, in order to protect the consumer, Congress passed a law prohibiting cigarette advertisements on television. When cigarette advertisements were allowed on television, the antismoking groups were allowed equal time. It appears from studies I have seen that the anti-cigarette ads did more to reduce cigarette sales than procigarette ads did to help cigarette sales. The ban on cigarette advertisements on television also made entry and publicity of low tar brands more difficult.

It is difficult to foresee what the Consumer Protection Agency would have done in this situation.

In 1962, the "Journal of Law and Economics" published an article on the effects on natural gas production. This study of the cost of regulation found and argued that the consumers were being harmed in the long run because of the dampening on production resulting from maximum price ceilings imposed by Government in the name of the consumer. Look what happened with natural gas. Low prices imposed by law created a shortage, so businesses had to use substitute fuels which were more expensive than the deregulated price of natural gas would have been. And these higher prices are reflected in

higher prices for consumer goods. And Congress voted down a deregulation measure last year.

Now I believe that deregulation of the natural gas industry coupled with vigorous antitrust enforcement would be in the consumer's interest. Yet, this Congress has disagreed with me. What stand would the Consumer Protection Agency have taken? Will it be able to determine what is in the consumer's best interest regarding natural gas? Congress cannot make up its mind. What position would the Consumer Protection Agency have?

There are many in this country that have heart conditions or cancer, who will not be helped by the ACP. If they need something called a beta blocker or wish to try a new risky cancer drug, they cannot get it in this country. If they can afford it, they fly overseas to get it. Why is that? Because the Food and Drug Administration is painfully slow, very, very painfully slow in allowing risky drugs on the market. Why is that? It is not in the bureaucrats' interest to take a chance even though studies have revealed that twice as many good drugs are produced than bad drugs are produced and if the FDA slows down the entry of bad drugs, then it also stops the entry of good drugs. Sure, we do not have thalidomide, but then there are thousands of people who die because of a lack of new innovative medication. They never know that their lives might have been prolonged. What stand would the Consumer Protection Agency take regarding FDA regulations? Is there an identifiable consumer interest? I do not think there is.

Nader's group wants to ban saccharine; I do not. Who would the ACP, using my tax dollars, represent?

In many instances, there are conflicting consumer interests. There is no single consumer interest to represent. Who would the ACP represent?

So I think the second difficulty with this act is that if there is some potential impact which an Agency for Consumer Protection might have, it is going to be difficult to determine what the consumer interest is.

Finally, the third difficulty I find in this proposed Agency is that it is going to probably delay numerous hearings and administrative proceedings.

Now I do not like a lot of the administrative proceedings and hearings, but at least we obtain some decisions. There is no question that by allowing additional rights to intervene, there is going to be additional delay. I find it rather difficult to assume that this delay is going to advance the interests of the consumer.

Most likely all the ACP will accomplish will be to delay what is already a long, expensive process. At least we get some decisions out of these agencies. At least they respond to some extent, but now they'll be delayed even more. Regulatory action will take even longer and that is going to be the effect of this Consumer Protection Agency—$15 million the first year spent by those who will self-proclaim themselves to have consumer interest at heart when either they can do nothing or they do not know what to do. You are going to subsidize administrative hearings and delay decisionmaking.

To consider this bill at the same time Congress considers raising or imposing tariffs on clothes, sugar, televisions, and shoes—which is probably universally agreed to be harmful to the consumer; I dis-

agree with those who spoke before me, and I believe there is no question that as you define the consumer in this bill, the consumer would be harmed by import duties and tariffs—and to consider this bill at the same time, Congress plans to run a deficit of $57 billion which will most likely be monetized into the money supply, causing inflation, seems hypocritical.

I feel that having beaten the consumer over the head for the last half century, Congress is going out in the name of the consumer and buying itself another bat for $15 million. If Congress really wants to help the consumer and that is its real motivation, then I would suggest abandoning this bill and setting up a deregulation subcommittee and begin to do away with some of the laws and regulations which impose so great a burden upon all of us.

Thank you, Mr. Chairman. That concludes my prepared testimony.

Mr. BROOKS. I appreciate your kind mention in the statement, Professor.

I would put in the record at this time my statement in 1975 which you quoted on page 3 of your statement. I would put in the entire statement which is about six paragraphs. I think this would put in better context the import of my comments at that time, rather than squabble with you about what you think my intent was.

Dr. HYMAN. Certainly.

[The material follows:]

The primary purpose of this legislation is to strengthen the consumer's hand in his dealing with the corporate giants that now control the economy. For the most part, the neighborhood dealer who has an interest in keeping his customers happy has been replaced by the chainstore and the conglomerate, whose vast computerized operations reduce the individual transaction to the blink of an electronic eye. Products have grown in complexity until it is almost impossible for a consumer to perform his own repairs. He is pretty much at the mercy of the manufacturer and the retailer, and H.R. 7575 is an attempt to restore some kind of balance to their relationship.

It would give the consumer a voice in the Government agencies that make decisions affecting their interests. There is no lack of opportunity for the business community to express its points of view. Its lobbyists are familiar figures around town. It has trade associations, law firms, experts and professionals of every kind at its command.

Now, there is nothing wrong with any of this. In fact, what we are trying to do in H.R. 7575 is to make the same opportunity to tell their story available to the great mass of consumers.

The bill seeks to accomplish this by creating an Agency for Consumer Protection with the right to intervene in Federal proceedings or activities that substantially affect consumer interests. It will also receive complaints about anti-consumer practices and see that they are acted on by the appropriate Federal agency. It will disseminate information useful to consumers.

Provisions have been written into the bill to make sure that any interventions by the new Agency will not disrupt or unduly delay the ordinary procedures of Government decisionmaking or of business activities. There are safeguards against any unwarranted release of information the Agency may obtain from Government or business sources. And, since women do most consumer buying, it is fitting that the bill bars sex discrimination in any functions that would be carried out under the act.

H.R. 7575 forms a proper basis for the deliberations of the Subcommittee on Legislation and National Security. It was introduced by me along with the distinguished leader of consumer activities, Ben Rosenthal, and an equally distinguished battler for the consumer, Frank Horton, on the Republican side.

And, inasmuch as we received considerable testimony in the 93d Congress on a similar bill, I hope our witnesses at these hearings will not go over ground that has already been adequately covered. We are, however, anxious to have any new facts or arguments on either side of the question.

Mr. BROOKS. On page 11 of your statement you say:

"According to Congressman Brooks, this committee is not going to go against government."

I don't know where you got that quote. I'm pretty much for this Government, and I trust most people are.

You say "will promulgate new rules against business." I would assure you that this committee is not going to promulgate anything. Although what we will do is recommend a bill which will include authority for an agency.

The agency may have regulations or guidelines, but the committee does not. Any action the committee would take, is taken by Congress and signed by the President.

Rules and regulations are virtually always issued by agencies after their creation, rather than by the Congress. I think it's just a matter of semantics.

You stated that a "majority of laws and regulations and rules enacted by Congress and its agencies have done far more to harm the consumer than to help him or her." I agree with you that the Agency cannot affect legislation, but if consumers are, in fact, hurt more than helped by regulation as well as legislation, shouldn't we let a consumer agency help them with this problem?

Dr. HYMAN. I think that's a very important question. I think it goes to the very heart of this bill. That is, what could this Consumer Protection Agency do about the Interstate Commerce Commission backhaul of empty trucks, other than file some more papers?

It seems incredulous that when President Johnson could not do anything about deregulating the trucking industry in this town, that the Consumer Protection Agency could do something. As to your concern with my comment on page 11 of my statement, I meant to use the word agency not committee.

Mr. BROOKS. The gas business you mean? Deregulation of gas?

Dr. HYMAN. Deregulation of the Interstate Commerce Commission over trucking—backhauls and routes and fares.

It is difficult to understand how the Agency is going to have any impact on these agencies which have been around for 30 or 40 years who have tremendous discretion to do what they want to do.

With the CAB, you have not been able to do much.

How is the Agency going to change the underlying incentive structure of the CAB or the ICC to make it more responsive and do what we really need. You have to pass a special bill to do something about the CAB.

Mr. BROOKS. That is probably true.

I think if you have an agency that will point up the problem, you are then much more likely, though nothing is assured I'll concede, to have the legislative committees make the legislative changes in the structure of those agencies when you find over and over a pattern of discrimination or disservice to consumers or lack of regard for them.

To protect consumers in the long run, is a desirable thing, both for business and certainly for government.

You understand this Agency will have some possibility and some authority to protect small business from the very kind of agency and regulation difficulties that you fear and are aware of to some extent.

Dr. HYMAN. My reaction to your statement is that you say if the Agency could make known and point out the deficiencies of these major regulatory agencies, then Congress would perhaps move to do something. I think—though I wouldn't want to be called on to do this—that with a little time I could fill this room with stacks of reports which have documented time after time over the last 20 years—in article after article and study after study in a great part financed by Government and private universities—exactly what the CAB and the ICC and banking regulations have done.

I think there is no question among many as to the effects of these agencies. We have truckloads of reports documenting this, and Congress still has not been able to do much.

As I said, a task force report to President Johnson pointed these things out. He was not able to do anything about it, and it's been fully documented for many, many years. Now we have an Agency costing $15 million a year which will have the ability to file some more papers at these Interstate Commerce Commission and CAB and FPC hearings. And the people have wide discretion and say thank you for your statement and then make their decisions—which they would do anyway.

Mr. BROOKS. Professor, you are a man of little faith. You have to have more confidence in the ability——

Dr. HYMAN. We've waited 50 years.

Mr. BROOKS. You'll have to have more confidence in the ability and capability of a vital Consumer Protection Agency to have some effect on these matters.

I've been in Congress a long time, and I don't find that well-documented cases, prepared at the university level, have had a great impact on Congress as a general rule. While they might be well documented and well authenticated and, in fact correct, it is very difficult to bring that information to enough Members of Congress, both Republicans and Democrats, to make the kind of changes that you would seem to indicate were warranted. This Agency may be able to accomplish that.

Congress is really a very representative group. I think if properly laid out to them, they will take action on some of these matters. I don't expect them all to be resolved—not next week or next month and maybe not ever. But if we can just continue to make progress in this country, we can solve some of them and we are headed in the right direction.

That's my desire. I don't think this is going to be the cure-all for every consumer problem in the world and for every small business problem in the world. It's not going to automatically do some of the things you would like done, as you seem to indicate.

This is just one method of making an effort to do it. It is not a perfect effort, but it is an effort.

I want to thank you for being here.

I yield to Mr. Erlenborn.

Mr. ERLENBORN. Professor, without having used these words, what you are really telling us is that Congress has the authority to create agencies, to tell them what to do, to see that they act in the public interest including the consumer interest, and what we should be doing is looking to those agencies we've already created that have been charged with that obligation who are imperfectly performing their function. That's why we have the agreement between you and the chairman that the consumers' interests are not being properly represented.

I think what you are suggesting to us is, as the Congress, we have an obligation to look at the CAB and FPC and ICC to determine if they are doing the job they should and, if not, to reform them, rather than create another agency that is going to do an imperfect job. Would you agree?

Dr. HYMAN. There is no question about that.

In fact, I would point out it would be a demonstration of courage by this committee to actually begin to look into the deregulation of the Interstate Commerce Commission and the CAB and some of these other agencies which have so burdened the American public.

That would be a real act of courage and would not be what I think is almost an act of a misrepresentation to call something a consumer protection agency which is nothing but a palliative to the consumer. It has a nice ring, but really does very little of substance to assist and help the consumer.

Mr. ERLENBORN. The chairman mentioned the word "semantics," and it got me thinking.

I think maybe we are being victimized by semantics by the proponents of this legislation who say that they want an agency that is going to represent the interests of the consumer.

I don't want to again get into that question you have raised as to the unitary interest of consumers and how you can identify that one interest.

I suspect what the professional consumerists—like Ralph Nader or the Consumer Federation of America—are really telling us is they want to be able to do those things they think are in the best interest of the consumer.

That may sound very similar to representing the consumer's interest, but it isn't necessarily.

One of the witnesses yesterday for the Consumer Federation of America made the point, when talking about seatbelts or helmets for motorcyclists, that it is in the best interest of consumers that they wear seat belts and helmets; and if they won't do it, we'll force them to do it. Because we elitists, knowing what is good for these people, given the governmental authority to impose our will on them, will tell that stupid consumer what he is to do in his own best interest.

So I think that is really the motivation behind the Agency—not to find out what the consumer wants and then represent that generally held concept of the consumer before agencies to try to get the consumer's interest activated before these agencies; but rather these people who are the professional consumerists, knowing what is good for the consumer whether he knows it or not, will have the ability with Government authority and our tax funds to see that the consumer does what is in his best interest, even if we must penalize him by forcing him to do it.

How do you react to that observation? Would you agree or disagree?

Dr. HYMAN. You and the people here are certainly much more expert about what motivates the many people who appear before you than I am.

I can't help but believe, however, that I personally am offended by those who want to come here and say they represent my interest.

What really offends me is not so much that they say they are going to represent me, but that much of what they advocate has often been

proven to be more to my disinterest and the disinterests of those they say they advocate.

There are many fancy regulations of a rather complex nature which we could discuss—regulations enacted by the FTC. For instance, the FTC just enacted a rule recently concerning holder-in-due-course provisions. It would be a complicated matter to discuss that issue here, but I'm not so sure that it is in the consumer's interest that this was enacted. And the same concern applies to a variety of other rules and regulations.

I am upset that those people who come here and say they represent my interests, and then attempt to get Government money to continue when these actions really are not in my interest.

Mr. ERLENBORN. I don't feel too bad about those who are self-appointed advocates. They may not represent my interests, but as long as they are self-appointed they may represent the interests of at least a certain segment of consumers. And as long as they do that, they are going to have public support.

Of course, that's the system we have today. You may have a diverse number of consumer advocates representing different consumer interests. As long as they do that—representing at least a modicum amount of consumers—they are going to continue to have public support.

What bothers me is that we are no longer going to have the concept of the self-appointed consumer advocate. Let them appoint themselves all they want.

We are now going to put that Government stamp of approval on one, and say, here is the official consumer advocate. And it is bound to be one of these self-appointed consumer advocates—one of the elitists who knows better than the consumer what is in the consumer's best interest—who is going to get that governmental stamp of approval.

So I don't know if I'm disagreeing with you or not. But let the self-appointed consumer continue. I would encourage their support. And as long as they represent a substantial body of thinking, they are going to have that support.

But I think what's happened with the Ralph Naders and some of these other people, is that they found out they didn't have that public support; and they're in jeopardy. What they really need now is to get their hands into the public till—go into the Treasury and get your tax dollars and mine so that they can continue to see that the consumer is forced to do what is in his own best interest.

Thank you for responding so well to all these questions I've asked here.

Dr. HYMAN. I was delighted. We should do this more often. [Laughter.]

Mr. ERLENBORN. If you have any further observations, please use your time.

Dr. HYMAN. I will just reiterate one or two points.

I've read past years' hearings before I came up here. Individuals, like myself, came here and stated: The consumer's interest is being harmed. And they want this agency or this bill to do something to help the consumer. I say: I really don't think so; I think this bill is a sham; I think it is a bit of misrepresentation. It will be used to make the public think something is being done about these burdensome regulations, which is not the case.

I think if Congress really had the courage to help the consumer, they would not let bills remain on the books for 30 to 50 years which have proven time and time again to be detrimental—not only by university studies in obscure places but by Government funded efforts and publications and task forces reporting to these committees and Congress and the President. There is no more information which needs to be found out before something can be done about these agencies which have so greatly burdened the consumer.

That is the reason, I think, that Congress—or at least this bill—really won't do much for the consumer. I don't know if the proponents of this bill really have the consumer's interests at heart.

That concludes my comments.

Mr. ERLENBORN. Thank you very much.

Mr. BROOKS. Is there any further comment?

Dr. HYMAN. You have been more than generous and I appreciate the time you have allowed for me to appear here today.

Mr. BROOKS. I am delighted to have you here.

Who is your Congressman in Coral Gables?

Dr. HYMAN. I don't know; I am only there temporarily. I am out in California most of the time.

Mr. BROOKS. Who's your Congressman out there?

Dr. HYMAN. I've move around so much, it would be hard for me to say.

Mr. BROOKS. You'd be a big help to a Congressman, because you could tell him how to do all these things.

Dr. HYMAN. Do you think he'd listen?

Mr. BROOKS. You would be persuasive, of course.

Dr. HYMAN. Right.

Mr. BROOKS. All right.

[Dr. Hyman's prepared statement follows:]

PREPARED STATEMENT OF DR. ALLEN HYMAN, PROFESSOR, LAW AND ECONOMICS CENTER, UNIVERSITY OF MIAMI SCHOOL OF LAW, CORAL GABLES, FLA.

I would like to thank this committee for allowing me to testify here today on perhaps what is one of the most important and vital concerns facing us all, that involving the effect of the laws enacted by Congress upon consumer welfare.

I am acutely aware that this is the seventh year that this committee has held hearings on this bill, that testimony has been offered by a variety of individuals both in and out of government, that there now exists volumes of testimony and that there is hope that finally with a Democratic Congress and with a Democratic President, this bill will finally be signed into law. I am pleased to have the opportunity to add my few remarks. I will make them short and to the point.

I would think that the only thing which distinguishes my presentation may be in that it appears that I am the only, or one of the few, academics to appear at these hearings. I do not represent nor am I affiliated with any industrial or commercial interest, nor am I representing any of a number of governmental agencies which have testified before you, nor (and this is most important) do I represent any of the self-appointed "consumers' " groups who have continually moved for enactment of this legislation.

I am a professor of law and economics. And if I can claim to be an expert on anything, it is being able to determine the economic effects on the consumer of the laws that Congress enacts. I would like to tell you what I do agree with and what I disagree with about this bill.

First, I wholeheartedly, enthusiastically, and without reservation agree with the introductory Statement of Findings of H. R. 6118:

> That Congress finds that the interests of consumers are inadequately represented and protected within the federal government; and that vigorous representation and protection of the interest of consumers are essential to the fair and efficient functioning of a free market economy.

I do not know how many times, to how many students and individuals I have repeated that same statement. There is no question that the interests of consumers can only be supported through an efficient functioning of a free market economy. Because, without a free market economy, we know that the interests of the consumers are doomed. And there is no question that the interests of consumers has been inadequately represented in Congress. I wholeheartedly agree with the finding that the majority of laws, regulati. and rules enacted by Congress and its Agencies have done far more to harm the consumer than to help him (or her). Yet while I am pleased with the Statement of Findings, I am puzzled and distraught as to the actual con' of Bill H. R. 6118. I am initially concerned with the remarks made by Congressman Brooks which are reported on page 32, of hearings before this subcommittee, June 17, 1975, where he stated:

> The primary purpose of this legislation is to strengthen the consumer's hand in his dealing with the corporate giants that now control the economy. For the most part, the neighborhood dealer who has an interest in keeping his customer happy has been replaced by the chain store and the conglomerate, whose vast computerized operations reduced the individual transactions to the blink of an electronic eye. Products have grown in complexity until it is almost impossible for a consumer to perform his own repairs. He is pretty much at the mercy of the manufacturer and the retailer and H. R. 7575 is an attempt to restore some kind of balance to their relationship.

I am disturbed with this statement because if there is any consensus among economists who study law and economics, if there is any consensus at all, it is that government itself, has done far, far more to harm the consumer, and has created far more monopoly by legislation than attributed, correctly or not, to the private corporate sector.

The list of harmful laws and regulations is endless and it would be an act of misrepresentation on Congress's part after enacting a multitude of laws which have harmed the consumer, to offer a superficial palliative, by setting up another agency with a nice title which would mistakenly cause the consumer to feel finally that his concerns have been considered.

I know today we often hear that government regulations are time consuming and burdensome. But, believe me, if you analyze the results of study after study of the effect of government regulation, not only is it burdensome, it is often perverse and harms the very people that it is supposed to help.

In past years, when one has testified as I have, a member of the Committee will normally interrupt at this time and ask, "Since he believes the consumer has been treated so badly, one would imagine he would support this bill on the consumer's behalf, which would at least offer some remedy and relief." This is the basic argument offered by those who support the enactment of this bill. Yet, that argument is faulty for three fundamental reasons.

(I) In those areas where the consumer interest is well defined, the harm to the consumer is so pervasive and has been around for so long, despite the fact that study after study has documented this harm, that it seems unrealistic that an agency which has as its only power the right to file a hundred pieces of paper at administrative hearings and at a judicial review of those hearings will in any way modify the behavior of those that enact these many laws, rules and regulations. Many of the laws which harm the consumer may only be changed by <u>legislation</u>. For example:

(A) For the past 57 years, since the enactment of the Transportation Act of 1920, the consumers, the residents who live in Hawaii and in Alaska and Puerto Rico, pay more for American goods which are shipped to their communities than do foreigners who buy these same goods. One might find this rather puzzling. Why is it that the consumers, our own citizens, have to pay more for American goods than people who live in Singapore and Hong Kong and Tokyo and Europe? The reason is, as you well know, the

restriction which continues under the Transportation Act of 1920 which says that all goods shipped from one U. S. port to another U. S. port must be carried on U. S. Merchant Marine shipping which charges approximately one-third to one-half more in shipping costs than do foreign vessels. So Congress, while having imposed this higher cost on the people who have lived in these areas for the last 55 years, now proposes a consumer protection agency. A consumer protection agency could do nothing to modify this law.

(B) Since 1936, for over 30 years, commercial banks have been prohibited by law from paying interest on checking accounts. This law supposedly was enacted to "protect" the consumer from ruinous competition and bank failures. Despite all the banking regulations and the F.D.I.C., this law remains. If the bank presidents had collectively agreed not to pay interest on their own, they would be in jail because of violation of the antitrust laws. But they are able to accomplish under legal sanction what they could not do privately.

A consumer protection agency can do nothing to modify this law.

(C) World Airways, seven years ago, wanted to initiate one-way coast-to-coast scheduled air service for $100. The C.A.B. was able through procedural maneuvering to avoid even considering the application. Everyone agrees, except the airlines of course, that deregulation would benefit the consumer, and this fact has been known for 20 years. President Johnson's Task Force on Transportation recommended deregulation in 1967 and President Johnson was unable to modify the actions of the C.A.B. It apparently will take an act of Congress to change the underlying incentive structure of that agency. Yet, you want to spend 15 to 20 million dollars a year to let a new agency file some more paper before the C.A.B., an agency which has considerable discretionary authority.

(D) While President Carter and Congress in regard to energy matters are planning to impose a tax on the consumption of gasoline over the next ten years, thirty to forty percent of all the interstate trucking trips in this country are made with empty trucks. Millions of gallons of fuel are being wasted each week and, while Congress plans to impose a tax on cars that the consumer is going to buy, at the same time, Congress allows forty percent of the trucks to ride around empty.

Again, President Johnson's Task Force recommended to a very powerful President that he deregulate the trucking industry. Though President Johnson could not do it, and this Congress

cannot deregulate, you tell the American people that this new agency by filing some papers with the I.C.C. which has discretion to consider the matters before it or not, will somehow affect the behavior of those that enact these rules that promulgated monopoly upon the American public. The enactment of the A.C.P. can do nothing for the consumer in regards to I.C.C. regulations.

(E) President Carter just increased the milk price supports. Now consumers have to pay more for milk. The Consumer Protection Agency can do nothing about this price increase.

(F) In order to protect the consumers, this body passed a law prohibiting cigarette advertisements on television. That was suppos to help the consumer. Of course, when cigarette advertisements were allowed on television, the anti-smoking groups were allowed equal time and the anti-cigarette ads did more to reduce cigaret sales than the cigarette ads did to help cigarette sales. The ban on cigarette advertisements also made entry and publicity of low tar brands more difficult. The Consumer Protection Agenc can do nothing about this law.

So, in the first place, even in those cases where we could defir a single consumer interest, this proposed agency would not appea to have the ability to affect the laws in any way. For those cases where there is a generally accepted consumer interest, this agency would be totally ineffective.

(II) In the second place, there are numerous cases where the consumer interest is not well defined. What I consider to be the consumer interest is not what someone else thinks is the consumer interest. For these cases, this agency becomes a captured lobbying group for some other "particular" consumer interest.

The Natural Gas Crisis: In 1962, The Journal of Law and Economics published an article on the effects on natural gas production. This study of the cost of regulation found and argued that the consumers were being harmed in the long run because of the dampening on production resulting from maximum price ceilings imposed by government in the name of the consumer. Look what happened with natural gas. Low prices imposed by law created a shortage, so businesses had to use substitute fuels which were more expensive than the deregulated price of natural gas would have been. And these higher prices are reflected in higher prices for consumer goods. And Congress voted down a deregulation measure last year.

Now I believe that deregulation of the natural gas industry coupled with vigorous antitrust enforcement would be in the consumer's interest. Yet, this Congress has disagreed with me. What stand will the Consumer Protection Agency take? Will it be able to determine what is in the consumer's best interest regarding natural gas? Congress cannot make up its mind. What position would the Consumer Protection Agency have?

There are many in this country that have heart conditions or cancer, who will not be helped by the A.C.P. If they need something called a beta blocker or wish to try a new risky cancer drug, they cannot get it in this country. If they can afford it, they fly overseas to get it. Why is that? Because the Food and Drug Administration is painfully slow, very very painfully slow in allowing risky drugs on the market. Why is that? It is not in the bureaucrats' interest to take a chance even though studies have revealed that twice as many good drugs are produced than bad drugs are produced and if the FDA slows down the entry of bad drugs, then it also stops the entry of good drugs. Sure, we do not have thalidomide, but then there are thousands of people who die because of a lack of new innovative medication. They never know that their lives might have been prolonged. What stand would the Consumer Protection Agency take regarding FDA regulations? Is there an identifiable consumer interest? I do not think there is.

Nader's group wants to ban saccharin; I do not. Who would the A.C.P., using my tax dollars, represent?

In many instances, there are conflicting consumer interests. There is no single consumer interest to represent. The A.C.P. will be a captured agency.

(III) I stated that there were three things wrong with the proposal to set up this agency. I have mentioned two.

The third difficulty is found in what the agency is going to accomplish on a day-to-day basis. It is going to intervene. You and I, we know the situation. If you intervene, if you are allowed to file some papers, then the regulators can listen to those concerns and can make their decisions anyway. And, in no way, believe me, in no way in the entire history of regulatory agencies in this country is the fact of filing an additional 100 pieces of paper stating what someone particularly feels is his or her particular view of the consumer interest going to modify what this regulatory agency does. And even if they do modify it, they may modify it to harm the customer. You have no way of knowing what the consumer interest is.

But most likely all the A.C.P. will accomplish will be to delay what is already a long, expensive process. At least we get some decisions out of these agencies. At least they respond to some extent, but now they'll be delayed even more. Regulatory action will take even longer and that is going to be the effect of this consumer protection agency. Fifteen million dollars the first year spent by those who will self-proclaim themselves to have consumer interest at heart when either they can do nothing or they do not know what to do. You are going to subsidize administrative hearings and delay decision making. I disagree with

many of the decisions made by the agencies, but at least there are some decisions as opposed to no decisions at all. The worst situation is to have no decision, with agencies taking years to conclude proceedings. And according to Congressman Brooks, this committee is not going to go against government but will promulgate new rules against business. This is its intent. This is its real motivation.

To consider this bill at the same time Congress considers raising or imposing import tariffs on clothes, sugar, TV's and shoes, which is universally agreed to be harmful to the consumer and while at the same time Congress runs a deficit of 57 billion dollars which will most likely be monetized into money supply causing inflation seems hypocritical at best.

After having beaten the consumer over the head for 50 years, Congress goes out and in the name of the consumer buys itself another bat for fifteen million dollars.

If Congress really want to help the consumer, if that is its real motivation, then abandon this bill, set up a deregulation subcommittee and begin to do away with some of the laws and regulations which impose so great a burden upon us all.

Allen Hyman
Professor
Law and Economics Center
University of Miami School of Law

Mr. BROOKS. The committee will adjourn until 2 p.m. this afternoon.

[Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 2 p.m., the same day.]

AFTERNOON SESSION

Mr. BROOKS. The committee will reconvene.

Our first witness for this afternoon is Mr. Paul S. Weller, Jr. He is the vice president for public affairs and secretary of the National Council of Farmer Cooperatives. He was named to his current post in March of 1972.

Mr. Weller is listed in "Who's Who in America," and has a long history of involvement in agricultural matters since graduation from the University of Maryland in 1960.

Mr. Weller, we are delighted to have you here. We would ask you to proceed as you see fit.

STATEMENT OF PAUL S. WELLER, JR., VICE PRESIDENT FOR PUBLIC AFFAIRS, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. WELLER. Thank you, Mr. Chairman. I might add, at the very beginning, that I have the primary responsibility for working closely with consumers and the consumer organizations on behalf of the Nation's farmer cooperatives.

In this regard, we have been very active with consumer interests.

There are currently some 7,500 farmer-owned cooperatives in the United States. These member-owned and controlled organizations currently market nearly 80 percent of the Nation's dairy products, 40 percent of its grain, 35 percent of its cotton, and some 25 percent of its fruit and vegetables.

Total annual volume of these consumer-owned businesses now approaches $55 billion, helping to provide the Nation with the world's most plentiful supply of food and fiber.

Because farmer cooperatives are, themselves, consumer owned, they have had a deep commitment to consumer affairs. Staff members of the national council helped form the Agriculture Council of America, an organization dedicated to developing close working ties between farmers and consumers.

Today, I serve on the organization's advisory committee, a dairy cooperative member serves as its chairman, and much of its funds come from farmer cooperative organizations from coast to coast.

We in the cooperatives are part of American agriculture, the Nation's largest industry serving consumers, with assets of more than $200 billion. We are dedicated to a strong consumer effort for the benefit of all Americans.

It is for this reason that the national council chooses to present this statement on government consumer efforts. We do not separate farmers and consumers into distinct groups, for we are convinced that both must work together as a team.

Indeed, we are also convinced that the groups are inseparable, and that farmers rank among our most important consumers, purchasing goods and services far in excess of the national norm. We have an important stake in any consumer effort by the Federal Government.

In brief, farmers and their cooperatives generally support legislation that would protect consumers' rights. However, we find ourselves in a dilemma on H.R. 6118, legislation designed to establish an independent consumer agency in the executive branch of Government. We would like to address our remarks to that proposed legislation.

Sections 5 and 9 of the act would encourage and support research and testing of consumer products and services—yet we already have an independent Consumer Product Safety Commission charged with this responsibility.

Indeed, it is the feeling of the farmer cooperatives that existing Federal agencies—such as the Federal Trade Commission, the Department of Justice, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission, to name a few—already have adequate authority to protect the interests of consumers.

What concerns us most in the farmer cooperatives are the following specific provisions of the act:

Section 6(d)—Representation of Consumers. There are an estimated 200 decisionmaking processes within the U.S. Department of Agriculture which would be determined to "substantially affect the interest of consumers * * *." These include the critically needed commodity marketing orders that even out the flow of perishable milk, fruit, and vegetables to the Nation's marketplace.

They also include much of the $20 billion in agricultural exports that help this Nation pay for much of its escalating energy costs from foreign imports.

We in the agricultural sector have nothing to hide from such an agency. However, none of us—consumers and farmers alike—can afford the lengthy disruptions in the Nation's finely tuned food and fiber programs that would be caused by judicial actions brought by persons not skilled in agricultural production and marketing.

The same is true of succeeding provisions that permit agency intervention in private judicial proceedings. We have prepared a statement that lists some of the most serious disruptions that could be forthcoming from agency action for submission to this committee.

Mr. BROOKS. Without objection, it will be included in the hearing record.

[The material follows:]

ADDENDUM

(STATEMENT ON AN AGENCY FOR CONSUMER PROTECTION)

There is potential in H.R. 6118:

(a) Disrupt emergency food aid to foreign nations through the beneficial P.L. 480 food assistance programs, and thus seriously affect U.S. foreign policy;

(b) Suspend or otherwise disrupt the orderly processes of federal marketing orders that exist to even out the distribution -- and thus the prices -- of milk, fruits, and vegetables to market;

(c) Embargo the export of U.S. agricultural commodities to foreign customers, thus reducing markets for U.S. farmers, adding to the critical balance of payments deficit, and disrupting long-standing contracts with buyers around the world;

(d) Burden and negate the contractual arrangements of USDA's commodity procurement and distribution program that provides food for the nation's School Lunch project;

(e) Damage the orderly marketing and price surveillance activities provided to U.S. livestock producers by the Packers and Stockyards Administration;

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Addendum continued

(f) Boost operating costs, administrative delays, and tax revenue needs of the Food Stamp program;

(g) Delay beyond critical deadline dates USDA price support and Commodity Credit Corporation food supply programs and inventory control operations;

(h) Negate and render ineffective the food inspection services and responsibilities of USDA in protecting the consuming public;

(i) Duplicate and complicate the Federal channels of responsibility for consumer protection and representation.

# # #

Mr. WELLER. Section 10(a)(1)—Information Gathering. This section authorizes yet another Federal agency to send its subpenas and its staff members into the daily workings of private business. Sometimes we in the farmer cooperatives feel we are working more for the Federal Government than for our farmer members.

Let me cite an example of how this increasing Federal information gathering can cripple and impede the operations of business. Not long ago, the Federal Trade Commission—another consumer agency of the executive branch—sent a 17-page subpena to one of our northeastern dairy cooperatives. It demanded detailed business records of a 10-year period.

What ensued nearly brought this farmer-owned cooperative to its knees, for it was required to spend approximately 56,500 man-hours at 42 different locations in 5 States, collecting approximately 29,200 documents requested.

At $10 per hour—a reasonable estimate—it cost this already financially troubled cooperative nearly a half million dollars just to get the data for the Federal Trade Commission. That did not include legal fees.

Now we propose to add yet another burden through another consumer agency, and we propose to prosecute those who cannot comply through the Federal district courts. Nearly all of our farmer-owned cooperatives would be liable under this section's small business exemption.

Section 18—Exemptions. Legislation to establish an Agency for Consumer Protection, passed by the U.S. Senate on May 15, 1976—and passed by the House—carried a partial exemption for agricultural production programs. I read from the Senate version, as follows:

> Nothing in this Act shall be construed to authorize the Administrator to intervene or participate in any proceeding or activity directly affecting producers of livestock, poultry, agricultural crops or raw fish products, including but not limited to, such proceedings and activities relating to the initial sale by such producers of raw agricultural commodities; Commodity Credit Corporation price support, procurement, loan and payment programs; Public Law 480 and other export programs; acreage allotment and marketing quotas; Federal crop insurance, soil conservation and land adjustment programs; Farmers Home Administration and Rural Electrification Administration loans; marketing orders; and programs to prevent the spread of livestock and poultry diseases; plant pests, and noxious weeds.

That amendment was adopted in the Senate, and a similar one in the House last year. Mr. Chairman, we feel that if a bill like this is passed by the U.S. Congress it must, very definitely, carry an exemption for agricultural production and its programs.

An amendment of this type would not—and I say "not"—exempt agency action on nonfarm food costs. If price manipulations and anti-customer practices exist in the processing, distribution, and retailing sector, then any new consumer agency would have full authority to intervene on behalf of the consumer.

However, it would prevent Federal Government intervention into the production of agricultural commodities where historic precedent has proven that such action is almost invariably counterproductive.

If we are to have an Agency for Consumer Protection, then it is absolutely imperative that such an amendment be added to this legislation. We do not feel that the limitations carried in section 18 of the act provide any kind of adequate protection for agricultural production.

Mr. Chairman, it is not the tradition of the farmer cooperatives to be completely negative on legislative issues. We do not want to be at all negative on consumer protection and representation within the Federal Government. We are consumers, our members are consumers, and, of course, our customers are consumers.

Mr. Chairman, we would propose to this committee that the most sensible and effective consumer protection would be forthcoming, not from another Federal agency, but rather from increased consumer representation and involvement within the Federal executive agencies where technicians and specialists actually understand the problems and possible solutions.

We in agriculture have made a substantial move in that direction. We have a Secretary of Agriculture who is strongly proconsumer. We have an Assistant Secretary of Agriculture for Consumer Affairs—Mrs. Carol Tucker Foreman—who has been committed throughout her professional career to consumer protection.

In brief, we propose that the work of the previous administration to activate and support consumer affairs programs within each of the executive agencies be continued. This is the logical course of action, and we in the farmer cooperatives support this type of program.

We support a program in which each agency organize and adequately fund an Office of Consumer Affairs, and that such an office be headed by a qualified consumer advocate with full authority to represent the consumer's voice in all agency affairs.

For the U.S. Department of Agriculture, under the new Assistant Secretary for Consumer Affairs, we would propose such a program to include the following:

One: The Assistant Secretary for Consumer Affairs would be included in all USDA policy meetings thought to have any interest or impact on consumers.

Two: the USDA's Office of Consumer Affairs would have an advocacy role, designed in each case to fully represent the interests of individual consumers.

Three: An economic impact study would be required on each consumer-oriented decision, taking into account its costs not only to consumers, but to farmers and agribusiness as well.

Four: Every effort would be made within USDA to get valid consumer input at the beginning of each pertinent decisionmaking process. Regulations should not be publicly proposed without full consumer input into their preparation and direction.

Five: The USDA Office of Consumer Affairs would be allowed to operate with its own independent budget and limited supporting staff, to include research and accounting assistance for maximum effectiveness.

Six: Regular consumer forums would be scheduled by USDA through its nationwide Cooperative Extension Service to involve consumer input at the local grassroots level.

Seven: The full capabilities of the USDA Office of Communications and the Cooperative Extension Service would be utilized to publicize these consumer forums, as well as to publicize all USDA actions that warrant consumer input and action.

Mr. Chairman, that is the kind of plan that we propose for each of the executive agencies. We are convinced that such an interagency ef-

fort, aimed at individual consumers, will be much more effective than an external bureaucracy designed to take potshots at other executive agencies and businesses.

Our basic objection to this bill is that it will surely increase the risks of farming which are already at an intolerable level for many. The Washington Post published an editorial last year that sums up our thoughts on the subject. It said in part:

> The more uncertain and speculative farming becomes, the harder it will become to achieve the maximum production that the country now urgently needs, for both consumers here and those large populations abroad that now depend upon us * * *.

We, and the American farmers whom we represent, respectfully ask your consideration of these comments.

Thank you for this opportunity to appear here this afternoon.

Mr. BROOKS. Thank you for a very interesting statement, Mr. Weller.

I might observe, as you have probably noted, the bill which we are now considering does have an agricultural exemption almost exactly like the one we had in the bill last year, if you recall what that was.

Mr. WELLER. Yes, sir, I do.

The bill I have, Mr. Chairman, is dated April 6. Is that the final draft?

Mr. BROOKS. That is correct. The exemption is on page 31. I think it substantially does the job which you want done, to exempt basically those commodities under the Department of Agriculture.

Mr. WELLER. Mr. Chairman, the two major areas of concern to us in agriculture are exports and commodity marketing orders. I do not see those in here.

Mr. BROOKS. You think those are the two major ones?

Mr. WELLER. Yes, sir; as far as we are concerned.

Mr. BROOKS. They are more important than wheat, feed grains, soybeans, and cotton?

Mr. WELLER. Yes, sir. These are support and price programs that you have listed in the bill.

Our problem is export embargoes. Thirty-three percent of the U.S. agricultural production is now exported abroad. If we have export embargoes, this will be a disaster to American farmers' prices.

Mr. BROOKS. Would you send us some language on that? We will take a look at it.

Mr. WELLER. Yes, sir.

Mr. BROOKS. Would you also give me an estimate of what your organization spends annually to represent the views of its farming membership to Congress. What is their general overhead?

Mr. WELLER. Of the National Council of Farmer Cooperatives?

Mr. BROOKS. Yes. You can furnish it for the record.

Mr. WELLER. Our budget, Mr. Chairman, is public record. Our budget approaches about $900,000 for a professional staff of 18 people.

Mr. BROOKS. Thank you very much.

Mr. Horton?

Mr. HORTON. I have no questions, sir.

Mr. BROOKS. Mr. Rosenthal?

Mr. ROSENTHAL. I have no questions.

Mr. BROOKS. Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Weller, let me thank you for your testimony. I think that the Chairman of the Paperwork Commission would be particularly interested in your observation on page 4 about information gathering, and the cost of complying with the demand for information by the Federal Trade Commission.

I am not sure that Mr. Horton, the Chairman of the Commission, was in the room at the time, and that he is aware of your comments. I wanted to call that to his attention.

It is really a horrendous figure—a half million dollars.

Mr. Weller. Yes, sir.

Mr. Erlenborn. That is the minimum necessary to comply with furnishing information. This must be an outstanding example of one of the most horrible horror stories you could come up with.

I would be surprised if we could find anything that bad, but I may be wrong. Maybe there are other demands by Government that even exceed that.

Mr. Weller. Mr. Erlenborn, the cooperatives have had an experience within the last 5 years of having one of these about every 2 or 3 months from a Federal agency. I just dread to think that we would have another agency engaged in a similar activity.

Mr. Erlenborn. I do, too.

I have had to intervene on behalf of constituents—businessmen—when the Federal Trade Commission has demanded information from them. I guess it must be the worst offender there is in this field.

Fortunately, I have been successful in some cases in getting the Commission to moderate its demands so as to lessen the cost to my constituents.

Mr. Weller. I think the Antitrust Division of the Justice Department runs a close second to FTC as far as the co-ops are concerned.

Mr. Erlenborn. There is one other item of the bill on which you may not be prepared to testify, but it has been called to my attention.

This is the area which states that, though the Freedom of Information Act applies to this Agency—as it would to all other agencies—the exemptions do not apply when the proposed consumer advocate demands information from another Government agency.

If a member of the public demanded it under the FOIA, the host agency—the one that has the information—could refuse under one of the exemptions.

Having then acquired this information that would be subject to an exemption, this agency is under no requirement to consult with or follow the guidance of the original information-gathering agency, but could—if there were a similar FOIA demand—turn loose, and not exercise their right under exemptions, to maintain the confidentiality of information.

You mention the Federal Trade Commission. It can get a substantial amount of confidential information which might be protected if it wishes to exercise its rights under the FOIA. The new consumer advocate could get that same information, and might not, necessarily, exercise the same judgment.

The new consumer advocate might even suggest some new lines of inquiries for the Federal Trade Commission so it could come up with bigger, more ambitious projects of information gathering with which you are already familiar.

Mr. WELLER. Mr. Erlenborn, you have ruined my day. [Laughter.]

Mr. ERLENBORN. Thank you very much, Mr. Weller.

Mr. BROOKS. We want to thank you very much. Mr. Weller, will you take a close look at that exemption on page 31 and see if it covers your export market orders?

Mr. WELLER. The way we read it and the way our attorneys read it, it does not.

Thank you.

Mr. BROOKS. Thank you very much.

Our next witness is scheduled to be Mr. Crook. Mr. Crook, I hope you will forgive us, but I see that we have been joined by a very distinguished Member of Congress, Philip M. Crane, from the State of Illinois.

He has taught and been an administrator in schools in the Midwest. He is a veteran of the Army, was on active duty from 1954 to 1956. He is the father of seven girls, and was elected to the House in 1969 where he now serves on the Ways and Means Committee.

Congressman, we are delighted to welcome you to the committee.

STATEMENT OF HON. PHILIP M. CRANE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. CRANE. Thank you very much, Mr. Chairman. I was introduced recently, before giving a speech, and someone made reference to the fact that we did have eight children. They thought it was altogether fitting and proper that I was named to the Ways and Means Committee.

Mr. BROOKS. Is it eight or seven?

Mr. CRANE. It is eight—seven girls and one son.

Mr. BROOKS. Is your son the youngest?

Mr. CRANE. No, sir. He was number five in line. We then got overconfident and had three more girls. After that, we lost our nerve. [Laughter.]

Mr. BROOKS. The gentleman will proceed. Don't tell us how. [Laughter.]

Mr. CRANE. Mr. Chairman, before beginning, let me express my thanks to you and the other members of the subcommittee for letting me appear here today. I appreciate your consideration.

What prompts my visit is a deep-seated concern about the potential adverse effects of the bill that, essentially, is designed to protect the interests of the American consumer. While creating a single agency to guard the consumer may seem beneficial on the surface, in practice it will complicate and impede the already burdensome process of Federal regulation.

On the one hand, existing Federal regulatory agencies will continue to make rules and regulations in the public interest. On the other hand, the proposed Agency for Consumer Protection—ACP—would be charged with contesting those very same rules and regulations in the consumer interest.

In theory, this legislation is based on the assumption that a single agency can act as an advocate for consumers as a class. The fact is that there are as many consumers as there are citizens, and their interests are more diverse than one can imagine.

It is ridiculous to think that any one Federal agency could possibly represent them all.

Richard Simpson, the first Chairman of the Consumer Product Safety Commission, once stated—in a letter to President Carter:

> It is my view that sincere, and well intentioned, legislators too often seek instant "cures" for such problems by the creation of yet another Federal agency.

He continued by noting that:

> The ACP legislation would appear to me to be an attempt at such a legislative panacea. Unfortunately, as we are all too well aware, the cure is often worse than the illness. Just because the legislative title says "Consumer Protection" doesn't mean that in practice the consumer will be served.

Truer words were never spoken.

Many people forget that there is no lack of Government interest and involvement in the welfare of consumers at the present time. In fact, there are about 50 Federal agencies and bureaus performing some 200 or 300 functions affecting the consumer, and if they have not helped him by now, what reason is there to believe that yet another agency would do any better?

Moreover, creation of an ACP would seem to contradict President Carter's stated purpose of streamlining the bureaucracy. At the very least, it will increase paperwork and redtape. At the worst, it threatens to frustrate not just the regulatory process, but our entire system of governmental checks and balances.

In the first place, I believe it unwise to set up one super agency with the power to intervene in the affairs of other agencies, and to call their decisions into question in the courts.

The Agency for Consumer Protection, proposed in H.R. 6118, will have not only the right, but the mandate to become an adversary against every other agency—first disputing their findings, and then overriding their decisions by appeals to the Federal courts.

Private persons and companies engaged in proceedings with other Federal agencies now will be confronted with the situation in which no decision involving consumer interests is final until the Agency for Consumer Protection has agreed to let it rest, or until it has been reviewed and settled by the courts.

The ACP would not only be authorized to appear in formal hearings, but would also be legally empowered to intervene in agency hearings of a most sensitive nature, well below the level of formal rulemaking.

This is the result of a provision which allows for the Administrator of the ACP to intervene in Federal regulatory agency investigations requiring an investigational hearing.

It seems to me that such intervention by the ACP Administrator would destroy the very purpose of the investigatory hearings which are nonpublic for good reason.

The ACP would also have the right to issue mandatory interrogatories, subpena trade secrets, and other confidential information from business and individuals. Any piece of paper, any type of communications, and records of any kind might have to be turned over to the proposed Agency for Consumer Protection.

This kind of situation would have a shattering effect on normal negotiations between business and the Federal Government. It would literally put an end to the practice of negotiated settlements between

the two—settlements which often save the consumer the cost of lengthy litigation.

Once the ACP made itself a party to all such informal negotiations by demanding copies of communications, whatever cost advantage there might be in settling would diminsh.

In pursuit of the information that would be necessary for it to function, the ACP would have the power to demand information about business and businessmen, regardless of its confidentiality.

Even privileged data, reports, studies, or findings submitted to another agency could be obtained by ACP. Existing understandings as to the proprietary nature of such items would not be binding upon the ACP, leaving anyone's business activities open to the perpetual threat of public disclosure.

Moreover, as inferred earlier, such an agency could bring adversary pressure to bear on Government decisionmaking and, through prolonged and tortuous litigation, further bog down the decisionmaking process.

The paperwork alone would increase the delay and cost in excessive proportions, and the legal costs of both prosecution and defense would be tremendous. Since the taxpayer would foot the bill for the former and the consumer would be charged for the latter that unique combination of the two—the American citizen—would be the loser twice over.

Perhaps that is why a national survey, done by Opinion Research Corp., found that 75 percent of the consumers they questioned opposed setting up a new agency favoring, instead, making existing Federal consumer agencies more effective.

If all that were not enough, what about those who are exempted by this legislation? Certainly consumers are affected by the activities of labor unions, the setting of price supports, and the market price of loans to farmers.

Yet all these things are exempted, just as organized labor is from the provision of the antitrust laws, in what can only be considered an amazing paradox. The very least we can do is apply the same torture to everybody so that everyone can enjoy it together.

However, if we were to do that, I suspect the furor would be so great that the value of applying H.R. 6118 to anyone would soon be brought into serious question.

The trouble with legislation like this is that it is not possible to be all things to all men. One person's protection may be another's poison, and it is high time Congress and the American people recognized that a stance you take on behalf of one class of consumers is apt to leave another class unhappy.

This legislation will undoubtedly leave a lot of people unhappy, and I urge the subcommittee to reject it.

Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Crane, I want to thank you very much for a splendid statement. We appreciate you taking time out of your busy schedule to come over and personally testify on this matter in which you are interested. We are grateful to have you here.

Mr. CRANE. Thank you, Mr. Chairman.

Mr. BROOKS. Mr. Horton?

Mr. HORTON. Phil, we thank you very much for coming before the committee. We appreciate the benefit of your views on this piece of legislation.

I have no questions, Mr. Chairman.

Mr. CRANE. I appreciate the opportunity to be here.

Mr. BROOKS. Mr. Erlenborn?

Mr. ERLENBORN. I really should not pass up the opportunity of getting my colleague from Illinois on the other side of the witness table to ask him a number of questions I have been wanting to ask him for a long time, but I am going to restrain myself.

I will just say that I do appreciate your taking your time to testify. You have very succinctly—yet, I think, very accurately—outlined the reasons why this committee and the Congress should reject this legislation.

Probably the highest compliment I can pay to you would be to say that I would like to adopt your remarks as my own.

Thank you.

Mr. CRANE. Thank you very much. I appreciate your generosity in letting me testify.

Mr. BROOKS. The next witness before the committee is William E. Crook.

Before we proceed, I would like to place in the record a statement from the Honorable Richard T. Schulze who could not be here. He has submitted his statement for the record.

Without objection, his statement will appear in the record.

[Mr. Schulze's prepared statement follows:]

PREPARED STATEMENT OF HON. RICHARD T. SCHULZE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, I thank you for the opportunity today to lend my views in opposition to H.R. 6118, the latest version of the Consumer Protection Act of 1977.

For over eight years now many of us have been fighting the battle against growth of the Federal bureaucracy, in terms of opposing the creation of new Federal agencies. We have been successful since 1969 in halting the creation of a Consumer Advocacy Agency; but like a cat it must have nine lives, for once again legislation is pending in both the House and Senate to create such an office.

What is truly amazing to me, Mr. Chairman, is how President Carter can justify creation of a new agency at the same time that he is calling for Government reorganization. As a matter of fact, on the same day that President Carter sent his message to Congress calling for a Consumer Advocacy Agency, Bert Lance, his budget director, speaking on reorganization said, "There are too many agencies in Government. We just don't need that many. We need to do something about it." It would appear that they are playing both ends against the middle and the American people are going to end up caught in the squeeze.

We all know the arguments against creating this agency because we have been stating them for years. But they are as valid today as they were in the late sixties when we began this fight. There is no doubt that creation of this Agency would add to the growth of bureaucracy, expand the Federal work force, cost a lot of money, and add months to the long delays that already stifle the making of final decisions in the governmental process. The real cost of a new governmental agency frequently goes unnoticed when it is established, but in this case not only would a Consumer Advocacy Agency place an additional charge upon Federal revenues for its own operation but would also impose costs upon other governmental agencies that have to deal with it.

I think the American people have made it very clear, Mr. Chairman, that they are disenchanted and indeed angry with Government growth, Government cost, and Government intervention. President Ford, in the last Congress in response to this feeling of the people, and with a commitment to helping the consumer, sponsored the creation of consumer representation plans within the already existing executive agencies and departments. It certainly makes sense that a consumer spokesperson within each agency will have more clout and know more about the goings-on of that particular agency than a separate agency that has to cover the entire spectrum of the Federal Government. I would hope that these "inside"

consumer offices would be retained and, if needed be, strengthened instead of pursuing this really foolish idea of establishing an entirely new agency, which I do not believe would be as effective, efficient, or as cost effective as the consumer representation that currently exists.

Thank you.

Mr. BROOKS. We also have a statement from Congressman Charles E. Grassley, from Iowa, for the record.

Without objection, that statement will be in the record.

[Mr. Grassley's prepared statement follows:]

PREPARED STATEMENT OF HON. CHARLES E. GRASSLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

My going on record at this early time as opposing the establishment of an Agency for Consumer Protection may seem strange to some Members of this subcommittee. After all, it is difficult to be against a bill which in its preamble states that, and I quote, "Vigorous representation and protection of the interests of consumers are essential to the fair and efficient functioning of a free market economy."

The fact that I am speaking out against H.R. 6118 should not be construed as manifesting an indifference to the best interests of the consuming public. The opposite is true. I believe that consumers ought to get a fair shake in their dealings with business and the federal government. Legitimate consumer grievances must be redressed.

Nonetheless, from my perspective the evidence is considerable, if not overwhelming, that the bill H.R. 6118 is not the appropriate legislative vehicle to reach a mutually desired end. Let me briefly outline a few of the reasons why I am opposed to the legislation now before the Subcommittee on Legislation and National Security.

There is first and foremost the matter of cost. To be sure, section 20 authorizes only $15 million for fiscal year 1978 and $17 million for fiscal year 1979. This sum of money, while not insignificant, is relatively small in light of a projected federal budget of $462 billion for fiscal year 1978. Perhaps the fact that the $32 million authorized by this bill can be referred to as "small" by a fiscal conservative such as myself is indicative of a larger problem in the area of federal spending.

But getting back to my original point, I do not believe that the authorized $32 million will be adequate to accomplish all that this legislation seeks. There will be increased costs to other federal agencies which will have to come out of their appropriations. Further, I anticipate that if H.R. 6118, or a similar measure, is enacted into law, we in the House of Representatives will be continually deluged with additional authorization and appropriation bills asking for similar "small" increases so that additional staff may be hired, scope of activities expanded, et cetera. We will, in short, have created a monster that will consume increasing amounts of tax dollars. This will not sit too well with the folks back home who are already taxed to death.

There can be no doubt that setting up an Agency for Consumer Protection will increase the costs of doing business in the United States. The $32 million authorization which I mentioned earlier represents only a fraction of what the total cost will be to business and ultimately the American consumer. I would respectfully request that this subcommittee and the full Government Operations Committee investigate this matter thoroughly before reporting out a bill such as H.R. 6118.

If there have been any indepth studies of the total cost of H.R. 6118 which have come to your attention, I would appreciate your sharing them with me and the American people. I am not aware of any such total cost projections. Based upon my own gut reaction and the way that similar federal adventures have worked in the past, I believe that these insidious indirect costs would run into the billions of dollars.

Recently, key economic indicators have once again raised the spectre of double-digit inflation. The increased cost of goods and services to the consuming public of an Agency for Consumer Protection can only further fuel the fires on inflation. That certainly will not be in the best interests of the American people. Consumers, especially those who must get by on a fixed income, will suffer in a very real and visible way.

There are more than a few other matters of concern to me as a Congressman and a consumer. Foremost among these is that H.R. 6118 will set upon a new level of federal bureaucracy at a time when the people are crying out for less federal regulation and subsequent interference in their lives. To establish a new superagency at this point in space and time will run counter to many of the campaign promises made by the current occupant of the White House. The American people will feel, and justifiably so, that once again the faith and trust they have placed in their elected representatives has been betrayed. Apparently campaign promises to reduce the size and growth of the federal bureaucracy are made to be broken.

Next I question why section 18 of H.R. 6118 sets up so many exemptions from coverage, particularly those that relate to the activities of organized labor. It would almost seem that the drafters of this legislation have reached the conclusion that the activities of organized labor, particularly with reference to salary increases, have no impact on the consuming public. Even the most cursory surveys of public opinion would demonstrate that the contrary is true.

Finally, we are told that this proposed Agency for Consumer Protection will represent the interests of the American consumer. But what happens when the interests of one consuming group are at variance with another. Are we going to see one group of consumers, represented by a government attorney, battling it out with another set of consumers, also represented by an attorney on the federal payroll, with the outcome of the dispute to be decided by yet another employee of the Agency for Consumer Protection.

We ought to allow the American consumers to decide for themselves what is in their best interests. Sooner or later we are going to have to trust the people to make choices and decisions and run their own lives.

Mr. BROOKS. Mr. Crook is the president of the National Association of Retail Grocers, and is the owner of Bill Crook's Foodtown in Nashville, Tenn., a seven-store chain. He is past president of the Middle Tennessee Retail Grocers Association.

Mr. Crook, we are delighted to have you here. We welcome your testimony. A 5-minute prepared summary looks like a good statement, but if you feel like it, you can read the entire statement or add to it.

STATEMENT OF WILLIAM E. CROOK, PRESIDENT, NATIONAL ASSOCIATION OF RETAIL GROCERS; ACCOMPANIED BY FRANK D. REGISTER, EXECUTIVE DIRECTOR; AND HENRY BISON, JR., COUNSEL

Mr. CROOK. Thank you. Mr. Chairman.

I would like to introduce our executive director, on my right, Mr. Frank D. Register.

Mr. BROOKS. Mr. Register, we are glad to have you here.

Mr. CROOK. On my left is our counsel, Mr. Henry Bison, Jr., from a firm here in Washington.

Mr. BROOKS. We are delighted to have both of you.

Mr. CROOK. I am an independent retail grocer, and appear here as president of the National Association of Retail Grocers of the United States—NARGUS. I operate Bill Crook's Foodtown Super Markets with headquarters in Old Hickory, Tenn.

NARGUS is a national organization representing independent retail grocers and has approximately 40,000 members. I appreciate the opportunity of appearing at this hearing, and will keep my statement within the time limits set by the committee.

Grocers are in close daily contact with consumers. Grocers depend, for their success, on pleasing consumers. This closeness to the consumer leads us to oppose H.R. 6118 and the proposal to create a new independent Consumer Protection Agency in the Federal Government. In our view, the proposed legislation will do consumers more harm than good.

Our reasons for taking this stand may be summarized as follows:

The Federal Government bureaucracy is too large to operate effectively. Creating a new independent agency will add another Government layer, making the bureaucracy larger and even more unresponsive.

The huge size of the Federal Government makes it very difficult to manage. Government reorganization and reform are badly needed. There are so many Federal agencies and departments in existence that no one knows their exact number.

One of President Carter's most frequent campaign pledges was to reorganize the Federal Government and deal with what he termed "the horrible bloated bureaucracy."

If we accept the argument that some Federal agencies are not meeting their responsibilities in protecting consumers, it is better to correct the problem from within the agency by better management and congressional supervision than it is to create a new agency and another layer of Government.

Establishing an independent Consumer Protection Agency will result in less consumer concern among thousands of Federal officials throughout the Government who will feel this responsibility has been taken over by the new Agency.

Adequate protection of consumer interests can be provided by existing Federal agencies which are required by law to serve the public interest and that includes consumer interest.

The small business exemption in section 10(d) (1) and (4), on pages 23 and 24 of the bill, does not extend to most of the Nation's small grocers. The vast majority of these operators are affiliated with either a voluntary or a cooperative buying and merchandising group.

So-called affiliated independent grocers—numbering over 100,000—do not appear exempt under the bill from having to file reports and answer questionnaires sent out by the Agency Administrator.

The cost of providing such reports and answering questionnaires would be a heavy burden on small operators.

If a Consumer Protection Agency is set up under this legislation, it will not be long before Congress will be told the Agency is too weak, and too small to do its job. Congress will then be asked to increase the Agency's size and independence, with much broader powers of investigation and regulation.

Our primary objection to H.R. 6118 is that it proposes the wrong remedy for making the Federal bureaucracy more responsive to consumer needs.

Whatever the Federal Government is doing wrong or can do better in protecting consumers will not be corrected with maximum efficiency by creating another new Government agency in Washington.

Reducing the number of such agencies and requiring those that remain to do their job more effectively with better supervision from Congress is much more likely to achieve the desired results.

Thank you for the opportunity to present this statement.

Mr. BROOKS. I want to thank you very much, Mr. Crook, for coming down. If there is anything you would like to add from your full statement, we would be happy to put it in the record.

Mr. CROOK. Thank you, Mr. Chairman.

Mr. BROOKS. Without objection, it is so ordered.

[Mr. Crook's prepared statement follows:]

Prepared Statement of William E. Crook, President, National Association of Retail Grocers

Mr. Chairman and Committee Members, I am William Crook, President of the National Association of Retail Grocers of the United States (NARGUS). NARGUS is a national trade association representing independent retail grocers with over 40,000 members operating supermarkets as well as convenience stores.

NARGUS opposes the so-called independent consumer agency bill for two basic reasons. First, the interests of consumers, including better representation of consumers in the activities of the federal government, will not be adequately served by the proposed bill. Second, the bill goes contrary to the urgent need to reduce the federal bureaucracy.

I

One of the reasons frequently given for creating a new independent consumer protection agency is that the federal government has grown too big and too complex for consumers to be heard. President Carter's recent consumer message to Congress referred to the need to plead the consumer's case within government.

The bill, in its declaration of proposed findings, makes the statement that "consumers are inadequately represented and protected within the Federal Government." Supporters of the bill say its purpose is to protect and promote the interests of the people of the United States as consumers.

Since the entire population of some 212 million persons in the country are consumers, and almost everything the federal government does affects consumers, the complexity of making sure that government decisions are made in the consumer interest is as great and wide-ranging as the huge federal bureaucracy itself.

What is the answer to the question why the federal government makes decisions affecting consumers without adequate consideration of consumer interest and why consumers cannot make their influence felt when it is needed?

The answer is that because of the huge size of the federal government, it is very difficult to manage. Government reorganization and reform are badly needed.

Another answer to the problem is to impose on every government agency the obligation to give a high priority to consumer interests. Place on each agency administrator the responsibility to promote and protect the interests of the people of the United States as consumers in keeping with their other duties and responsibilities.

Give each administrator and agency director adequate powers to establish procedures for carrying out consumer protection. Have Congress oversee the entire operation through periodic checks. Supplement this effort with directives from the President. Establish clear lines of accountability.

What we are proposing here is that instead of centralizing consumer advocacy in a new independent agency, give consumer protection a high priority in every government agency.

Considering the immense size of the federal bureaucracy - over 2,000 agencies at last count - , and taking account of the wide range of government policies that affect consumer interests, the most progress can be made by decentralizing this important concern throughout the federal government. The job is too big to assign to one agency. It is too important to be delegated to a relatively few agency employees among so many on the public payroll.

If Congress creates a so-called consumer protection agency, government administrators will give less attention to the effects of their actions on consumers with the result that consumer interests will be more inadequately protected and less promoted in the federal government than is the case today.

If a consumer protection agency is created by this legislation, it won't be long before Congress will receive complaints that the Agency is not

doing its job, that the purposes of the Agency are not being carried out, that the Agency is ineffective and weak. Complaints will be made that the Agency lacks sufficient size, power, and independence to do its job. Urgent requests will be made to substantially increase the size of its appropriations, staff, and power. Cries will be made to strengthen the new Agency by giving it more independence of action with wider coverage. Various possibilities come to mind, such as demands for direct power to compel the production of documents and witnesses, authority to write rules of business conduct, and prosecute offenders. In the course of time, the new Agency will tend to grow and duplicate functions performed by existing agencies. This is the way the federal bureaucracy has worked in the past. Nothing suggests the process will be any different with respect to the Consumer Protection Agency.

If we accept the argument that some federal agencies have not carried out their responsibilities for protecting consumers, the most effective remedy is to find out the cause for such deficiency and take measures that will enable the agency to perform better. The answer is to correct any bad practices from within, and not to create another federal bureaucratic layer.

If some agencies of federal government are not working like they should in protecting consumer interests, nothing is gained by adding to the number of agencies already in existence.

If the bureaucracy is not responsive to consumers, it will only make matters worse to create another layer of government making the bureaucracy larger and even more unresponsive.

Whatever the federal government is doing wrong in connection with protecting consumers will not be corrected by creating another new independent agency in Washington. Reducing the number of federal agencies and requiring those that remain to do their job more effectively with better supervision from Congress are more likely to achieve the desired results.

II

Proponents of this legislation stress that small business has nothing to fear from the proposal because it is exempt from the Agency's information-gathering authority. The statement is made that small businesses are exempted from compulsory disclosure of information where an imminent and substantial health or safety danger is not involved.

It seems to be recognized that without effective safeguards, the Agency's powers to obtain information from business could impose a burden on small enterprises that would threaten their success.

Section 10 of the bill gives to the Agency's Administrator authority to require businesses to file with him reports or answers in writing to specific questions. The Administrator can obtain data and information from business concerns whose activities he determines may substantially affect consumers. He can also obtain information through a federal agency issuing its orders, including access to all documents, papers, and records.

The provision in the bill providing a small business exemption from the Agency Administrator's power to require filing reports and answering Agency questionnaires defines a small business concern in terms of not having assets or emmployees exceeding narrow limits. However, in determining whether any of these limits is exceeded, the small business concern and any of its affiliates, including those arising out of a franchise agreement, are to be considered together.

Requiring that small business concerns and their affiliates be considered as one enterprise when attempting to qualify for the small business exemption, will result in denying the proposed exemption to the vast majority of independent retail grocers. The reason for this is that a large percentage of independent grocers are affiliated with either a cooperative or a voluntary wholesale group.

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Almost 90 percent of total independent grocery store sales are presently accounted for by members of a retailer-owned cooperative or grocery wholesaler-sponsored voluntary group. These grocers, numbering well over 100,000, are commonly referred to in the trade as "affiliated independents." They are not exempt from the consumer Agency Administrator's demands for filing reports and answering questionnaires under the proposed legislation. Affiliated independent retail grocers, including small single store operators, would be required to file consumer Agency government reports and questionnaires.

The requirement for filing Agency reports and questionnaires poses a burdensome government paperwork problem for affiliated independent grocers. The solution to this problem is not, in our opinion, to broaden the small business exemption in Section 10 of the bill. A better answer is to postpone approving the proposed measure at least until the need for a new independent consumer agency is clearly justified in light of current prospects for governmental reorganization and reform proposals. These prospects include, in addition to various reorganization plans, zero base budgeting, the sunset concept, and regulatory reform. When the idea of a consumer protection agency first arose over eight years ago, there was nothing approaching the urgent efforts toward government reorganization and reform that exist today. In light of current wide-ranging efforts to improve and reorganize government activities, it would be best to wait awhile before proceeding with creation of a new independent consumer agency.

III

A basic objection to the bill is that it operates counter to the need for reducing the size, complexity, and unmanageableness of the federal bureaucracy.

The President has just signed legislation authorizing him to begin reorganization of the Executive Branch. One of Mr. Carter's most repeated

campaign pledges was to reorganize the federal government and make what he has termed "the horrible, bloated bureaucracy" manageable. There are so many federal agencies now in existence, no one knows their exact number. Coordination of the activities of federal agencies is a matter of such concern that some 129 interagency units are in operation to resolve conflicts, overlapping, and duplication of efforts.

The point of these comments are: first, that this is not the time to consider creating another independent federal agency; second, that the most urgent governmental need today is reform, reorganization, and streamlining of the federal bureaucracy; third, that adding another layer of the federal bureaucracy will cost consumers more than any benefits they may receive from the proposed new agency; fourth, that business, including small business, such as "affiliated" independent retail grocers are threatened by a heavier government paperwork burden connected with compulsory filing of Agency reports and questionnaires; and, fifth, if a new consumer agency is established it will not be long before supporters of the Agency will return to Congress contending the Agency is too weak and too small to adequately protect consumers. They will urge legislation expanding the Agency's size and powers so that eventually it becomes a "super agency" of Government.

Thank you for the opportunity of presenting this statement.

Mr. BROOKS. I think yours is a very well compiled statement and reflects your view succinctly.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Crook, I notice that you have prepared for us today, something called a 5-minute summary of prepared statement. You said something within the first paragraph about keeping your statement within the time limit set by the committee.

Were you advised before coming here today that there would be some sort of a limitation on your time to present this to the committee?

Mr. CROOK. I understand that we were, Congressman; yes.

Mr. ERLENBORN. I think that is interesting because we had a little flap here this morning when the chairman told us that nobody was going to be under any time limit—they were going to have all the time they wanted.

He seemed to be unaware that witnesses have been advised they would be limited to a 5-minute presentation. You were not here this morning. I have not talked to you. I do not think you were aware of this dispute within the committee.

I think it is interesting to have this information that witnesses were told they had such a time limitation.

Thank you very much, Mr. Crook.

Mr. BROOKS. You are very kind, Mr. Erlenborn.

Let me state, for the record, that the evening was going too long, and I indicated to the staff that they should encourage witnesses to summarize their statements. If the witnesses thought they were limited to 5 minutes, that is unfortunate.

We have extended to every witness all the time that they wanted. If they do not finish this afternoon, I will come back in the morning and hear the rest of them.

When I asked Mr. Crook if he had anything else to say, he did not indicate that he wanted to add to his statement. If he does wish to now, he can. If you want to add to it, you can.

You are now recognized, Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

I just think it is fine that you are finally aware of what your staff was apparently doing in your name.

Mr. BROOKS. I might add, at this point, that I had occasion to talk with Mr. Leon Jaworski—a very fine attorney in Houston—and he made it very clear to me that he had indicated his interest in testifying before this committee on May the 5th, the 11th, or the 12th.

I explained to him—as they had previously explained to his staff—that the committee did not anticipate having hearings on this matter on those dates, but that we would welcome his statement.

I told him that again on the telephone at about 5 minutes to 1 when he called back. He said that would be fine. He will prepare a statement and he did not feel he had been denied an opportunity to testify. He was delighted to submit the statement in behalf of his clients and would do so.

[See app., p. 383.]

Mr. BROOKS. I would like, at this time, to submit a statement for the record from the U.S. Industrial Council.

Without objection, their statement is accepted for the record.

[The statement follows:]

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL

ON H.R. 6118, A BILL TO ESTABLISH AN

INDEPENDENT CONSUMER AGENCY

FOR THE LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE

OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE

During the campaign which led up to his election to the nation's highest office, President Carter repeatedly promised the American people that he would reduce the size and scope of the federal bureaucracy. Since taking office, he and his advisors have promised businessmen that every effort will be made to free business of our unwarranted federal regulations and red tape that have been strangling our private enterprise system. Introduction of Administration-sponsored legislation to create a new federal bureaucracy, the so-called Agency for Consumer Advocacy, flies in the face of both these promises.

In a speech introducing this legislation in the Senate, one of its sponsors, Senator Abraham Ribicoff, stated that the President has indicated he intends to implement the legislation to a great extent through reorganization by consolidating and eliminating duplicating existing consumer functions in the Federal bureaucracy. Yet the proposed legislation plainly states that the authority of the ACA to carry out its purpose "shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law." This provision of the bill seems to make it clear that it can only

add another layer of federal bureaucracy, despite what the President may have indicated.

The United States Industrial Council and its 4,000 members employing some 4,000,000 people will yield to no one in our interest in the welfare of consumers. The survival of our member companies depends on their ability to serve the needs of consumers and provide them with products and services of a quality that meets with their approval and at prices they are willing to pay. In our free enterprise economy, the consumer occupies top position. By conferring or withholding their patronage, the consumer determines which business enterprises shall succeed and which shall fail. When government tries to think for the consumer and make decisions for him or her, we move away from the private enterprise system that has produced such a wealth of goods and services at affordable prices, and further along the road to a socialist state.

The fallacy of the ACA bill is in the premise that consumers are a separate and distinct class whose interests are distinct and different from those of other citizens. Every citizen is a consumer. The decisions and actions of every agency should, therefore, give the fullest consideration to the best interests of every citizen as a consumer, as well as taxpayer, and producer -- for each of us plays these multiple roles.

In its Statement of Findings and Purposes, the bill says: "The Congress finds that the interests of consumers are inadequately represented and protected within the federal government... Each year, as a result of this

lack of effective representation before federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences..."

If this be true, it is a strong indictment of the Congress and the federal agencies it has created. It shows that Congress has failed miserably in meeting its responsibility for oversight of the federal agencies. Enactment of legislation creating an Agency for Consumer Advocacy to make sure that federal agencies are considering the welfare of consumers would be simply buck-passing.

Instead of setting up one more agency -- another level of bureaucracy -- Congress should start riding herd on the agencies that it already has created to make sure they are doing their job of looking out after the interests of consumers.

The ACA legislation is nothing more than politics, pure and simple. Every member of both the House and Senate wants to be on the side of the consumer -- as they should be. They shouldn't have to prove it by setting up another federal bureaucracy. The people of the United States have begun to recognize they are the victims, not the beneficiaries of "big brother" government. They hoped the present Administration would get "big brother" off their backs, cut the federal government down to size, and lift some of the tax burden caused by having to support more and more federal bureaucrats. That hope will be dashed if Congress, with the support of the President, sets up the ACA bureaucracy.

Sponsors of the ACA legislation say it is not a "major" new spending

program since it would authorize the spending of only $60 million the first three years for the new agency. It is a sad commentary on how far we have gone in flinging around federal dollars that a federal spending program is not considered "major" unless it involves billions, rather than millions, of dollars. Furthermore, if the ACA follows the same path as other government spending programs, the costs of operating it will grow year after year.

Instead of creating the efficiency and good management practices in the federal government that are the announced aim of the President, the proposed legislation would lead to inefficiency in the functioning of federal agencies by authorizing the ACA to intervene in agency proceedings and administrative hearings virtually at will. It would deprive agencies of staff time and facilities needed to perform the functions with which they are charged, since the bill provides that each federal agency is "directed to make its services, personnel and facilities available to the greatest practicable extent within its capability to the Agency (ACA)..." Federal agencies also are directed to provide statistics and information when requested by the ACA, which means added work loads for the agencies.

In an attempt to silence critics of the independent consumer agency proposal, a number of changes intended to answer criticisms have been made in the legislation since it originally appeared in earlier sessions of Congress. For example, special exemptions for small business and family farmers have been written into the bill to keep down opposition from those quarters. Some protections against the revelation of trade secrets have been included. A whole new section requiring cost-benefits justification for new agency rules

and regulations has been added. The result, however, is an exceedingly long, complex and cumbersome bill. The changes are mainly cosmetic. They do not correct the basic fallacy in the bill -- that we don't need another federal bureaucracy to meddle with, and interfere in, the work of other agencies and to intervene in, and initiate, litigation in the courts purportedly to help consumers.

Despite protestations of its sponsors to the contrary, the legislation establishing an ACA would lead to harassment of business and could cause irreparable injury to business firms. It requires companies to answer written interrogatories from the ACA. This authority given to the ACA could easily be abused and lead to "fishing expeditions." At the best, it could cause the lost of considerable amounts of time and money, and create numerous headaches, for companies in trying to provide all the information that some ACA bureaucrat decides he needs.

The testing of products by the ACA and dissemination of test results would give federal bureaucrats the power to make some companies rich and put others out of business. This is too much power to place in federal employees who are subject to human error and prejudices. Like other sections of the bill, it would move us away from a market economy, which has been the source of our strength as a nation, and expand the scope of government control.

We have faith in the American consumer and in his ability to make his own independent decisions on what meets his needs and the prices he is

willing to pay. As businessmen, we are willing to leave our fate in his or her hands.

As far as the effect of federal agency actions and regulations on the consumer, we believe this is best determined at the point where the actions are taken and the regulations determined -- rather than in a new federal agency to serve as a watchdog over the other agencies. The role of watchdog over the actions of federal agencies properly lies with Congress, and Congress should not try to shirk that responsibility by setting up one more agency.

Setting up an independent consumer protection agency would be a fraud upon consumers because it would not produce the benefits for them they would be led to expect but would just set up another bureaucracy. If Congress wants to help consumers, the best thing it can do is to stop creating new agencies, reduce the bureaucracy, cut federal spending, and eliminate a substantial portion of government regulations and red tape. In that way, it will reduce inflation so that the consumer's dollar will buy more, and ease the tax burden so he will have more dollars to spend. It also will enable the free enterprise system to function in a way that will produce more goods and services at lower cost.

The Agency for Consumer Advocacy is an idea whose idea has come and gone. It should now be put away for all time.

Mr. BROOKS. I would also like to place in the record a statement by Mr. Avram J. Goldberg of the Stop & Shop Co., which is an operation that has 157 Stop & Shop Supermarkets, 75 Bradlee's Department Stores, 35 Medi Mart Drug Stores, and 48 Perkins' Tobacco Shops in New England, New York, and New Jersey. It employs 25,000 people and, in 1976, had retail sales of more than $1.4 billion.

I would submit for the record their statement and their letter which appears to very thoroughly endorse the Consumer Protection Agency.

Without objection, it will be inserted.

[The letter and statement follow:]

(617)463-6263

The Stop & Shop Companies, Inc.
P.O. Box 369 Boston, Massachusetts 02101

AVRAM J. GOLDBERG
President

April 19, 1977

The Honorable Jack Brooks
Chairman
Committee on Government Operations
The House of Representatives
Washington, D.C.

Dear Mister Chairman:

The Stop & Shop Companies, Inc. endorses H.R. 6118, which would establish an Agency for Consumer Advocacy within the Federal government, for the same reasons that two years ago we endorsed Senate 200.

A copy of the statement of endorsement I made at that time is attached and may be considered applicable to H.R. 6118 as well. I would like to note that in the two years since we have become more persuaded than ever of the need for more formalized consumer involvement in the governmental decision making process.

We believe that involvement should be through a single agency pulling together the multiplicity of consumer specialists now scattered through the many Federal Agencies.

In my statement endorsing Senate 200, I noted that in 1974 Stop & Shop had 46 Consumer Boards in operation from Maine to Southern New Jersey; today the Boards number 56 and involve more than 1,500 consumers in the decision-making process of our Company.

In those two years, our Corporate Consumer Board has given us valuable insight into the issues of prescription drug pricing, packaging, nutritional education, Universal Product Code and Scanning and food additives.

We think we are a better Company for this consumer involvement; we think the Government will benefit from the same kind of consumer involvement and I respectively urge that your Committee approve H.R. 6118.

Sincerely,

Herman J. Goldberg

AJG:ec

CC: The Honorable Esther Peterson, Special Assistant to the President for Consumer Affairs

ENC.

The Stop & Shop Companies INC.

P.O. BOX 369, BOSTON, MASS. 02101

STATEMENT BY AVRAM J. GOLDBERG, PRESIDENT OF THE STOP & SHOP COMPANIES, INC. MARCH 24, 1975, ENDORSING SENATE 200 (94TH CONGRESS)

"The Stop & Shop Companies, Inc. endorses Senate 200, a bill to establish an Agency for Consumer Advocacy, and urges its passage in this session of Congress.

This legislation will make possible planned and regular consumer involvement in the governmental decision-making process. For nearly a decade, consumer advocates have sought departmental recognition of that right. Stop & Shop now adds our voice to those seeking such recognition.

Stop & Shop has always firmly believed in a philosophy of consumer input in our daily business lives. We believe it only right that the Federal government receive that same input. Every day we make decisions which affect the consumer, such as open dating, toy safety, The Universal Product Code. Therefore, we formally involve the consumer in our decision-making through inter-action and dialogue with our customers - all the way from our individual store managers to our senior executives. Right now we have 46 consumer boards in 7 states - with almost 1,000 members who meet regularly with us. They provide that essential consumer input, and frequently have influenced changes in major company policies and procedures. In addition, our company has a strong and growing department of consumer affairs, professionals headed by Ms. Karen Hayes, who interact on a constant basis with company executives at all levels.

Our experience over the last 8 years, particularly with our consumer board program, has proven to us that the same philosophy, systematically organized and recognized at the Federal level, should have the same beneficial impacts on governmental decisions and decision-makers - as it has had on us. S. 200 provides the means by which consumer advocates will be heard, along with the representatives of business, the professions, unions and the other groups which make up our society, as Federal agencies perform the tasks entrusted to them. Finally, we are pleased that the present bill has built into it reasonable safeguards adequate to allay the understandable concerns of the American business community."

(The Stop & Shop Companies, Inc. operates 157 Stop & Shop Supermarkets, 75 Bradlees Department Stores, 35 Medi Mart Drug Store and 48 Perkins Tobacco Shops in New England, New York and New Jersey. The company employs 25,000 people and in 1976 had retail sales of more than $1.4 billion.)

Mr. BROOKS. On the Mahon amendment to recede and accept a Senate amendment to the supplemental appropriation bill, there is a vote being taken.

The committee will stand in recess until we return from that vote.

Did you have anything else you would like to say?

Mr. CROOK. No, Mr. Chairman. Thank you.

Mr. BROOKS. We are glad to have you. You just have to understand that these little differences within the committee do arise.

[Recess taken.]

Mr. BROOKS. The subcommittee will reconvene.

Our next witness is the very distinguished former Member of Congress, James D. McKevitt. He is Washington counsel for the National Federation of Independent Business. He has been associated with the federation since 1972. He served one term in the House from Colorado from 1971 to 1973. He has been a district attorney in Denver, Assistant Attorney General of the United States for Legislative Affairs in 1974, and General Counsel of the Energy Policy Office.

Mr. McKevitt, we are delighted to welcome you back to the committee. We are ready to hear your testimony. You may talk as long as you want. You may talk all afternoon if you wish.

STATEMENT OF JAMES D. McKEVITT, WASHINGTON COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS; ACCOMPANIED BY JOHN MOTLEY III, LEGISLATIVE REPRESENTATIVE

Mr. MCKEVITT. Thank you very much for your gracious welcome. It is certainly a pleasure to be before this committee with you and also your distinguished colleague, Mr. Erlenborn.

I would, first of all, like to respectfully request that my statement be made a part of the record and be incorporated therein, and then my remarks will be brief.

Mr. BROOKS. Without objection, so ordered.

Mr. MCKEVITT. I am appearing today with Mr. John Motley who is also representing the National Federation of Independent Business.

Mr. BROOKS. We are glad to have you, Mr. Motley.

Mr. MCKEVITT. I am pleased to state, Mr. Chairman, that as of last week we went over the half million mark in member firms. We now have 500,000 firms across the country. These include everything from manufacturers to small retail stores, gas stations, and the like.

As you know, we poll them eight times a year as to their different feelings on significant issues which are germane to economics in small business. In March of this year we polled them on the ACA, formerly known as the Consumer Protection Agency. The result of the poll at that time was 86 percent opposed to it; 11 percent favored it and 3 percent were undecided.

However, I might state this, Mr. Chairman: So far as the concerns of small business are concerned, they just feel that they have too much Government. They feel that the creation of one more Federal agency is going to be another pack on their back.

The average small businessman or woman spends one-half to 1 day a week dealing with Federal, State, and local bureaucracy, either through investigations, through forms, or a variety of problems. They see the ACA as one more big problem.

I know there is some discussion about an exemption so far as small business is concerned. We have serious reservations as to the scope of the exclusion and the duration of the exclusion. But I think the biggest concern we have, whether there is a small business exclusion or not, is the growth of the Federal Government and the fact is that this is going to be one more giant agency, of which they are deeply concerned.

In addition, many of our members still have vivid memories of an agency which was created several years ago called the Occupational Safety and Health Act, which has been a menace to many of them. Whether you call it OSHA or any other four-letter swear word, the problem is OSHA has been a big concern to small business. Many of our members see ACA as another OSHA in the making.

So far as regulations are concerned, we feel that regulations, if they are not in the provisions of the act now, will be the next step so far as the act is concerned.

I remember, for example, when CPSC was set up. At those early stages the committee was assured that there would be no regulatory powers and that the budget would be limited in scope. Then like topsy, CPSC grew to become a very large agency.

Of course, our final concern is the fact that where exclusions are concerned, one of the big outstanding exclusions is labor. Of course, we ask "Why"?

Mr. Chairman, I am trying to keep my remarks brief. That is the essence of the concerns of the National Federation of Independent Business and its members across the country.

I want to thank you very much, sir, for this opportunity to appear before this committee today.

Mr. BROOKS. I want to thank you very much, Mr. McKevitt.

On page 23 of the bill we have a pretty good exemption for small business concerns. Your organization represents mostly small business; is that correct?

Mr. MCKEVITT. That is correct, sir.

Mr. BROOKS. It says:

> The Administrator shall not have the power to issue written interrogatories or require the production or disclosure of any data or other information under subsection (a) of this section from any small business concern.

They are talking about assets not to exceed $1 million. That should help some of your members.

What do you figure your organization spends on representation before Congress now? You have over 500,000 members?

Mr. MCKEVITT. Yes.

Mr. BROOKS. That is a pretty good amount.

Mr. MCKEVITT. They spend a good deal of money. One of our biggest thrusts, Mr. Chairman, is letters.

You are talking about the cost of what we spend now?

Mr. BROOKS. Yes; your operation here. Could you submit for the record a rundown on the expenses here in the Washington office?

Mr. MCKEVITT. We would be glad to do so. We break it all down now as to lobbying reports——

Mr. BROOKS. Just send a copy of what you already have documented. I think that would be enough.

Mr. MCKEVITT. We would be glad to give that.

Mr. BROOKS. Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

I want to welcome you to the committee. Thank you for your brevity. I noticed you kept well within the 5 minutes. I do not know whether it was due to the chairman having his knife out at that time. You might not have noticed it.

[Laughter.]

Mr. ERLENBORN. You did a good job.

Mr. MCKEVITT. As a freshman Congressman, I worked under the 1-minute rule and I have never broken the habit.

Mr. ERLENBORN. You did a fine job. I do want to thank you for your testimony. I do not have any particular questions to ask you.

Mr. BROOKS. Are you sure you do not have anything else you want to tell us?

Mr. MCKEVITT. Mr. Motley has a comment he would like to make, Mr. Chairman.

Mr. BROOKS. He was not scheduled, but as a special favor and in view of our general easy, moderate, kindly disposition and attitude toward everybody who wants to spend the afternoon here, we want to extend a special invitation to John Motley III.

Mr. MOTLEY. Thank you, Mr. Chairman.

You asked about the small business exemption which is presently in the act. NFIB believes that the exemption as written is an extremely bad test for small business. Assets is not a very good test of a small firm. It would be very possible for an extremely small firm owning a couple of pieces of very expensive machinery to be well over the $1 million in assets test.

The Small Business Administration, which is given authority to determine what is a small business in this country for either Government assistance or for procurement or whatever, uses two criteria: gross sales and number of employees.

I think if you are going to include the exemption for small firms from paperwork that the easiest possible thing would be to say "as defined by the Small Business Administration." Therefore, we would be working from one set of criteria and we would not have a great deal of confusing language on the books.

Mr. BROOKS. You are mighty nice to come down.

Mr. Erlenborn?

Mr. ERLENBORN. Yesterday I was having lunch with one of my former colleagues, Dan Kirkendall, who is from Texas. He was commenting, and I think the chairman will recognize this, on the investment that somebody in west Texas would have, for instance, in land alone, much less the cattle, to operate what would be essentially a small business. It could easily exceed $1 million.

So I think your comment is well taken. I thank you for your suggestion.

It would be refreshing and I think encouraging if one committee would recognize what another committee has done in definitions so we would have some uniformity which would be helpful to everyone.

Mr. MOTLEY. Mr. Erlenborn, there is one other thing that bothers us. The exemption does seem to be temporary with the Administrator being requested to come back and report in 2 years. We have no faith that it would be continued after that period.

Mr. BROOKS. I want to thank you very much.
Mr. McKEVITT. Thank you very much.
[Mr. McKevitt's prepared statement follows:]

PREPARED STATEMENT OF JAMES D. MCKEVITT, WASHINGTON COUNSEL, NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. Chairman, the more than 500,000 member firms of the National Federation of Independent Business (NFIB) are unalterably opposed to the creation of an Agency for Consumer Advocacy.

In 1962, President Kennedy told Congress that consumers were the only important group in the economy who did not have their views heard by Government. Since then we have listened to repeated claims that consumers are the only group who must stand by helplessly while the Federal Government increasingly regulates their everyday lives.

Mr. Chairman, our membership can attest to the fact that consumers are not alone in feeling left out of the political process. As small and independent businessmen, they have seen time and again that the small business sector of our economy is ignored and overburdened by the regulatory agencies. In fact, every argument that has been made in favor of a consumer agency also applies to the plight of the small businessman. But small business is not looking for this kind of help and would rather not have an expansion of Federal authority in areas traditionally left to free enterprise.

However, if the ACA is created, the balance of power between consumer and businessman will be disrupted so severely it may be necessary to strengthen the Small Business Administration simply to restore some balance. The same would be true of agriculture and other parties as well. Where does it end?

NFIB's members oppose the ACA for several reasons, the first being their solid distrust of big Government. Small businessmen are painfully aware that big Government means overregulation of their daily activities, mountains of paperwork, and litigation delays. All of these add up to increased costs and large periods of time spent away from the conduct of business, neither of which small business can afford.

Let me make it clear that small business often reflects the same concerns that prompt the Government to action. For example, no humane employer is against industrial health and safety, and we believe that the majority of our members strive to maintain a safe working place for their employees—without the government telling them to do so. Statistics bear us out in our opinion since small business is adjudged by experts to have the best record for safety within the business sector. Yet none checked the facts before the bill creating OSHA was passed in 1970. As a result, OSHA has become one of the major headaches a small businessman must face today. Because of OSHA, CPSC, and other regulatory agencies, the small businessman is justifiably fearful of our Government, since more often than most, Government actions lead to increased burdens upon small business.

The creation of yet another agency, however laudatory in theory, will only add another layer of bureaucracy, thereby, removing the American public one step further from their Government. Passage of the ACA would contradict the avowed wishes of Americans for the reorganization and simplification of our Government. The people want their Government to be more accessible to them; easier access cannot ensue from expansion of the existing bureaucratic muddle.

There are at present numerous consumer advocates scattered throughout the executive branch. The claim has been made that these public officials are simply not doing a good enough job in protecting consumer interests. For this reason, the proponents of the ACA justify its creation by arguing that the new agency will consolidate consumer expertise within one agency, and that these advocates will not be diverted by any one special interest group seeking favors from the Government at the expense of the rest of the American people. We do not consider this argument a valid justification of the ACA.

We are also concerned that the formation of the ACA will result in an abdication of the responsibility on the part of other public officials to consider the interests of the consumer before any action is taken. Each agency is mandated to act in the best interests of the American people, i.e., the consumers of the Nation. If we give this responsibility to one agency alone, we may well be offering public officials the opportunity to ignore their responsibilities and pass the buck to the ACA Administrator—who can only voice consumer concerns but has no voice in the final decisions of the other agencies.

NFIB feels that the answer to this problem lies in a thorough review of existing consumer services within the Government. If there are deficiencies, then steps should be taken to correct them. If the various existing agencies cannot be made more responsive to consumer demands, how logical is it to assume that another Federal agency will be more successful?

As the bill is presently drafted, the ACA is given no regulatory powers. NFIB believes that, in all probability, the ACA will evolve naturally into a regulatory role. With the ACA in existence, it would become logical for Congressmen and professional consumer groups to seek out the ACA's advice and opinions concerning new consumer legislation.

Soon every bill that passes Congress will be sent to the ACA for review. The next step is implementation, and who better to implement a consumer bill than the experts in consumer affairs? The agency's powers will have to be expanded in order to meet the demands for new services. With regulatory powers, the ACA will be able to implement legislation; it will also have more influence in the proceedings of other agencies. In short, the ACA will have the necessary "clout" to push consumer causes in the government. In no time at all, the Agency for Consumer Advocacy will become a costly, full-blown regulatory agency, doing exactly what it was intended to prevent other agencies from doing—providing unwarranted interference and arbitrary regulations of people's lives.

Some of you may be wondering why the small businessman is concerned about the ACA since there is included in the bill an exemption for small business from enforcement of interrogatories (paperwork). NFIB is gratified that special attention was given to small business in the drafting of this bill. Even so, our members have serious reservations about the exemption.

The criteria used in this bill to define small business is unacceptable to us. If, as stated in Section 10, the SBA is to work closely with the ACA in protecting the interests of small business, it would be advisable for both agencies to share the same point of reference. Since SBA is universally recognized as the official representative of small business concerns, we feel that the definition in the bill in section 10(D)(1) should conform to SBA standards. It would be much easier to amend the bill than to expect the SBA to function with two different perspectives—one for their own programs, and another for those of the ACA.

One way to conform to SBA standards would be to define small business by its annual gross receipts instead of by its assets or net worth. Assets and net worth are not accurate indicators of the size of the business, since they can be as closely related to holdings that are not related to the business as to actual business activity. Annual gross receipts are a much more accurate indicator of small business activity.

Section 10 also requires that the ACA and all other Federal agencies give "due consideration . . . to the unique problems of small business" when implementing the act. The language is too vague and insubstantial for the small business sector to feel assured of adequate consideration. The intent of this section needs to be clarified, so we know whether "due consideration" will mean that potentially harmful actions to small business will not be undertaken, or simply that small business will get a specific mention each time agencies discuss implementation.

By far, the most important concern regarding the exemption for small business is whether it is permanent or temporary in nature. We believe our members are justified in being skeptical about the exemption. They can see that concessions have been made to them in the short run, but with no guarantee that they will remain perpetually exempt from the paperwork requirements of the bill. This is a deep concern because small business already spends too many hours and too many dollars in filling out government forms. Unlike large companies, these businesses rarely employ a full-time accountant. Either they employ the services of an independent accounting firm, or the businessman and his family spend their limited free time in complying with Government regulations and resultant paperwork. If the exemption is temporary, small business will be faced with an additional burden, taking more time away from running their businesses and increasing the costs of accounting services.

The claim has been made that without enforcement of interrogatories, the ACA will have no means to investigate consumer complaints against small businesses and will be powerless to prevent abuses. Since the vast majority (97 percent) of all businesses in this country are small, NFIB members are convinced that they will be a primary target for consumer groups seeking expansion of the ACA's powers. Congress will be pressured to remove the small business exemption. If this happens, complying with the requirements of the ACA will become yet another headache for which there is no cure.

The fear of reduction or removal of the small business exemption is not ungrounded. Small businessmen have seen their exemption under the minimum wage laws flatly reduced by an Act of Congress, then a further reduction as a result of erosion caused by inflation. Very likely the pattern will be repeated in the case of ACA.

In closing, let me assure you that NFIB's membership is not opposing the safeguarding of consumer interests. After all, consumers are customers, and satisfied customers patronize those stores that give them quality goods at a competitive price. Good business practices mean satisfied customers and profitable businesses. And for a businessman, profit is measured not only in terms of dollars, but in the building of a reputation as an ethical, dependable, fair businessman.

Of equal importance is a fact which some proponents of the ACA bill seemed to have forgotten: every businessman is also a consumer. He has a vested interest in assuring that both Government and business take care of the consumer. The creation of an ACA, however, would form an imaginery dividing line separating consumers from producers. The ACA will encourage an adversary relationship between consumers and businessmen that does not, in reality, exist. The small businessman will encounter an agency that is eager to listen to his complaints about other businessmen, but which is distrustful of his own business practices. By all means, let's join forces to ensure the well-being of the consumer. But the creation of the ACA will ultimately lead to divisiveness, distrust, and disillusion among the American people.

Thank you.

Mr. BROOKS. Our next witness is Mr. John Datt. He is the director of the Washington office of the American Farm Bureau Federation. He joined the staff of the Farm Bureau in 1950. He was named to his present position in January of 1976 after having served as director of congressional relations and associate director of the Washington office, among other positions.

STATEMENT OF JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION; ACCOMPANIED BY FRED POOLE, ASSISTANT DIRECTOR OF NATIONAL AFFAIRS

Mr. DATT. I have with me Mr. Fred Poole, who is assistant director of national affairs for the American Farm Bureau Federation.

Mr. BROOKS. We are delighted to have both of you. We encourage you to talk as long as you want and say anything you want and take your time.

Mr. DATT. We have a statement which you have in front of you which we would like to have filed for the record.

Mr. BROOKS. Without objection, so ordered.

Mr. DATT. I have some brief comments.

Mr. BROOKS. The gentleman is recognized.

Mr. DATT. The Farm Bureau is the largest general farm organization in the United States with a membership of 2,676,259 families in 49 States and Puerto Rico. It is a voluntary, nongovernmental organization representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

In the past our organization has opposed the creation of a so-called Consumer Protection Agency on the basis that it is wrong in concept and wrong in principle. This Agency for Consumer Protection will, in our view, lead inevitably to unilateral Government decisions on many matters which are better left to the marketplace. Moreover, it is a mechanism which lends itself to Government control of the economy.

Despite the assertions of consumer protection, the proposed ACP Act is, in fact, quite wide of that mark. It is instead a design for Gov-

ernment agency chaos. It creates a cloak of alleged consumer interest, vesting the total decision in such matters in the hands of the Administrator whereby he decides where and when he will appear in other agency proceedings and in court. The Administrator is empowered to undertake to represent whatever interest he may call a consumer interest merely by the allegation thereof. These are enormous powers.

This bill proposes agency versus agency confrontations with final resolution of differences to be made in the Federal courts, if need be.

Necessarily, we look with keenest interest upon the impact such legislation would have on the agency with which agriculture has the most dealings, the U.S. Department of Agriculture. It is here that we meet a broad exemption of the USDA and related agencies and programs from the provisions of the bill H.R. 6118 in section 18 thereof.

It is here that we must repeat what we have said before. "We did not ask for or participate in the drafting of that exemption nor do we support it. Exemptions granted by one Congress can easily be withdrawn by another."

From all that has been said in the past, and all that we can perceive in today's economic circumstances, prices would likely be the first target of any ACP created by the Congress. This is the nature of things.

Agriculture's peculiar sensitivity to this matter accounts for the nature of farming business itself and what is the most overlooked feature of the market situation. The nature of the farming business is that it deals almost entirely in futures from seed to crop, from birth to finished animal. Farm production is a continuing progression.

It begins with an uncertain production cost against an uncertain quality of production to be sold at an uncertain future price. In the case of most producers, and certainly farmers, hoped for prices set the level of production. Overhang his market with artificial imponderables affecting prices and his problems are compounded.

He will see the ACP proposal as another Government mechanism almost certainly to influence his price structure quite outside the mechanism of the USDA.

We can see in this proposal a really monstrous instrument for jawboning in the Government and available to self-appointed representatives of the public, representatives who need not represent a substantial body of opinion but need only an agreement from one man, the ACP Administrator. Then it can proceed with the media observing and reporting as it should. The public and political impact would be enormous.

This proposal is inconsistent with the campaign promises that were made during the last campaign in terms of eliminating many of the regulations as far as Government is concerned and, in fact, it moves in the other direction.

To reiterate, it is perhaps less what is in the bill than the mechanism it creates with a great potential power which can be wielded from outside the structure, the intent, or the design of the bill that causes such grave concern.

Therefore, the American Farm Bureau Federation opposes the passage of H.R. 6118.

Mr. BROOKS. Mr. Datt, I want to thank you very much for a concise statement. It is well thought out. You have represented your views with great distinction.

You are accompanied by your old cohort, Brother Fred Poole, there. I am delighted to have you all here. We are glad to have your comments on this legislation.

Mr. Erlenborn?

Mr. ERLENBORN. Thank you, Mr. Chairman.

To highlight what you said, Mr. Datt, the Farm Bureau Federation does oppose the agricultural exemption that is contained in this bill.

Mr. DATT. The Farm Bureau opposes H.R. 6118 which contains the agricultural exemption. As far as we are concerned, the bill, as I indicated, is wrong in concept and wrong in principle irrespective of any exemption it might contain.

Mr. ERLENBORN. You almost defined the bill as the Supreme Court did "obscenity," that is, "wholly without redeeming social value." Is that the way you view this bill?

Mr. DATT. Pretty close to that.

Mr. ERLENBORN. There is no way you could shape it up to make it look good to you?

Mr. DATT. Not as far as we are concerned.

In terms of exemptions, we have dealt with exemptions. One Congress exempts us and then the next Congress comes back and puts us under. They exempt us in order to get something passed; then once they have it passed, they come back and sock it to us in the next one. We have dealt with that, so we are opposed to the idea and principle.

Mr. ERLENBORN. Some might say that what you have said sounds cynical. I think it sounds very realistic. I have observed the same things.

Thank you very much for your testimony.

Mr. DATT. Thank you, sir.

Mr. BROOKS. It is a pleasure to have you all back here in business with us.

Mr. DATT. Thank you very much, Mr. Chairman.

[Mr. Datt's prepared statement follows:]

PREPARED STATEMENT OF JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Farm Bureau is the largest general farm organization in the United States with a membership of 2,676,259 families in 49 States and Puerto Rico. It is a voluntary, nongovernmental organization, representing farmers who produce virtually every agricultural commodity that is produced on a commercial basis in this country.

Farm Bureau policies are developed through study, discussion, and decision by majority vote at community, county, state, and national meetings. Our statement today is based on the following policy adopted by the voting delegates of the member State Farm Bureau at the 1977 annual meeting of the American Farm Bureau Federation:

> Government standards of quality, safety, health, and labeling have a role in the marketplace.
>
> However, we do not believe the government can protect every consumer in each of his transactions without infringing upon his personal freedom.
>
> We oppose the establishment of any consumer agency or council having other than advisory powers.

In the past our organization has opposed the creation of a so-called Consumer Protection Agency on the basis that it is wrong in concept and wrong in principle. We will not take time today to elaborate upon these two points, but we reaffirm them.

We need not now repeat the arguments well made in the past that the "consumer" is not in truth and fact an identifiable group. This is a flaw in the

concept of a government agency to represent consumers. Those who have not grasped this essential fact will not be convinced in the few minutes we shall take here today.

The proposed ACP Act is a design for government agency chaos. It creates a mislabeled cloak of alleged "consumer interest," and vests the total decision in such matters in the hands of an Administrator who is to decide where and when he will appear in other agency proceedings and in court. The Administrator is empowered to undertake to represent whatever interest he may call a "consumer interest". These are enormous powers. They are circumscribed only slightly by a certain obeisance to administrative law regarding petitions for rehearing, etc. None of these would limit in any true sense the awesome legal and practical power of the Administrator.

This bill proposes agency vs. agency confrontations with final resolution of differences to be made in the federal courts, if need be.

Necessarily, we look with keenest interest upon the impact such legislation would have on the agency with which agriculture has the most dealings, the USDA. The Department has long administered the programs, regulations, practices, and government corporations that affect American agriculture. It is here that we meet the exemptions of the USDA from the provisions of the bill, H.R. 6118, in Section 18 thereof.

As we have said before: "We did not ask for or participate in the drafting of that exemption nor do we support it. Exemptions granted by one Congress can easily be withdrawn by another."

From all that has been said in the past, and all that we can perceive in today's economic circumstances, prices would likely be the first target of any ACP created by the Congress. Let us take just a moment to look at the nature of agricultural prices which remain outside the realm of the exemption in Section 18 of this bill.

The American farmer produces only when and what he perceives will return him his costs and a profit. Overhang his markets with artificial imponderables affecting prices and his problems are compounded. The ability and judgment of those to whom he sells to move their products, the semi-processed or processed products of the farmers, are the measure of the farmer's market. From these influences there is no possible exemption. So long as there remains a vestige of a free market, prices will be established by supply and demand and known economic forces. But if artificialities are created by an approach to market intervention such as is foreseeable in ACP, then the producer's price risk is tied identically to the risk of the processor, wholesaler, and retailer and arbitrary government interference can warp the market.

During the last hearing on the ACP proposal the supporters of this bill said, in effect, that, given the job of the Administrator, the first thing they would undertake to do would be to shut off the exports of grains. This we know as an "embargo." In the agricultural areas "embargo" has become a "too familiar word." Parenthetically it is a familiar word in other quarters. The local morning paper found in the announcement of these bills in the House and Senate powers for the ACP director to "lobby for or against grain sales."

In agriculture we have had three experiences with embargoes in the last several years. One was the Nixon embargo of soybeans to Japan. The so-called "shock" of this to our Japanese customers was wholly destructive. It has made the Japanese, and others, less certain that the United States is by contract or otherwise a reliable supplier. It has led, in fact, to Japan's undertaking to become self sufficient by financing and creating soybean contractors, and financing their production in Latin America. And this was a customer to whom the United States supplies more than 90 percent of their requirements.

This bill is in truth nothing but the product of a small, but relentless, group who see in a CPA a mechanism to lend force to the advocacy of their viewpoints. There is in truth little broad public support for this kind of a bill.

What is clearly perceived, by those committed to the "consumerist" idea and by those who oppose the bill, is that such an agency, once in being, can be used to wield enormous influence. It will be made powerful in all sorts of markets, industries, businesses, and professions through the attention the media will give it. This could result in such things as forcing the Secretary of Agriculture to open up CCC stocks to bring down market prices.

It is not difficult to imagine the effects upon the futures market were the ACP Administrator to call a press conference merely to announce that he was growing concerned about the situation and that he felt quite certain that the administration would be doing something very soon.

Mr. Chairman, we can see in this proposal a really monstrous instrument for jawboning, institutionalized in the government and available to self-appointed representatives of the public, representatives who need not represent a substantial body of opinion but need only an agreement from one man, the ACP Administrator. Then it can proceed into the fray with the media observing and reporting, as it should. The public and political impact would be enormous. In fact, a willful ACP can by this process bring other agencies into great disrepute, if not outright ruin.

Let us apply all that we have just said to a current situation, and see how this might work.

Last year the United States exported $22 billion worth of agricultural products. We have to believe that Mr. Blumenthal at Treasury looks upon this figure as one of the strong timbers in his balance of payments structure. Agricultural exports generate much of the exchange used to pay for our enormous oil imports.

Thus the question arises. Who is the consumer? Is it those who clamor for lower food prices (though it is only the farmer's price which would be reduced if exports are curbed). Or is it the oil-consuming public which lives, works, and exists by an oil-fueled economy.

To repeat, then who is the consumer indeed—the one who seeks lower cost food—all of us—or the one who lives by imported petroleums—also all of us. And, Mr. Chairman, all the impact upon ours, and all the other markets, in our economy, affected by the government or not, are just this vulnerable to an ACP.

To reiterate, it is perhaps less what is in the bill than the mechanism it creates with a great potential power which can be wielded far outside the structure, the intent, or the design of the bill that causes such grave concern.

Mr. BROOKS. The next witness is Mrs. Margaret Sullivan. Mrs. Sullivan is a former business consultant and has been president of the Stockholders of America for 5 years, and is very well known throughout the United States as a corporate observer.

Mrs. Sullivan, we are delighted to have you here.

STATEMENT OF MARGARET COX SULLIVAN, PRESIDENT, STOCKHOLDERS OF AMERICA, INC.

Mrs. SULLIVAN. What a nice introduction.

Mr. BROOKS. We will accept your statement for the record or you can read it, say anything you want to say or do anything you want to do, and take all of the time you want to take. We have all afternoon.

Mrs. SULLIVAN. Thank you, sir.

I appreciate the opportunity to appear before this distinguished committee on behalf of the over 25 million stockholders in this country—the real owners of American business.

My name is Margaret Cox Sullivan, president of Stockholders of America, Inc., a nonprofit, nonpartisan organization of stockholders headquartered in Washington, D.C.

The membership is a very diversified group comprised of people from every State across our great country and from every walk of life. They have only one thing in common: They are investors in the equity capital market. They are capitalists. Collectively they own a large portion of American business. They are the schoolteachers, telephone operators, linemen, barbers, shopkeepers, salesmen, officeworkers, construction workers, pilots, truckdrivers, doctors, lawyers, military personnel, retired people, and the many factory workers who have bought stock through their employee stock purchase plans. They are the backbone of our free enterprise system—a system often called "people's capitalism," a system that has made us a nation of owners.

Since Stockholders of America is committed to public issues which affect stockholders and our free enterprise system, we strongly oppose

the Consumer Protection Act of 1977. We feel that this legislation is fraught with many dangers. It is a wrong concept. It is against the very premise of free enterprise defined in our American Heritage Dictionary as: "The freedom of private businesses to operate and compete for profit with minimal government regulation."

The existing government regulations could hardly be called minimal and we certainly do not need a superregulator to regulate the regulatory agencies. By "superregulator," I mean the Administrator, the advocate, who is given so much power in this legislation, more power than the regulatory agencies.

There are now consumer affairs sections in most Federal departments and agencies working with the Office of Consumer Affairs which advises the executive branch on consumer-related policies and programs. There is now a Special Assistant to the President for Consumer Affairs whose duties include analyzing and coordinating all consumer protection activities.

The Federal Trade Commission established in 1914 and recognized as a major consumer protection agency now has authority to make detailed rules over selling and other trade practices and the authority to impose penalties for violation of those rules. This Commission may sue on behalf of consumers or classes of consumers to bring about redress of their complaints, including the awarding of damages. Further, the Commission now has a fund for private legal representatives of consumers and consumer organizations who are otherwise unable to finance themselves.

I understand that other departments, such as Transportation and HEW, are also studying plans for the establishment of such funds.

Further, the creation of the Consumer Protection Safety Commission in 1972 established unprecedented jurisdiction over the production and sale of practically every component, product, and service bought and used by consumers.

The Food and Drug Administration was established to protect the consumer against impure and unsafe foods, drugs, and cosmetics.

We could add that we have the President's Council on Wage and Price Stability which is responsible for appraising the programs and policies of the Government to determine their inflationary impact which would be of direct concern to the consumer.

It is my understanding that there are now more than 1,000 consumer-related programs handled by 33 Federal departments and agencies. If these agencies are not doing their work effectively, they they should be abolished. If their is duplication of effort and overlapping of mandates, the programs should be reevaluated and the unnecessary or overlapping ones terminated. We should not add another layer of regulation which the Consumer Protection Act of 1977 will do by creating a Federal Agency for Consumer Advocacy—an Agency with the power of subpena; the right to demand information; and the legal authority to have confidential data from corporations. If it cannot make its case in the regulatory agency when it has intervened, it has authority to appeal the decision to the courts and challenge another arm of the Government and the business respondent.

The consumer will pay for this. The consumer is paying to be consumed. And remember, stockholders are consumers, too.

So as stockholders, consumers, and taxpayers, we are paying for more government than we want, more than we need, and as a nation more than we can afford. The Federal Government is trying to do more than its resources will permit; it is trying to do many things that it cannot do very well; and it is endeavoring to do some things that it should not do at all. Legislation emanating from Congress, in our judgment, should be directed away from more Government controls.

In our continuing surveys to the question, "Do you favor more or less Government regulation of business?" 97 percent to 98 percent of those polled answered less. There certainly is a trend in our country against Government regulations, redtape, and bureaucracy. This was evidenced in the last national election—a Washington outsider was chosen President. Other examples: the uproar over the ban of saccharin, and then, of course, not accepting the ignition interlock system.

At the suggestion of Stockholders of America, many companies are informing their stockholders about the number of records to be kept, reports which the company is required by law to file, and the number of regulatory agencies that they must report to. We have even suggested that companies include the number of manhours expended for these purposes and put a price tag on it so that their stockholders will know exactly what Government reporting and recordkeeping is costing them.

The stockholders' pocketbooks are affected, their investments eroded, and equity investment becomes less attractive. This is occurring at a time when the need for equity investment in our country is crucial and the number of stockholders is declining.

According to the latest statistics released by the New York Stock Exchange, the number of individual stockholders declined by 18 percent from 1970 to 1975. This figure is particularly jolting on two counts. At the same period in our national history when the number of stockholders was growing, we as a country were enjoying rapid, prosperous economic expansion; and it has been estimated that we should have 50 million stockholders by 1980 to meet the expanding capital needs for a growing work force, to keep our industrial leadership in the world, to keep our country strong, and to keep our standard of living.

It has been estimated that over the next 10 years American industry will need $4.5 trillion. We have allowed our great American business machine to get rusty. Our equipment is becoming obsolete, and many industries operate short of capacity. We have to realize that 67 percent of all metalworking machinery in this country is more than 12 years old; whereas in Japan the figure is only 30 percent and in Germany 37 percent. That is typical of all our plants and equipment. It shows why our long-term production advantages are fading, as in Great Britain.

Given the equity investment needed, we can rebuild our great economic engine and expand our economy. Jobs can be created in the private sector and our country can return to a position of a lower unemployment rate. We then can work toward creating jobs for the 10 million more who will be coming into the work force by 1980. To a large degree, this equity investment will have to come from the American people.

Historically, it has been the people—the individual investors, the stockholders, the little guys—who have been the source of equity capital. They have been called the strongest ingredient, the backbone of our capital markets. Their role is vital. They are the capital force of our country. Just as the millions of workers in the labor force supply labor services, so capital services are supplied by the capital force—the millions who invest in the American business system.

Our capital-raising process, the equity capital markets, has been successful because we have provided a mechanism—the auction market—where individuals with diversified interests and judgments can invest in companies of their choice and share in the ownership of these companies. The success and strength of our free enterprise system—the American business system—come from this large, diversified ownership base. We should be considering how we are going to protect this system from the elements that are trying to strangle it—perhaps not intentionally, but the end results will be the same.

Untempered zeal is dangerous. We must be continually aware that it is our free enterprise system that has allowed its people to build out of a wilderness the greatest industrialized nation in the world with its people having the highest standard of living, while keeping their freedoms.

We must get back to the basic principles upon which this country was founded. Liberty, freedom, independence, and justice are engraved in the thinking of Americans. Americans want to control their own lives and make their own choices. However, this Government has become so inflated and has grown to such monstrous dimensions that it has become a sprawling giant with more fingers in our economic pie and picking the pockets of the people.

We have a wonderful country with good people. There is a spirit of America. And the last thing we need or want is a consumer czar. Therefore, we vehemently oppose this legislation with the final plea: Let's keep the "free" in free enterprise.

Mr. BROOKS. I want to thank you very much, Mrs. Sullivan. We are pleased to have had you here. We are honored to have you testify. We appreciate your views.

Mrs. SULLIVAN. Thank you very much for your kindness.

Mr. BROOKS. I want to recognize Congressman Pritchard.

Mr. PRITCHARD. I appreciate very much your coming down here. I think we are going to be working this bill over. We will take your views into consideration. Thank you very much.

Mrs. SULLIVAN. Thank you.

Mr. BROOKS. Thank you very much.

Our next witness is Ms. Barbara Keating, from New York City. She is a member of the National Board of Directors of the American Conservative Union. She is also chairman of Consumers Alert.

We have testimony here submitted by Barabara Keating prepared by Clifford White for presentation. This is a copy of it here.

I recognize you and we are delighted to have you here.

STATEMENT OF BARBARA KEATING, BOARD MEMBER, AMERICAN CONSERVATIVE UNION

Ms. KEATING. I appreciate the opportunity to speak, however briefly, regarding——

Mr. BROOKS. Speak as long as you want to speak. Feel free.

Ms. KEATING. I must admit, Mr. Chairman, that I was informed that I was to be given 5 minutes time.

Mr. BROOKS. If you have anything else to say, take your time. Take about half an hour, if you would like to do so.

Ms. KEATING. I think much of what needs to be said has been stated here.

Mr. BROOKS. Yes; I quite agree.

Ms. KEATING. There are a couple of points which I believe have not been sufficiently covered, and I would hope very much to shed a new light, a new objection to the establishment of the Consumer Protection Agency.

This committee has for some time listened to testimony directed against the Agency by business. I think what we neglected to point out that the end result of anything that is established by the Federal Government is the individual American consumer. It is for that individual that I would intend to address my remarks, on his behalf.

I must say that I am dismayed to learn that these hearings are only allotted 2 days' time; is that correct? There are only 2 days of hearings regarding this?

Mr. BROOKS. That is correct.

Do you have anything more than you wanted to add?

Ms. KEATING. Well, I believe that the public at large should certainly have been given far more time to mobilize an effort to get in here and have all views aired.

Mr. BROOKS. Might I add for your information and edification that everyone who has asked to appear has been given an opportunity to submit statements or to testify.

Ms. KEATING. Mr. Chairman, I simply intend to point out that there are many Americans out there all over the country that have not the foggiest notion what is going on in Washington here on Capitol Hill today or many other days. I think all too often they do find out afterward that a new agency has been created. I think, had they been given an opportunity to put their 2 cents in, so to speak, that many other Americans would relish an opportunity to come forth and give their views to a committee such as this one.

In short, these hearings favor, as the bill they are designed to endorse, not the consumers, as I pointed out, but the bureaucrats, I believe, and others who wish to create another big brother Government agency.

I describe the view of bureaucrats in such a way because I do not understand why else they would hold such a low view of the American people as to propose an agency which would usurp the power of the consumer to make his own decisions in the free marketplace in favor of an agency which would do it for him.

Mr. Chairman, the Agency for Consumer Protection would purportedly determine a single consumer interest on any issue which affects the consumers. Since we are all consumers, I can only assume that the Agency would be able to involve itself with just about every Government and business practice ranging from the safety of toy dolls to a future Russian wheat deal.

Let's be practical and let's be realistic because there is no single consumer interest. Any claim that one group of bureaucrats can determine any such thing, in my opinion, is a sham.

The Consumer Protection Act of 1977 would add about 100 more lawyers to the Federal payroll. Now I hold nothing personal against attorneys; but if there is one thing this Government does not need more of, you have to admit it is another batch of lawyers in our bureaucracy.

The bureaucratic and judicial processes are cumbersome enough without creating a new agency whose sole purpose would be to litigate and subpena and create more paperwork for itself, other agencies, and the businesses who have testified here today.

We already have countless public and private organizations which are designed to guard several particular consumer interests: the Better Business Bureau for one, the Environmental Protection Agency for another. Each protect various aspects of consumer interest.

I believe that a new super agency would have no new insights into the consumer's wishes and desires. If it is the conclusion of those who propose this bill that already established agencies are inherently incapable of protecting the consumer, then I would contend that any Government bureaucracy would be susceptible to the same shortcomings.

If there is something inherently wrong with the FTC, or the CPSA, or the EPA, and several other acronyms which make up our Federal bureaucracy, then improved congressional oversight might be required but certainly not another agency. It is an accurate rule of thumb that old agencies never die; they just grow larger.

Although the price tag attached to the proposed Agency would be only $32 million over 2 years, I do not need to point out that every single one of those dollars will be provided by the American consumer. That figure would unquestionably grow in future years.

The Agency for Consumer Protection would add to inflation through increased cost of business. Every increased cost of business is not absorbed by business; it is passed on to you and me when we enter the marketplace.

In addition to the increased cost of maintaining that bureaucracy, the accumulation of power within that Agency to me is another danger. Bureaucracies seem to live lives of their own and they do grow unresponsive, even if they try to move with the best intentions. They become unresponsive to public pressure.

Who would have thought 2 years ago that the Office of Civil Rights, for instance, within the Department of Health, Education, and Welfare would today be forcing universities to discriminate based on race and sex when hiring their faculty and admitting students?

Who would have guessed that the Occupational Health and Safety Administration, which was created by this Congress and was at that time 30 pages long, would grow to the point of establishing enough regulations to fill 800 pages? You have heard companies here today complaining about the regulations of that department.

Any costs are immediately passed onto the consumer.

The point, Mr. Chairman, is that before any more agencies are created we ought to examine closely the potential impact that it might have on individual Americans. My objections represent just the tip of an iceberg of several more specific problems involved with the proposed Agency.

I hope in the future when equally controversial legislation is introduced that this subcommittee will be fair and allow a longer and

more thorough debate. To do otherwise, to ram this bill through while pollsters tell us that it is opposed by the majority of Americans, is a sad commentary on our congressional process.

In short, Mr. Chairman, I believe that the consumer interest does not equal the bureaucratic interest. The bill before this subcommittee represents the bureaucrats, not the consumers, in my opinion.

Lobbyists who are close to Washington and who have long advocated heavier legislation in the area of consumerism get the word very quickly and are apt to run over here and lobby in favor of further legislation or the creation of a Consumer Protection Agency. Believe me, there are millions and millions of Americans out there who make intelligent choices, hundreds of those choices every day of their lives in a marketplace that is packed with a variety of such choices. I believe it is time the Congress allows and credits those Americans with the same kind of intelligence equal to the members of this committee.

I want to thank you, Mr. Chairman and members of this committee, for giving me an opportunity to testify today. Thank you.

Mr. BROOKS. Without objection, your complete prepared statement will be made a part of the record.

It has been an unusual pleasure for us, Ms. Keating. We appreciate your coming down from New York and enlightening us about your views on this legislation, and on the congressional procedures also. It has been constructive and helpful.

Mr. Pritchard?

Mr. PRITCHARD. Let me say this: I would not quarrel with your views. I think they are legitimate views. I might not agree with them all.

However, I do think that this legislation at this point is the same as it was 2 years ago. Thorough and long debate was held at that time.

In my district and through many organizations we had great debate. I am not sure it all has been accurate, but there have been lots of discussion on this bill.

I do not really think that it is fair to the chairman here to say that he is railroading it through since we had a long session last time and this is the same legislation.

Ms. KEATING. I have to say that I learned about these hearings only last night. I requested an opportunity to have a chance to come in here today and testify.

What I am trying to point out is that the average American consumer, which includes all Americans, by and large, is not participating in a consumer advocacy group. They have long been railroaded by bureaucrats. I have to include some consumer advocates when I say that. They feel apparently that somehow the average consumer is incompetent and needs someone to watch over him in order to help him pick and choose and to regulate the things that he buys.

I believe that there is a grassroots arousement of American people coming forth today in opposition to that view. It is precisely the kind of organization that I will be representing when I talk about Consumer Alert.

There are many consumers out there who do not espouse to Nader's Raiders views who have paid the price in increased costs in their automobiles, from increased usage of gasoline in their automobiles.

If I might take the liberty, I have a copy of an "Op-Ed" page that appeared in the New York Times a few days ago written by a Mr. Quittmeyer. I have taken the liberty of running off enough copies. I would be very grateful if the committee would allow me to distribute a copy to each of you. I urge you to read it.

Mr. PRITCHARD. I am sure the chairman will allow you to put it in the record.

Ms. KEATING. I would like to put it in the record.

Briefly, I think the gentleman put it very concisely when he said, "We have long asserted that certain freedoms are basic and inalienable. Why not add another: the freedom of the consumer not to be treated as an incompetent?"

In closing, if I may, I will not take any more time with this committee, but I would like to say this: When I learned I was going to come down here today, I decided this was a grand place to bring my personal gripe as an American consumer. I would like to bring out a piece of evidence for this committee, if I may. I think it illustrates what the consumer out there, myself, is up against when Government attempts to step in and help us out.

I am a mother of five children. Two days ago I walked into a store and I paid $8.95 for a pair of pajamas for my 10-year-old son [indicating]. In the neckline you can see that they are brandnew pajamas. There is a ticket that points out that it has been treated with flame-resistant chemicals under the U.S. standard.

My son has worn these for 2 days. He has not been near the stove, I must say. He does not cook. However, he does act like normal 10-year-old boys. He crawled around on his knees. This morning I put these in the wash for the first time, but, as you can see, there are no knees left in the pajamas.

I am told that the flame retardant which has been required by the Federal Government is responsible for the deterioration of this material.

I am the consumer at the end of all of this regulation.

Mr. BROOKS. Ms. Keating, I understand your problem. I understand it exactly. I believe now it is said by the Government that such flame-resistant retardants are not very effective. My wife learned a couple of years ago that when you buy those allegedly flame-resistant pajamas that they do not wear but about a week. About two washings is all they are good for if children are active.

I share your interest in 10-, and 7- and 3-year-olds. We try to keep them from getting burned up like you do.

However, we also feel that money is something to be utilized carefully inasmuch as we have so little of it. So we do not buy those flame-retardant pajamas because they are not any good. They do not last. After you wash them, all the flame retardant comes out anyhow. Then you have nothing left.

So I would recommend that you do not buy that kind any more.

Ms. KEATING. They are more expensive.

Mr. BROOKS. And they are not as good.

Ms. KEATING. That is right.

Mr. BROOKS. We quit them about 2½ years ago. We found it was not practical.

Ms. KEATING. I appreciate the opportunity to illustrate that the consumer, by and large, has been the victim not only of big business,

but of big Government as well, and consumer advocacy groups which are set up to protect them.

I ask this committee to spare me that protection. Thank you very much.

Mr. BROOKS. Without objection, the article from the New York Times will be made a part of the record at this time.

[The article follows:]

[From the New York Times]

CONSUMER LIBERATION

By Robert T. Quittmeyer

This is the era of liberation. I hope we will soon add to the growing list of liberation movements one to liberate consumers from their self-appointed "protectors" in and out of government.

Sooner or later, regulation of business becomes regulation of the consumer. It either increases consumer costs or decreases consumer choice or both.

Former President Ford estimated the cost of regulation to American consumers at $2,000 per family per year—a staggering $130 billion altogether. Legislative bodies in the United States are passing about 600 new laws every day and regulators are promulgating an "inestimable" number of administrative edicts.

There is no question of the need for some regulation. Certain destructive behaviors must be carefully defined and prohibited. But there is a limit. Excessive regulation becomes much more than a costly inconvenience; it is eroding society's vital capacity to adapt—to digest change. It imposes uniformity on a society that needs diversity—pluralism—to stay alive. Efficiency and uniformity seem to be essential to society, and to some extent, of course, they are. But even more crucial is flexibility—the capacity to *adapt*.

The benefits of a pluralistic society unfettered by needless regulation are not very widely appreciated. Yet some observers think that America's ability to accept diversity and change may have been a principal cause of its unprecedented productivity.

We are beginning to see signs of sluggishness of a chronic, sustained underemployment of resources. We have massively reduced the vitality of the system by excessive regulation.

I believe the root of the regulatory impluse is often arroganee. If you scratch an advocate of regulation you are likely to find, very close to the surface, an arrogant desire to substitute some personal vision of order for the apparent disorder of the marketplace.

Arrogance is a common human trait. Most businessmen are arrogant, particularly if they are chief executives.

Happily, there are checks against rampant arrogance in business. The ablest people will not work for a martinet very long, and a business that can't attract and hold good people tends to dry up and blow away. A businessman who arrogantly offers a product he thinks the public ought to want soon finds he is much more a servant than a master.

But when arrogance is embodied in public policy, there are no effective checks on it. It becomes institutionalized—immortalized.

The compulsion to regulate is almost always based on the idea that people are uninformed, undiscriminating and irresponsible. One writer offers this imaginary characterization:

"Consumers are ignorant and gullible. They cannot, without help, tell a rotten apple from a good one. They believe everything they hear and give particular weight to what they hear on television. Their most urgent appetites are for things that are least good for them. Left to themselves, they would squander their wages on cotton candy, costume jewelry, dirty movies and fortune tellers."

To people who think this way, the impulse to limit consumer choice is, naturally, irresistible.

We have long asserted that certain freedoms are basic and inalienable. Why not add another: the freedom of the consumer not to be treated as an incompetent.

But when we talk about consumer liberation, we need first to recognize that when we are not talking about the consumer's unquestionable right to choose from dozens of brands of hair spray, but about the maintenance of a pluralism that may be essential to the survival of our society.

And perhaps the solution is not in wider understanding of sounder economics, as so many of my colleagues seem to believe, but simply in the liberation of the consumer through the wider acceptance of an almost forgotten idea called humility.

Mr. BROOKS. We are delighted to have had you here.

[Ms. Keating's prepared statement follows:]

PREPARED STATEMENT OF BARBARA KEATING, BOARD MEMBER, AMERICAN CONSERVATIVE UNION

Mr. Chairman: Since I have been granted only five minutes to discuss H.R. 6118, "The Consumer Protection Act of 1977," I will have to limit my remarks to a few broad-brush observations. At the outset, Mr. Chairman, let me make clear that I find the character of these proceedings to be contrary to the best interests of the consumers. Only two days of hearings have been allotted to this most controversial subject. Despite requests that they be extended, those who favor a new Agency for Consumer Protection have arranged to avoid meaningful debate. How, in five minues, one is to adequately present any objections to the proposed new agency is beyond me.

In short, Mr. Chairman, these hearings favor, as does the bill they are designed to endorse, not the consumers, but the bureaucrats and others who wish to create another "Big Brother" government agency.

The French statesman Frederic Bastiat observed in 1850 that public officials "desire to set themselves above mankind in order to arrange, organize, and regulate according to their fancy. . . . They think only of subjecting mankind to the philanthropic tyranny of their own social inventions."

Although times have changed since the days of Monsieur Bastiat, the essential character of the bureaucrat has not. The American people are distrusted by the bureaucrat and assumed to be gullible and incapable of caring for their own needs. Given the record of government regulatory activities over the past decades, I must take strong exception to such a condescending view.

I describe the view of the bureaucrats in such a way because why else, unless they held such a low view of the American people, would an agency be proposed which would usurp the power of the consumer to make his own decisions in the free marketplace in favor of an agency which would do it for him?

Mr. Chairman, the Agency for Consumer Protection would purportedly determine a single consumer interest on any issues which affect consumers. Since we are all consumers, I can only assume that the agency would be able to involve itself with just about every government and business practice, ranging from the safety of toy dolls to a future Russian wheat deal.

There is no single consumer interest. Any claim that one group of bureaucrats can determine any such thing is a sham.

"The Consumer Protection Act of 1977" would add about 100 more lawyers to the federal payroll. I hold nothing personal against attorneys, but if there is one thing the government does not need more of, it is another batch of lawyers in the bureaucracy. The bureaucratic and judicial processes are cumbersome enough without creating a new agency whose sole purpose would be to litigate, subpoena and create more paperwork for itself, other agencies and businesses.

We already have countless public and private organizations which are designed to guard several particular consumer interests. The Better Business Bureau and Environmental Protection Agency each protect various aspects of the many consumer interests. A new superagency would have no new insights into consumer wishes and desires.

If it is the conclusion of the proponents of H.R. 6118 that already established agencies are inherently incapable of protecting the consumer, then I would contend that any government bureaucracy would be susceptible to the same shortcomings. If there is nothing inherently wrong with the FTC, CPSC, EPA and the several other acronyms which make up our leviathan federal bureaucracy, then improved Congressional oversight might be required, but certainly not another agency.

It is an accurate "rule of thumb" that old agencies never die, they just grow larger. Although the price tag attached to the proposed agency would be only $32 million over two years, that figure would unquestionably grow with the years. Also, the Agency for Consumer Protection would add to inflation, through increased costs to businesses, which would have to contend with another layer of bureaucratic litigation, and increased costs to other agencies, which would be sued from time to time by the new bureaucracy.

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In addition to the increasing cost of maintaining the bureaucracy, accumulation of power within the agency would be another danger. Bureaucracies seem to have lives of their own. They grow unresponsive to public pressure. Who would have thought a few years ago that the Office of Civil Rights within the Department of Health, Education, and Welfare would force universities to discriminate based upon race and sex when hiring faculty and admitting students? Who would have guessed that the Occupational Health and Safety Administration, which was created by an act of Congress 30 pages long, would grow to the point of establishing enough regulations to fill 800 pages?

The point, Mr. Chairman, is that before any more agencies are created, we ought to examine closely what the potential impact might be.

Mr. Chairman, my objections represent just the tip of an iceberg of several more specific problems involved with the proposed consumer agency. I hope that, in the future, when equally controversial legislation is introduced, this subcommittee will be more fair and allow thorough debate. To do otherwise, to ram through a bill which the pollsters tell us is opposed by most Americans, before anyone notices, is a sad commentary on our Congressional process.

In short, Mr. Chairman, I believe that the consumer interest does not equal the bureaucratic interest. The bill before this subcommittee represents the bureaucrat, not the consumer.

Mr. BROOKS. We have a vote on the floor so we will have a brief recess for that purpose.

[Recess taken.]

Mr. BROOKS. The subcommittee will come back to order.

Our next witness is Mr. Robert Schaus. He is with the Independent Bakers Association and the National Small Business Association.

He has been president of the Quality Bakers for 12 years and has resisted tasting too much there. He has been with the company for 44 years. He is a cookie king himself.

Mr Schaus, we are delighted to have you.

Mr. SCHAUS. I would prefer to be called the bread king.

Mr. BROOKS. All right.

STATEMENT OF ROBERT L. SCHAUS, NATIONAL SMALL BUSINESS ASSOCIATION AND INDEPENDENT BAKERS ASSOCIATION

Mr. SCHAUS. It is a pleasure to be here. I understand I have all of the time in the world.

[Laughter.]

Mr. SCHAUS. But I will not take it.

Mr. BROOKS. You had better take it.

Mr. SCHAUS. I am senior president of Quality Bakers Cooperative of America, Inc., the Nation's largest cooperative of wholesale bakers. QBA is an active member of both the National Small Business Association, an organization representing 1,000 or 1,200 SIC classifications, and the Independent Bakers Association, a trade group of small and medium-sized wholesale bakers representing all areas of the United States and an estimated 45 percent of the Nation's wholesale bakery production and the three bakery cooperatives in the United States.

In short, Mr. Chairman, I represent a collection of small business views on H.R. 6118, which would create a new Agency for Consumer Advocacy. But they all agree on one main point—opposition to this unneeded inflationary legislation.

Small business is approximately 98 percent of all firms in the United States, including bakers. It employs between two-thirds and three-fourths of the work force. When you add the self-employed to the small business category, small business has a work force of about 50 million people.

Unfortunately, Government policies have been directed toward solving problems of concern to larger companies and the large unions. There should be recognition in Government that small businesses are first to feel the impact of Federal regulation and control. Many do not have the financial ability to rapidly adjust their trade policies made necessary by congressional legislation.

Much of the publicity and emotion generated for legislation to establish an Agency for Consumer Advocacy deals with advertising and promotion practices of the larger companies.

The small business community is caught in a squeeze. In the area of consumer proposals in particular, small business becomes a shuttlecock between proponents of consumer legislation and the big business community. When charges are made in the press about automobiles, home appliances, and many other products, it is the larger firms that are mentioned. Very little attention is given to the role of the small manufacturer and distributor and to whether or not he will be able to survive if the mandatory standards that are being proposed in various bills before Congress become law. Actually, many of the major companies are assemblers of products; the parts are supplied by small business firms.

Although a small firm supplies a part meeting the standards of a larger firm, it is the small supplier who really bears the brunt of consumer discontent if the public does not accept the assembler's final product. It is the small supplier who must bear ultimate responsibility through litigation, ever-increasing insurance premiums for product liability, cancellation of contracts, and other mounting burdens.

Mr. Chairman, as presently written, this bill only asks for small business advice and counsel with no rights of intervention in behalf of small business interests.

Most small business firms are not financially able to appear before all Government agencies on the many complex issues affecting their interests.

Consumer groups have more clout with the 33 regulatory agencies than any small business association.

Therefore, NSB recommends:

First, the small business community must have an advocate with the same rights to intervene as are provided for an Agency for Consumer Advocacy.

Second, small business must have the right to appear in any proceeding before any agency that has a concern for consumers.

Third, small business must be placed in a position to give governmental agencies the facts and implications of possible rulings and regulations on the small business community.

Therefore, we ask that the Small Business Administration be given by legislation the same rights and authority given to a Federal Agency for Consumer Advocacy.

Other witnesses before this committee will analyze the actions of the Federal Government in protecting the consumer interest. There is no question as to the need for study of the possible overlaps in jurisdiction and duplication of efforts of the many agencies. These and other problems need considerable objective study, and we at NSB support these efforts.

Mr. Chairman, the fact that small business has been exempted from the interrogatory power of ACA may not be good. Because the Agency

will have unprecedented power to make investigations into the records of the largest corporations and will be drawing its conclusions from these records, small business may find itself held accountable to standards appropriate for large companies only.

I cite again to the Congress of the United States that bigness does not mean that you are more efficient or whether you can produce something for less cost.

While the bill as currently written does not provide independent standard-setting power for the ACA, it is quite possible that this will be added at a later date. If it is, small business could find itself the losing bystander in a battle between big business and big government.

As it has been admitted by the regulators themselves, small businesses are sought out in actions by the Government because small businesses are least likely to fight back or have the capability of fighting back. The justice of having a Government agency pick on the small guy is already questionable. Authorizing another big guy, ACA, to help the first in pounding the little guy into the ground seems unconscionable.

Certainly, there are arguments for protection of the consumer, who cannot by himself remedy all the defects of the marketplace or the problems of human or corporate greed. However, in view of the rising public outcry against big government, redtape, and overregulation, it would seem that the solution to problems that exist lies not in the creation of another super agency—another layer of bureaucracy—but in examining closely why the existing bureaucracies are not working. They certainly have talented people.

Two years ago it was reported that the so-called regulatory agencies in Washington employed some 63,000 people at a cost of $2 billion.

Establishment of an Agency for Consumer Advocacy may answer the demands of self-appointed guardians of public interest, but it does not solve the problems of the consumer, of the regulators, or of small business. Indeed, by increasing litigation and fostering more paperwork and delay, it may hurt consumer interests by increasing prices, adding to inflation, and fueling unemployment.

The Consumer Protection Act of 1977 does not address the real problem; it only adds to it.

I suggest that we want to protect the consumer. Last night I spent an hour looking at TV and I think I saw 15 murders or robberies. If we are to protect the consumer, I think we should probably protect them on the streets of the United States, in our homes, and on our way to the supermarket.

We disagree with the entire Consumer Act as it is now written. If we have such an act, we do not think there should be any exemptions—or else exempt everybody.

The American consumer, as pointed out today, controls the freedom of choice. She always has. She is not stupid.

We deal in our business, the baking industry, with 220 million Americans every day who buy bread, cakes, and cookies every day. They decide every day whether they are going to buy that product or not. There is nothing in this world that we can do to force that girl to buy our product if we do not give her, her money's worth.

We say again: Let's strengthen our regulatory agencies for the protection of the consumer. Let's put America to work to make this happen.

There is nothing in the world that any one of us in business would ever think of producing that we did not think we would sell. That includes food or any other item.

One hundred percent of the entire baking industry is against this act. We think that there are other things that should be challenged by this Congress that are more pertinent to the American consumer than to pass an act of this kind that will harass small business, the baking industry, and all business.

Thank you.

Mr. BROOKS. I want to thank you very much for coming down, testifying, and giving us the benefit of your years of experience. We appreciate your contribution to this hearing, Mr. Schaus.

Without objection, your prepared statement on behalf of the American Bakers Association will also be made a part of the record at this time.

[Mr. Schaus' prepared statement follows:]

PREPARED STATEMENT OF ROBERT L. SCHAUS, NATIONAL SMALL BUSINESS ASSOCIATION AND INDEPENDENT BAKERS ASSOCIATION

My name is Robert Schaus. I am President of Quality Bakers of America, and today am representing the American Bakers Association and speaking on behalf of the baking industry. The American Bakers Association includes in its membership bakers who produce about 80% of the commercially baked bakery products distributed to grocery stores, restaurants and institutions.

I want to express our opposition to the concept of an Agency for Consumer Protection, as is proposed in the legislation, H.R.6118, before this House of Representatives Government Operations Committee.

A new federal agency to intervene in department and agency proceedings on behalf of consumers is not needed. Since this legislation was first proposed many years ago, existing federal agencies have taken steps to see that consumer interests are fully heard. We now have a Government in Sunshine Act that opens practically all government sessions to public participation. We now have a Consumer Product Safety Commission, the FTC has risen as a potent guardian of consumer interests under the FTC Improvement Act, the Justice Department has an Office of Public Counsel, and the Department of Health, Education and Welfare has a Consumer Office, to name a few.

We believe that adding a new bureaucracy to watch over the existing bureaucracy is unnecessary, wasteful and inefficient. The agency, if established, in our opinion, would generate conflict with other government agencies,

delay decision making, increase litigation costs, and thus add to inflationary pressures. We honestly believe that the consumer, and that is everybody at one time or another, needs protection from over-regulation rather than more regulation.

There is enough delay today in getting decisions from federal agencies on matters of importance to us, and we fear that an agency with a formal right to delay actions, for whatever reason they might feel is legitimate, would further tie up the decision making process, add to our paperwork burden, and waste tax dollars. For example, we have been waiting for three years for an FDA decision on adding more iron to bread to fill a recognized dietary need for a large part of our population. This has been held up because of the testimony of a doctor, who fears that a very few people for whom added iron in the diet, might be injurious, might eat some of our product. Every possible aspect of this issue is being or has been researched without any master agency checking on FDA. We think that is enough.

There is obviously a lot more that will be said and can be said about this subject, but I will leave that to my colleagues.

A copy of our position paper is attached, for the record. Thank you for your attention.

American Bakers Association Position Paper
on Senate and House Bills Establishing
an Agency for Consumer Protection

1. A new federal agency to intervene in department and agency proceedings on behalf of consumers is not needed. This legislation originated in 1969, in the belief that the consumer interest was not adequately represented in the administrative process. Since then the Consumer Product Safety Agency has been created, the Federal Trade Commission has been revived as a potent guardian of the consumer interest and the Justice Department has established an Office of Public Counsel to represent consumers. Adding another new bureaucracy, which will cost $32 million over the next three years in this bill or $60 million over three years in the Senate bill, would be wasteful and inefficient.

2. The bill is discriminatory. The labor exemption makes it clear this is one-sided legislation. The proposed ACP cannot effectively represent consumers if it is prohibited from intervening in cases involving wages and labor practices which can add millions of dollars to the cost of consumer goods.

3. The Agency would generate conflict with other governmental units and thereby cause greater delay in an already long and burdensome federal decision making process. Under the bill, after the Consumer Agency presents its views and the department or agency reaches its decisions, the Consumer Agency could then appeal that decision to the courts. This is unnecessary overkill, which cannot benefit the consumer and will only increase the cost of litigation, thereby adding to inflation.

Mr. BROOKS. We are honored at this time by having a member of the full committee, not a member of the subcommittee, but a member of the full committee, Mr. Pete McCloskey.

Mr. McCloskey, we recognize you. We welcome you to the committee.

Mr. MCCLOSKEY. I am honored, Mr. Chairman, but I have no questions at this time.

Mr. BROOKS. Mr. Pritchard?

Mr. PRITCHARD. I have no questions.

Mr. BROOKS. Our next witness is Mr. Mark Kleinman. He is preparing for a career as a policy analyst.

Mr. Kleinman, we are delighted to have you here. We appreciate your comments. If you have a statement, we will put it in the record and then you can say what you have in mind.

STATEMENT OF MARK KLEINMAN

Mr. KLEINMAN. I appreciate this opportunity sincerely. I came here as an average citizen unaffiliated. I think it is important for other citizens to know that it is possible, if they want to make their voices heard, all they have to do is try to testify or make their points available to a committee.

First, I do not represent an interest group of any sort. I feel that hearing the viewpoint of an average citizen, how he might react to this, is particularly valid when it deals with 215 million Americans.

Above all else, I would say that the average citizen is fed up with politics and all its implications. When a subject such as consumer protection and/or advocacy is brought up, it is paramount to realize that consumer interests are void of political considerations. A consumer could care less if it is a Democrat, a Republican, or whatever that is running the show. All he or she wants is a fair price for a decent quality product.

I think the provision in H.R. 702 which calls for a 15-year term of the "Consumer Counsel of the United States" goes a long way toward creating an office or agency without the political pressures of a President, of Congress, or whatever.

What if, for example, in the case of H.R. 6118, as it now stands, the Administrator feels a Federal agency rule has the stamp of approval of the President, particularly if it is in reference to a law which was signed and introduced by the administration, would the Administrator be able to pursue that rule because it goes against the interests of consumers? The Administrator could, but he could lose his job or her job. This should not be the case.

With regard to public participation, and I understand that the House version of this bill is H.R. 3361, introduced by Peter Rodino, failure to pass or attach H.R. 3361 to H.R. 6118 is like passing the U.S. Constitution without the Bill of Rights.

Members of the committee, the express purpose of H.R. 6118 is to "represent the interests of consumers." Without H.R. 3361, H.R. 6118 is nothing more than creating a mouthpiece for a few bureaucrats who will tramp back and forth from one agency to the next trying to lobby for consumer interests.

The major concern of the Agency should extend beyond that to "promote the interests of consumers." By "promoting," it means to extend the purpose of ACA or ACP not just to itself, but also to the outside

as well; namely, to interest groups, citizen participation—all of whom are trying to represent the consumers' point of view. As H.R. 6118 stands, it is a bill specifically designed to create itself as an interest group.

In addition, I caution against leaving it up to the agencies with regard to H.R. 3361 to decide whether to reimburse attorney's fees, et cetera. This invites the experiences of Government procurement, of the Federal Information Act, and a whole bunch of other provisions which were left up to the agencies to implement. Instead this should merely be taken on as a function of H.R. 6118.

In other words, all reimbursements and decisions to participate would be in the hands of ACA or ACP. As it stands now, there is nothing in H.R. 3361 to prevent an agency from denying reimbursement to consumer interests if the agency has a bias against consumer interests.

I now refer to section 5(a) and quote: "The agency shall, in the performance of its functions, advise the Congress and the President as to matters affecting the interests of consumers."

I refer to section 16, paragraph 4, "The term 'interests of consumers' means any concerns of consumers involving the cost, quality," et cetera.

There is nothing within this definition to exclude Government goods and services from ACA or ACP. For example, if HEW stopped sending me my social security check, if the Defense Department gave me an unfavorable discharge, thus affecting VA benefits, I could write and seek redress under H.R. 6118.

Thus, ACA or ACP would become also an ombudsman agency as well, protecting the citizen as a consumer of Government goods and services from Government mistakes; that is, bureaucratic mistakes.

If, in fact, ACP or ACA is to take on an ombudsman function, it should be stated in clearer terms and thus spelled out, perhaps in a separate section.

I would like to refer to one specific example of what I am talking about to make this more clear. The Government produces information for citizens to understand. There are specific cases in which Government information can be misleading. The consumer, the citizen, has a right to protection if the Government is producing information which is not truthful and as it best can be stated.

I would cite as an example typically the professional and administrative career examination. I will read a certain paragraph:

"You must achieve a rating of 70 or above for any one of these six ability patterns to be required for jobs requiring those abilities."

Anyone who is trying to get a job in the civil service knows, or should know, that the score in order to really get a job is at least 98, 99, or 100. In fact, I know a person who scored 100 in all six abilities and was on the waiting list for a whole year before he was notified.

This type of information infers to the consumer or to the citizen that if you receive a rating of 70 you have a good chance of getting a Government job. This is clearly misrepresenting the facts. The consumer, the citizen, would be unable to judge for himself or herself whether to apply for the exam based on this information.

I contend that there are numerous cases in Government and its printed material should be looked at to see whether it is false advertising or whether it is misinforming the public as to their abilities.

Finally, under the title proposed by the President, the term "advocacy" brings to suspect that what he really means is "Agency for Consumerism." In other words, this Agency will be the voice of the Naders, the CFA's, et cetera, who would want unit pricing, clear labeling, and bans on saccharin.

It should be noted that sometimes the insistence upon these standards has only resulted in business raising their prices to meet these standards. For example, in the example of an auto emission control device, that device might raise the price of the car substantially. Do consumers want it? Maybe the Naders do, but how about the others? This is not to deny that such standards might be valid. It is just that in representing the consumers ACA should consider all the different ramifications of what they are advocating.

Therefore, in section 3 of H.R. 6118, in discussing the makeup of the Agency, there should be a guarantee that adequate representation of all different viewpoints with regard to the interests of consumers be assured.

Specifically, I make reference to the fact in the bill five or six administrators could be appointed by the President himself.

There should be adequate protection that these represent a cross viewpoint of consumers and not just Ralph Nader.

I think that this particular provision would eliminate a lot of fears that a lot of people have about this that it is going to be a voicebox of just a few consumers and not all.

Thank you very much.

Mr. BROOKS. Thank you very much, Mr. Kleinman.

Mr. Pritchard?

Mr. PRITCHARD. I have no questions.

Mr. BROOKS. Mr. Kleinman, we thank you very much for your contribution to us.

Our next witness is Nancy Steorts. She has worked for the Agriculture Department during the Ford administration. She is president of Nancy Harvey Steorts, Associates, and a specialist in consumer affairs.

We are delighted and pleased to have you here. We welcome you to the committee.

STATEMENT OF NANCY HARVEY STEORTS, PRESIDENT, NANCY HARVEY STEORTS, ASSOCIATES

Ms. STEORTS. Thank you, Mr. Chairman, and good afternoon to members of the committee.

As you heard, I was Special Assistant to the Secretary of Agriculture for Consumer Affairs in the Ford administration, and now I am president of Nancy Harvey Steorts, Associates, my own firm, which will specialize in consumer affairs.

The consumer, as you all well know, today wants to be heard and wants to be a part of the decisionmaking process. No longer will today's consumers sit back and allow Government and industry to formulate policies and programs which will affect their increasingly changing lifestyles without consumer input into these decisions.

There has been a great deal of discussion and proposed legislation over the last few years as to which was the best way to have consumer interests represented.

Some felt that consumers were already being represented fairly in Government; others felt that individual consumer offices within the executive branch would assist the consumer in being heard; whereas others felt the only way for the consumer to be truly represented was to have an independent agency which would serve as a focal point and overseer for consumer interests in the Government decisionmaking process.

Having served as Special Assistant to the Secretary of Agriculture for Consumer Affairs, I would like to address this question from my perspective of having served in that position for almost 4 years.

The independent agency which will represent the consumers' interest, I feel, is most important today, as I feel this will serve as the focal point in Government to bring together and focus on the various issues which are important to and will have impact on the consumer. This Agency can serve as a catalyst, if you will, at the earliest stages to look at all sides of the issue.

It can bring together producers, manufacturers, retailers, and consumers to look at the alternatives before an issue becomes a crisis. It can request new studies and research so that the best scientific data can be made available. It can bring together the appropriate Government offices within agencies that may have expertise in a specific field so as to avoid later duplication and overlap of responsibilities.

This Agency can also tap into the States and local jurisdictions for additional information and expertise. It can interpret for the grassroots consumer in lay language what the major facts are about the issues, so that they can make their voices heard on the specific issues.

It also can intervene and review Government decisions if they have not adequately heard the viewpoint of the consumer.

Producers and industry officials should welcome this new proposed Agency as an opportunity to work more closely with the consumer and the Government. Most industry officials want to do what is best for the consumer, I feel—otherwise why would they be in business? I believe industry officials, when they understand what this Agency can be, should welcome it as a tool that will help them be more effective and responsive to their customers.

Not everything has to end up in court with litigation; only that which has not had full public involvement should end up in court.

If Government is to be responsive, then all interests should have an opportunity to be heard. Once all interests have an opportunity to have input, then the decisionmakers must make a decision which is in the public interest. Not always is the consumers' interest going to come out on top. The important concept is that the consumers' interest be heard right along with all the other special interests. That is what I feel consumer input into the decisionmaking process is all about.

Regarding agricultural exemptions, there has been a great deal of discussion as to what should or should not be exempted from this bill.

I feel it is not in the best interest of the consumer, the producer, or agricultural industry to have agricultural exemptions. Agriculture and food policy is of paramount importance to the consumer. No decision that relates to market prices, price supports, or payments for raw agricultural commodities should be made without full consumer involvement in the issue. Supply and pricing decisions are some of the most important decisions made in agriculture. There is no reason to

have agriculture programs exempted from this act. The same procedure should be in effect for the agriculture producer as for the oil, steel, and auto manufacturer. So I urge you to delete the proposed agriculture exemptions from the bill before it is enacted.

It is much better to have consumer involvement in these agricultural issues at the early days of the decisionmaking process than to have the consumer excluded and then have them react after the fact. The Secretary of Agriculture should have the benefit of consumer imput in all major decisions that will impact on the consumer, not just a few.

The Agency for Consumer Protection, as I see it, will be involved with the major issues that have an impact on consumers. It should be small with well-qualified, nonpartisan individuals who will represent the consumer viewpoint, and it should focus on carefully selected, major priorities.

Now I would like to address myself to having an ombudsperson within each department. In addition to the independent agency, it is extremely important that there be within each executive department and regulatory agency an Office of Consumer Affairs or an ombudsperson to represent within the department the concerns and viewpoints of the consumer. This is essential, as each department needs to have at this stage a focal point for the consumers' interest.

Having served as the first Special Assistant to the Secretary of Agriculture for Consumer Affairs, I know how important that function was. This office should report directly to the Secretary of the Department or to the Administrator of the Agency and should have as its function the representation of the consumer viewpoint and the coordination of the consumer activities within the department.

It is extremely important that consumers have one central source within each agency that they can go to. This office is the key contact for consumers regarding new proposals, procedures, and issues that may have an impact on them. This office should work closely with all the officials within the department to be sure the consumer is being heard and is being involved in the decisionmaking process.

The ombudsperson in these departments should serve as the spokesperson and advocate for the consumer viewpoint both within and outside the department. The ombudsperson should work very closely with the Agency for Consumer Protection and should establish a good working relationship with all the appropriate officials within the Agency for Consumer Protection as well as within their own individual departments.

Respect and rapport is built up when you are within a department, as I well know; however, it is still essential that, in addition to the inside office, there be the backup and assistance from an independent agency as the independent agency will have the power to intervene legally if the consumers' interests are not being adequately represented.

Today at USDA there is no separate office of consumer affairs or ombudsperson for the consumer. It was the decision of Secretary Bergland to abolish the Office of Special Assistant to the Secretary of Agriculture for Consumer Affairs when I left on February 4.

Today there is no central coordinator whose full-time responsibility is to see that the consumer viewpoint is being heard throughout all agencies of the Department. There is no one that the consumer can turn to when the price supports are raised with no imput from con-

sumers. There is no one to handle and coordinate the hundreds of consumer complaints and phone calls that come in each week. There is no one to arrange briefings, conferences, seminars, and ad hoc meetings for consumer leaders. There is no one to testify or speak for the consumers' viewpoint in agriculture policy. In other words, there is a real void today at the U.S. Department of Agriculture for the consumer.

Carol Foreman, formerly executive director of Consumers Federation of America, who is now Assistant Secretary for Food and Consumer Services, is a welcome addition to USDA. However, in this position she cannot be expected nor should she be an advocate for the consumer position. In this position she must look at all of the various positions presented and then make a decision which is in the public interest.

Many areas of concern to consumers are not under her jurisdiction, such as marketing orders, export policies, research programs, support programs, extension education priorities, to name a few.

Therefore, I support this Agency for Consumer Protection but I urge that you also establish a separate ombudsperson in each department and agency. It is essential that, along with the independent Agency for Consumer Protection, the Congress direct the head of each executive department or regulatory agency to establish an ombudsperson and that these offices be adequately staffed and budgeted to be an effective spokesperson and advocate for the consumer within the department.

This will not duplicate the efforts of the Agency for Consumer Protection but it will enhance it. This, I feel, will be the most effective way to represent the consumer viewpoint in the governmental decision-making process.

Thank you.

Mr. BROOKS. I want to thank you very much, Ms. Steorts, for a very well-thought-out and constructive statement. I think your ombuds person idea is an interesting one. I do not know if it will be continued. There is some feeling that the fragmentation of the consumer effort is not desirable; but certainly there is some argument for some representative, some focal point, within various agencies where people could go, and you could consolidate those efforts and maybe then transmit the action on them to a new Consumer Agency.

We appreciate your coming down. I appreciate your courage in suggesting that they have absolutely no exemptions for agricultural products.

However, I might suggest that, if we did that on the floor of the House, there might not be any consumer bill. The advocates of exemption for agricultural products are probably about as potent on the floor as the advocates for consumer protection. I would hate to run the risk of getting them confused.

Without objection, your full statement will be made part of the record.

Mr. Pritchard?

Mr. PRITCHARD. Mr. McCloskey asked if I would yield to him.

Mr. BROOKS. We would be honored and privileged to have Mr. McCloskey ask questions. He is an able member of the full Government Operations Committee.

Mr. McCLOSKEY. Ms. Steorts, could you describe very briefly the number of staff that you had working under you in the Department of Agriculture when you were the consumer advocate there? Also, how many do you feel you needed?

Ms. STEORTS. I had a small staff. Even though it was small, I still feel we were very effective. I had a deputy who served in my office. I had two secretaries. Although it was a small staff, I really feel that we were effective and that we had the respect of the inside officials of the Department of Agriculture as well as those from the outside.

In addition to the particular staff within my office, I also had a coordinator of consumer activities in each of the 21 agencies. These people did not serve in a full-time capacity as a consumer coordinator but it was part of their overall responsibilities.

Mr. McCLOSKEY. These are 21 agencies of the Department of Agriculture?

Ms. STEORTS. Yes.

Mr. McCLOSKEY. You had a person then, I assume, at least part time who was assigned responsibility on consumer matters in each of the 21 agencies of the Department of Agriculture; is that right?

Ms. STEORTS. Yes.

Mr. McCLOSKEY. Did you have an annual budget assigned to your office?

Ms. STEORTS. No; I did not. I did have budget for staff, but the rest of the budget came from the overall agricultural funds.

Mr. McCLOSKEY. The problem that we had with this bill 2 years ago was in trying to understand what functions might be duplicated by the new consumer office as had been previously performed by offices such as yours in the various Cabinet offices and agencies. Our feeling was, when we considered the bill on the floor in an amendment that I offered, that the consumer advocate within an agency would have his or her voice stifled by the overwhelming mission of the Agency, particularly in Agriculture.

Let us say that the mission of the Department was to raise milk prices so that farmers could make money. If the consumer advocate within the Department was urging that milk prices be lowered to help the consumer, the consumer advocate would be one tiny voice whistling in the wind in a department like Agriculture.

Could you comment on that? Did you have any success ever in reducing agricultural prices in your tenure?

Ms. STEORTS. I think your basic question is how——

Mr. McCLOSKEY. My basic question can be answered yes or no. Were you ever able to get a price lowered while you were at the Department of Agriculture?

Ms. STEORTS. No; but there were many other things that I was able to do as the consumer advocate within the Department.

I feel that this office was a focal point that is extremely important to have within each of these individual agencies. The one problem as consumer spokesperson in a department is you can only go so far when you are on the inside of the house. I think that this is where the independent agency could be very helpful and very supportive especially when the consumer spokesperson within the department is taking a position which goes against the administration position.

Mr. McCLOSKEY. Frankly, this was our thought: In creating this independent Agency we were creating a consumer advocate who need

not worry about pleasing anybody at the Department of Agriculture, that could go in and swing from the heels, that did not need to worry about maintaining rapport with people whose missions were to raise milk prices rather than to lower them.

I am curious about this because I suspect that when the bill reaches the floor its ability to be enacted by the Congress will depend on showing that this advocate will be completely independent of the agencies with whom he or she is advocating and, correspondingly, that we will have to reduce somewhat the consumer establishment existing in the agencies if we are to create a new agency.

I say this because of the very real concern of most of my colleagues who were elected last November that the people want us to cut the size of Government and that any new agency is going to be highly suspect unless we can show that we are cutting something out at the same time.

Can you comment on that?

Ms. STEORTS. Let me make another comment. The independent Agency, as I see it, will only be able to handle a few major priorities each year. There are many other things that are going on within the departments that are very important to consumers. This is where I feel that the office of the consumer ombudsperson or consumer affairs director, or whatever you are going to call this person, this is where I feel that they can be of great service to the consumers at large.

I feel they need to be on the inside of the department. I do not feel that they need to have huge staffs or very large budgets. I was able to operate with four people and the coordinators rather effectively. Obviously, I could have had much more staff and as a result done a lot more things.

Mr. MCCLOSKEY. But, you see, you were on the inside and they did not need to worry about your taking them on in public on the outside. With the new Consumer Advocacy Office, it is really that we are putting him into an adversary position.

Why would there be any reason to believe that the outside advocate would get any better cooperation from an inside consumer advocate? If you did give that cooperation to the outside advocate, might you not find yourself cut off from that information and the rapport which you have described as making you effective in the past?

Ms. STEORTS. I do not think so. I might say that I was rather outspoken when I was in the Department of Agriculture. I did take positions that were not necessarily the positions of the last administration.

Mr. MCCLOSKEY. But not publicly.

Ms. STEORTS. Yes; I did take them publicly.

Mr. MCCLOSKEY. I would respectfully ask that you submit a set of those positions and perhaps the publicity that attended them for inclusion in the record at this point.

Ms. STEORTS. Yes; I will be glad to do so.

Mr. BROOKS. Without objection, so ordered.

Mr. Pritchard?

Mr. PRITCHARD. We have this agriculture exemption which I think a number of us would like to get rid of, but our concern is that the bill will not make it. Traditionally, farmers get an exemption and then they let the thing go on through.

I guess the tough decision here is whether you take out the agricultural exemption and jeopardize the bill.

Do you understand?

Ms. STEORTS. I understand what you are saying, but I also feel that the support programs are probably some of the major concerns of consumers today. I think we can look at the milk support that was just raised a few weeks ago. There was obviously no consumer input into that decision. That decision was not in the consumers' best interest. I really feel that consumers will suffer as a result of that.

Now let me ask this: Is that truly in the producers' best interest when the consumers are going to be as concerned as they will be when they see those milk prices going up?

Mr. PRITCHARD. I intend to vote to take the agricultural exemption out. If no one else offers it, then I will offer it. However, I do think we get into these hard parts.

I, for one, would like to put labor back in and put everybody in. However, I am not sure that I am in the majority on that.

Ms. STEORTS. I would agree with you that labor should also not be exempted, but I do not know why agriculture feels it should be exempted. It is hard for me to understand this.

Mr. PRITCHARD. This is a historical thing. In State legislatures all over this country they have a standard agricultural exemption paragraph. When you are putting legislation through a State capital, the farm groups get together and say, "You have [illegible] votes if you take us out." Because many times they have a strong bloc that crosses party lines, you have to take them out to get the legislation in. This has been traditional in the past 100 years in this country.

Let me say that you make it difficult for some of us who have just gotten around to being able to use the word "ombudsmen." Now you have this "ombudsperson" or something. I wish you would give us a little more time to get used to that term.

[Laughter.]

Mr. PRITCHARD. Do you feel that the consumer effort in the Department of Agriculture has gone backward? I am talking about since the new administration has come in. I can hardly believe that they would be less aggressive in the consumer area.

Ms. STEORTS. I think there is a void today in the fact that there is no central place for consumer coordination.

I supported the appointment of Carol Foreman. I think that she is a fresh new light at the Department of Agriculture; but I do not see that position as Assistant Secretary as the position that should advocate the position of the consumer. I think she certainly will see that as a part of the overall decisionmaking process, but still there needs to be at this time in the Government decisionmaking process an Office of Consumer Affairs or an ombudsperson office.

Mr. PRITCHARD. I would agree and I will look into this, Ms. Steorts.

Ms. STEORTS. I intend to talk with Secretary Bergland about that myself on Tuesday. Maybe the two of us can get it back in there.

Mr. PRITCHARD. Thank you.

Mr. BROOKS. Thank you very much, Ms. Steorts.

Mr. Pritchard, I am glad you and Ms. Steorts have a warm rapport on some of the major issues of this legislation. I do not fully share that rapport, I must say.

I appreciate your coming down today. It has been a pleasure to have you here.

[Ms. Steorts' prepared statement follows:]

PREPARED STATEMENT OF NANCY HARVEY STEORTS, PRESIDENT, NANCY HARVEY STEORTS, ASSOCIATES

Mr. Chairman and Members of the Committee: I am Nancy Harvey Steorts, formerly Special Assistant to the Secretary of Agriculture for Consumer Affairs, and now President of Nancy Harvey Steorts, Associates, Specialists in Consumer Affairs.

The consumer today wants to be heard and wants to be a part of the decision making making process. No longer will today's consumers sit back and allow government and industry to formulate policies and programs which will affect their increasingly changing life styles without consumer input.

Consumers today are putting quality and value at the top of their buying decisions. They are listening and reacting and they are insistent on being heard at the highest levels of both government and industry.

There has been a great deal of discussion and proposed legislation over the last few years as to which was the best way to have consumer interests represented.

Some felt that consumers were already being represented fairly in government, others felt that individual consumer offices within the Executive Branch would assist the consumer in being heard, whereas others felt the only way for the consumer to be truly represented was to have an independent agency which would serve as a focal point and overseer for consumer interests in the government decision making process.

Having served as Special Assistant to the Secretary of Agriculture for Consumer Affairs, I would like to address this question from my perspective of having served in that position for almost four years.

The independent agency which will represent the consumers' interests, I feel, is most important today, as I feel this will serve as the focal point in government to bring together and focus on the various issues which are important to and will have impact on the consumer. It can serve as a catalyst, if you will, at the earliest stages to look at all sides of the issue. It can bring together producers, manufacturers, retailers and consumers to look at the alternatives before an issue becomes a crisis. It can request new studies and research so that the best scientific data can be made available, it can bring together the appropriate government offices within agencies that may have expertise in a specific field so as to avoid later duplication and overlap of responsibilities. It can tap into the states and local jurisdictions for additional information and expertise. It can interpret for the grass roots consumer in lay

language what the major facts are about the issues, so that they can make their facts heard on the issue. It can also intervene and review government decisions if they have not adequately heard the viewpoint of the consumer.

Producers and industry officials should welcome this new proposed agency as an opportunity to work more closely with the consumer and the government. Most industry officials want to do what is best for the consumer - otherwise why would they be in business! I believe industry officials, when they understand what this agency can be, should welcome it as a tool that will help them be more effective and responsive to their customers.

Not everything has to end up in court with litigation - only that which has not had full public involvement should end up in court.

If government is to be responsive, then all interests should have an opportunity to be heard. Once all interests have an opportunity to have input, then the decision makers must make a decision which is in the public's interest. Not always is the consumers' interest going to come out on top. The important concept is that the consumers' interest be heard right along with all the other special interests. That is what consumer input into the decision making process is all about.

AGRICULTURE EXEMPTIONS

There has been a great deal of discussion as to what should

or should not be exempted from this bill.

It is not in the best interest of the consumer, the producer or agricultural industry to have agricultural exemptions. Agriculture and food policy is of paramount importance to the consumer. No decision that relates to market prices, price supports or payments for raw agricultural commodities should be made without full consumer involvement in the issue. Supply and pricing decisions are some of the most important decisions made in agriculture. There is no reason to have agriculture programs exempted from this Act. The same procedures should be in affect for the agriculture producer as for the oil, steel and auto manufacturer. I urge you to delete the proposed agriculture exemptions from the bill before it is enacted.

It is much better to have consumer involvement in these agricultural issues at the early stages of the decision making process than to have the consumer excluded and then have them react after the fact. The Secretary of Agriculture should have the benefit of consumer input in all major decisions that will impact the consumer, not just a few.

The Agency for Consumer Protection, as I see it, will be involved with the major issues that have an impact on consumers. It should be small, with well qualified, non-partisan individuals who will represent the consumer view point, and it should focus on carefully selected, major priorities.

OMBUDSPERSON WITHIN EACH DEPARTMENT

In addition to the independent agency, it is extremely important that there be within each Executive Department and Regulatory Agency an Office of Consumer Affairs or an ombudsperson to represent within the Department the concerns and viewpoint of the consumer. This is essential, as each Department needs to have at this stage a focal point for the consumers' interests.

Having served as the first Special Assistant to the Secretary of Agriculture for Consumer Affairs, I know how important that function was. This office should report directly to the Secretary of the Department or to the Administrator of the Agency and should have as its functions the representation of the consumer viewpoint and the coordination of the consumer activities within the Department. It is extremely important that consumers have one central source within each Agency that they can go to. This office is the key contact for consumers regarding new proposals, procedures, and issues that may have an impact on them. This office should work closely with all the officials with the Department to be sure the consumer is being heard and is being involved in the decision making process. The ombudsperson should serve as the spokesperson and advocate for the consumer viewpoint both within and outside the Department. The ombudsman should work very closely with the Agency for Consumer Protection and should establish a good working relationship with all the appropriate officials within the Agency for Consumer Protection

as well as within the individual Department. Respect and rapport is built up when you are within a Department, however, it is essential that in addition to the inside office there be the back-up and assistance from an independent agency as the independent agency will have the power to intervene legally if the consumers' interests are not being adequately represented.

TODAY AT USDA

Today at USDA, there is no separate Office of Consumer Affairs or ombudsperson for the consumer. It was the decision of Secretary Bergland to abolish the Office of Special Assistant to the Secretary of Agriculture for Consumer Affairs when I left on February 4. Today there is no central coordinator whose full-time responsibility is to see that the consumer viewpoint is being heard throughout all agencies of the Department. There is no one that the consmer can turn to when the price supports are raised with no input from consumers. There is no one to handle and coordinate the hundreds of consumer complaints and phone calls that come in each week. There is no one to arrange briefings, conferences, seminars, and ad-hoc meetings for consumer leaders. There is no one to testify or speak for the consumers' viewpoint in agriculture policy. In other words, there is a real void today at the U.S. Department of Agriculture for the consumer.

Carol Foreman, formerly Executive Director of Consumers Federation of America, who is now Assistant Secretary for Food and Consumer Services, is a welcome addition at USDA. In this

position she cannot be expected or should she be an advocate for the consumer position. Many areas of concern to consumers are not under her jurisdiction such as marketing orders, export policies, research programs, support programs, extension education priorities, to name a few.

SUPPORT AGENCY FOR CONSUMER PROTECTION WITH SEPARATE OMBUDSPERSON IN EACH DEPARTMENT AND AGENCY

A foundation for consumer involvement at USDA has been laid, but the frame is still to be built. Consumer involvement within a major Department such as Agriculture is slow and tedious, but possible. Thus, it is essential that, along with the independent Agency for Consumer Protection, the Congress direct the head of each Executive Department and Regulatory Agency to establish an Office of Ombudsperson and that these offices be adequately staffed and budgeted to be an effective spokesperson and advocate for the consumer within the Department. This will not duplicate the efforts of the Agency for Consumer Protection but it will enhance it. This, I feel, will be the most effective way to represent the consumer viewpoint in the governmental decision making process.

Nancy Harvey Steorts
4970 Sentinel Drive
Washington, D.C. 20016
(202) 229-1766

Mr. BROOKS. I want to put a letter in the record without objection. [The letter follows:]

METROPOLITAN DADE COUNTY, FLORIDA,
Miami, Fla., March 14, 1977.

HON. JACK BROOKS,
Chairman, House Operations Committee,
U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE BROOKS: I want to indicate my support at this time of the Consumer Protection Agency that will not only follow all consumer complaints through one central group, but will also act as an advocacy group for consumers.

This office has been the first such publicly funded Consumer Advocate's office in the country, and I can only assure you that it has been very successful.

I am enclosing a copy of the Ordinance creating this office, together with a Collage indicating some of the activities we are involved in.

In addition to the enclosed, our office has been mentioned in the Wall Street Journal, and is now becoming involved in class action litigation. Samples of the complaints filed are enclosed.

If there is any way I can help your committee in your understanding this concept, I will be more than happy to do so.

Sincerely,

WALTER T. DARTLAND,
Consumer Advocate.

Mr. BROOKS. This will conclude our hearings on H.R. 6118. Though this is a subject very familiar to this subcommittee, the information gained from our witnesses will be helpful in deciding what form this legislation should take. We heard extensive testimony from both proponents and opponents and many worthwhile suggestions have been made to improve the legislation.

The hearing is adjourned.

[Whereupon, at 4:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

National
Farmers Union

April 21, 1977

Hon. Jack Brooks, Chairman
Subcommittee on Legislation and National Security
Government Operations Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Brooks:

I want to place on the record of the hearings the endorsement of National Farmers Union for your bill H.R. 6118, the legislation to establish the Agency for Consumer Advocacy.

At the 75th anniversary convention of our organization held in San Antonio, Texas, in March, our delegates adopted a consumer protection plank which again called for legislation creating an independent consumer protection agency.

The statement pointed out that:

> "As one of the largest consumers of goods and services, farm producers are crucially affected by legislation to protect consumers."

As a matter of practice, farmers do buy most of their production inputs as retail and from that standpoint would benefit from measures which would help assure fair competition and discourage predatory practices.

The fact that services of farmer cooperatives are not available across the board, offering the highest standards of products and services, leaves producers vulnerable like other consumers in many instances.

The fact that farm marketing cooperatives as yet handle only a minor fraction of farm commodities beyond the initial sale from the farmers hands, also leaves consumers with a situation in which their interests can be injured by a destructive minority of businesses which indulge in less than legitimate practices.

As we view the proposed Agency for Consumer Advocacy (ACA), we consider that it would be a protection to legitimate businesses as well as to the ultimate consumers.

Suite 600, 1012 14th Street, N.W., Washington, D.C. 20005 — Phone (202) 628-9774

CONTINUED

4 OF 6

We believe the legislation is well conceived in assigning an advocacy rather than a regulatory role to the proposed agency. Should it have taken the latter role, the agency may have lost more than it could gain for consumers. The need to place, and in fact to increase the number of bonafide consumer voices on regulatory boards and agencies and departments, might have been downgraded in the minds of some by the fact that a centralized, regulatory consumer agency existed.

We believe that the value of the proposed agency would be in speaking for the public interest in those instances where the consumer now has little voice or little obvious recourse.

The Farmers Union sees the need for the type of agricultural exemption which was inserted in the legislation in the 94th Congress.

Nothing in the legislation should be construed as authorizing the ACA Administrator to intervene or seek judicial review of federal proceedings or activities affecting:

* The on-farm production of crops, livestock or poultry.

* The initial sale of such commodities by producers or their cooperatives.

* Federal farm stabilization, price support, procurement, loan and payment programs.

* Acreage allotment, marketing quota and set-aside programs.

* Federal marketing orders and agreements.

* International commodity agreements.

* National or international farm commodity reserves or buffer stocks.

* Export or import policies regarding farm commodities.

* Bargaining between farm producers and handlers.

In our opinion, the involvement or intervention of ACA in the above sectors would tend to be counter-productive.

It is the declared policy of the Congress that, in order to assure ample supplies for consumers, farmers should be assured parity of prices and income. It would hamper the achievement of this goal if an ACA Administrator were to intervene at any time that someone might think farm prices are "too high."

The purpose of the exemption is to make sure that no action would be taken which would have the effect of reducing farm prices below 100% of parity or preventing them from rising to full parity. To intervene in farm production or farm marketing for the purpose of reducing farm prices and income below equitable levels would indeed be dangerous to the long-run interests of consumers.

With a broad exemption such as is outlined above, we support the approval of legislation for an Agency for Consumer Advocacy.

Sincerely,

Tony T. Dechant
President

AMERICAN
TRUCKING
ASSOCIATIONS, INC.
1616 P Street, N.W., Washington, D. C. 20036

PRESIDENT
Bennett C. Whitlock, Jr.
(202) 797-5212

APR 25 1977
April 25, 1977

The Honorable Jack Brooks
Chairman
Committee on Government Operations
U. S. House of Representatives
Washington, D. C. 20515

My dear Mr. Chairman:

This is to record our opposition to H.R. 6118, which would establish an Agency for Consumer Protection insofar as it would apply to operations of interstate motor carriers.

As representative of an industry that is already thoroughly regulated by the Interstate Commerce Commission, the Department of Transportation, and other federal agencies, e.g., the Occupational Safety and Health Administration, and the Environmental Protection Agency, we believe the trucking industry has already reached the point where the cost resulting from overlapping jurisdiction is not justified by the public benefits, if any, derived therefrom. Enactment of H.R. 6118 would just add to the problem mentioned, with no real benefit that we can foresee.

Insofar as motor carriers of property regulated by the Interstate Commerce Commission are concerned, we believe there is no justification for the proposals embodied in the bill referred to. The shippers of property transported by interstate motor carriers are generally organized to protect their interests on a local, state, and national level. Our experience in contested proceedings before the Interstate Commerce Commission indicates that these shipper organizations do an excellent job of representing their interests, and that the agency is careful to protect them. The major area of property transportation by motor carrier, where the shippers are not sophisticated, i.e., in the movement of used household goods, has received the diligent attention of the Commission in the last few years through numerous in-depth rulemaking and enforcement proceedings. In addition, the Commission has recently increased its activity in providing assistance and protection to the consuming public by strengthening its compliance program and instituting a tariff examination program.

The Committee should also be aware of a relevant legislative development in the past year. The Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, created an Office of Rail Public Counsel to provide further consumer protection. This Office has authority to undertake a series of independent actions to participate in Interstate Commerce

Commission proceedings and contest Commission actions involving railroads. While the President has not yet appointed a Rail Public Counsel, the Commission is performing many of the functions of that Office. As for the other modes of transportation, the Commission is supporting legislation (H.R. 5618) to broaden the Public Counsel's Office to include motor carriers, freight forwarders, water carriers and pipelines under its jurisdiction. That bill is being considered by the Committee on Public Works and Transportation. We believe a Public Counsel for all modes of transportation -- should Congress decide one is needed -- would be able to perform more appropriately and with greater efficiency than various and sundry staff members of an overall Agency for Consumer Protection, who would not necessarily possess a knowledge or expertise in transportation matters.

For the reasons stated, there is no need to create jurisdiction in still another federal agency, and assign to it the authority which would be granted by H.R. 6118 to intervene in the daily affairs and operations of interstate motor carriers. We, therefore, respectfully request that H.R. 6118 provide for an exemption for motor carriers regulated under Part II of the Interstate Commerce Act. Finally, please make this letter a part of the hearing record on H.R. 6118.

Sincerely,

Bennett C. Whitlock, Jr.

Bennett C. Whitlock, Jr.

BCW:mbc

cc: Members, Committee on Government Operations

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April 26, 1977

Re: H.R. 6118 - Agency for Consumer Protection

Honorable Jack Brooks
Chairman
Subcommittee on Legislation
and National Security
Committee on Government Operations
U.S. House of Representatives
B-373 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

There is an aspect of the above proposal which I am calling to your attention because it is unlikely that it will be mentioned in other comments.

There is already in operation in one agency of the federal government a statutory "consumer advocate." This is the "Officer of the Commission" established by the Postal Reorganization Act to represent the interests of the "general public" in proceedings before the Postal Rate Commission.

This real-world example of a "consumer advocate" in operation is not one to give encouragement to supporters of the idea of an Agency for Consumer Protection. The participation of the Officer of the Commission and his staff in proceedings before the Postal Rate Commission has added enormously to the complications and delays of discovery, cross-examination, briefing, motions, objections and all the rest. The first hearing involving postal rates before the Postal Rate Commission involved 14,000 pages of transcript and over 1,000 filed documents. I would estimate that 20% or more of this huge output was caused by the presence of the Officer of the Commission in the case. His initial brief alone was over 300 pages long.

A major objection to the Officer of the Commission's performance is that there is no effort, formal or informal, made by this official to determine the actual views of members of the public on disputed issues. He sends out no questionnaires, holds no meetings and has no program of any kind for providing himself with guidance as to where the public thinks its interest lies. Instead, he makes his own judgments purely on the basis of theory and ivory tower thinking as to what are "the interests of the general public." On the basis of these one-man judgments he takes positions and puts forward proposals which cause enormous expense and expenditure of time for other participants in the proceedings.

I respectfully suggest that a worthwhile contribution to the material on the Agency for Consumer Protection proposal could be produced by a study by your staff of the functioning of the Officer of the Commission at the Postal Rate Commission.

I would appreciate it if this letter could be included in the record of the hearings.

Sincerely,

J. Edward Day:hm

THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

PROMOTER OF SOUND ECONOMICAL TRANSPORTATION

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April 26, 1977

RECEIVED
APR 27 1977
Legislation and National Security Subcommittee

The Honorable Jack Brooks
Chairman
House Government Operations
Subcommittee on Legislation and
National Security
B-373 Rayburn House Office Bldg.
Washington, DC 20515

Dear Chairman Brooks:

The House Government Operations Committee's Subcommittee on Legislation and National Security are presently conducting hearings on H. R. 6118 which propose to create an "Agency for Consumer Advocacy."

The National Industrial Traffic League wishes to take this opportunity to submit comments for the record of hearings on H. R. 6118 as it applies to the transportation regulatory agencies.

The League is a voluntary organization of 1800 shippers, shippers' associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic and transportation services of all carrier modes. It is the only shipper organization which represents all types of shippers nationwide. Its members include large, medium and small shippers who use all modes of transportation and who ship all types of commodities. The League is not a panel or committee of a trade group, or a spokesman for a particular commodity or transportation point of view, and does not permit carrier membership.

The League's primary concern is to provide for the nation and all its shippers a sound, efficient, well-managed transportation system, privately owned and operated.

To arrive at positions reflective of the broad range of shipper interests within the League, the League membership at its annual and special meetings considers, debates and votes on actions to be taken. During its seventy years of existence, the League has frequently been the spokesman for the nation's shippers before Congress on proposed transportation and regulatory reform legislation.

According to President Carter the "Agency for Consumer Advocacy" has four main purposes:

"First, most government consumer functions should be consolidated in the Agency. The Office of Management and Budget has begun a comprehensive review to help me indentify those units that should be transferred to the Agency. This review will also determine how remaining functions in the individual agencies can be strenthened. Of course, I still expect that all Federal agencies will be responsive to the consumer's concerns.

"Second, the Administrator of the Agency, like the heads of other executive agencies, should be appointed by the President and serve at his pleasure. The Agency should be subject to the normal executive budget and legislative clearance procedures. Accountability within the executive branch is necessary to ensure that the Agency will be as vigorous and effective as the people expect. It will not undermine the independence of the Agency's representational role.

"Third, the Agency should be empowered to intervene or otherwise participate in proceedings before federal agencies, when necessary to assure adequate representation or consumer insterests, and in judicial proceedings, involving Agency action. The agency, at its discretion, should be represented by its own lawyers. I will instruct the Administator to establish responsible priorities for consumer advocacy.

"Fourth, the Agency should have its own information-gathering authority, including, under appropriate safeguards, access to information held by other government agencies and private concerns. However, small businesses should be exempt from the Agency's direct information-gathering authority. Additional safeguards should be included to assure that needless burdens are not imposed on businesses or other government agencies."

President Carter also commented regarding the proposed new agency, "The Agency for Consumer Advocacy is mainly designed for participation in very large administrative proceedings; it is only one of a number of steps which will better protect the consumer."

The National Industrial Traffic League believes the nation's consumers are already protected in proceedings before the Interstate Commerce Commission, the Federal Maritime Commission and the Civil Aeronautics Board.

The Railroad Revitalization and Regulatory Reform Act of 1976 (Section 204) established the Office of Rail Public Counsel to protect the public interest in railroad proceedings before the ICC. The League supports expanding the ICC's Office of Rail Public Counsel to other modes.

The Federal Maritime Commission has a Bureau of Hearing Counsel charged with representing the public interest. FMC Chairman Bakke advised Senate Commerce, Science and Transportation Chairman Magnuson on December 29, 1976, that he believes that present FMC procedures are adequate in serving the public interest.

The Civil Aeronautics Board has an "Office of the Consumer Advocate" charged with representing the public interest.

In transportation cases, unlike other agency proceedings, there is now not only intervention by Agency Public Counsel, but also active intervention by users of transportation, such as the NIT League.

The subject of a consumer protection agency was brought before the entire membership at the 1974 Annual Meeting and the members voted unanimously to continue to oppose a federal office to represent consumers before Federal transportation regulatory agencies as unnecessary and undesirable since the agencies themselves are charged with protecting the public interest in transportation matters.

One of President Carter's major objective involves speeding up the decision process of federal administrative agencies. The NIT League and others have long and often voice their complaints regarding the length of time required in achieving decision by the transportation regulatory agencies. Passage of a bill creating an "Agency for Consumer Advocacy" could only further delay the already slow decision-making process of transportation regulatory proceedings. Addtionally, the League believes the nation's taxpayers will also be burdened with additional costs which in many instances will not be justified. The National Industrial Traffic League, therefore, opposes H. R. 6118 which would create a separate "Agency for Consumer Advocacy."

As an alternative, the NIT League supports the broadened authorization of the Interstate Commerce Commission's Office of Rail Public Counsel to handle public interest in other modes of transportation. Additionally, similar offices established in the Civil Aeronautics Board and the Federal Maritime Commission's Bureau of Hearing Counsel could be strengthened.

On behalf of The National Industrial Traffic League, I respectfully request that you consider our opposition to H. R. 6118 and the League's suggested alternatives

Sincerely,

J. Robert Morton

J Robert Morton
President

JRM:mah

cc: Members, House Government Operations Committee

APR 29 1977

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April 27, 1977

The Honorable Jack Brooks
Chairman
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 6118; Consumer Protection Act of 1977

Dear Mr. Chairman:

I am writing, in lieu of a personal appearance, to present my views on the bill H.R. 6118. I respectfully ask that this letter be placed in the record of proceedings before your Committee on the bill.

I have reservations about many of the provisions of H.R. 6118, most of which have been addressed by others. I wish to concentrate in this letter on a matter of particular concern -- the potential for disruption of our political system that the bill creates.

My years of law practice, both as a private and public citizen, have taught me that the stability and effectiveness of government depends upon balance among its institutions. Political power inadequately confined creates imbalance and invites abuse. The new Agency for Consumer Protection, as it is called in the bill, would be vested with authority so broad that it could easily be turned to the political advantage of those who control it. There are no checks sufficient to harness that authority. Under these circumstances, creation of the new agency is unwise.

The Agency for Consumer Protection would be charged to "protect" and to "represent" the "interests of consumers" in nearly every activity of our federal complex. The legislation would grant its administrator the right to appear before agencies and departments of government, the right to collect information by compulsory process from within and without government, the right to sue the government in federal court, and the right to speak from any platform -- all on behalf of the "consumer interest" which he "represents."

Let us consider the implications of this authority. To do so, we must first inquire who are the new agency's constituents. They are called "consumers" as if there were a difference between a "consumer" and a "person." In fact, of course, there is none. The agency will ostensibly represent the interest of every man, woman and child in this nation.

This conclusion leads to the question of how the interest of the people will be determined in any given matter. There are no criteria in the bill for defining that interest, nor could there be. Definition of the national interest is the most difficult and most fundamental objective of government; and ultimate responsibility for its accomplishment is placed by the Constitution upon the elected Members of Congress and the President. I have severe reservations about the delegation of so broad and basic a role to one unelected official.

I hope that you will carefully consider the implications of this extraordinary authority. The administrator would be empowered to appear before executive and independent departments and agencies, before the courts, before committees of Congress, and before any individual or entity outside the government to express the national interest as he defines it. The political authority inherent in such an assignment is literally enormous.

More importantly, there is no effective check against abuse of that authority by the elected branches. The bill contains no provision for a term of office or for the circumstances under which the administrator may be removed. These factors indicate congressional intent that

he be subject to removal at the discretion of the President and therefore that he would be within the President's control. On the other hand, the agency is empowered to sue executive departments and agencies, implying that the administrator would be independent from the President. Given that the power to sue executive departments is a keystone of the legislation, I assume that the administrator would not, in fact, be subject to control by the President. */ This conclusion is buttressed by the ability of the administrator to intervene and sue in the context of independent agency activity. Were he subject to the control of the President, his actions before independent agencies might constitute improper executive interference. If the Agency for Consumer Protection were to function as it is conceived in the bill, the power of the administrator could not be checked by the President.

Neither could Congress nor the judiciary provide an effective balance against the activities of the agency, so long as it remained within its practically limitless statutory authority. Congress could theoretically abolish the agency or limit its appropriation, but in practice would probably not do so. As the designated representative of all consumer interests, the administrator would have a far greater opportunity to influence public opinion than most Members of Congress. I would expect the agency to make the argument that its mandate could not be carried out without substantially greater appropriations. Given the administrator's public platform and his designated status as the representative of all consumers, it is not unlikely that he would prevail. For these reasons, I am skeptical as well about the "sunset provision" contained in Section 23 of the bill.

I do not care to speculate that any person would use the new agency as a vehicle to distort the political process for personal gain or for any other reason. I need not do so to prove my point. Power would be vested in the administrator of the new agency that could be wrongfully manipulated. That alone is sufficient to justify laying the concept to rest once and for all. It is contrary to the most fundamental of our democratic principles to vest in one unelected person the authority to represent, legally and politically, the interests of all of the people.

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*/ See United States v. Nixon, 418 U.S. 683 (1974).

I do not mean to concentrate on the negative. There are positive aspects to the bill, particularly its purpose, which is to make the processes of government more responsive to the needs of citizens. I applaud that goal, but cannot understand why the least desirable alternative to achieve it has been selected.

The creation of additional bureaucracy may have been more acceptable to the nation in the earlier years of this decade. It is apparent, however, that consumers now want less government for their "protection." The vote on this legislation has become increasingly negative to a point at which a shift of five votes in the House would have defeated it in the 94th Congress. Moreover, we have recently elected a new President who is pledged to halt the continued growth of government and to reorganize its existing functions along more efficient lines. I respectfully submit that he and the Congress should work together for the accomplishment of that goal, and not delegate the task to an unelected official with inordinate authority.

I regret that the scheduling of proceedings on H.R. 6118 was such that I was unable to appear personally to discuss my convictions on the bill in greater detail. If the proceedings are reopened, I would be pleased to do so. Furthermore, I stand willing to amplify the views expressed herein and to answer any questions that you may have.

In closing, I wish to make clear my interest and that of my firm in this legislation. We have, for several years, participated voluntarily with other members of the business community in an attempt to demonstrate why the consumer protection agency concept should be abandoned. We shall continue to do so. Our services in preparing for anticipated oral testimony before your Committee and the preparation of this letter will be compensated by the Business Roundtable, an organization of businessmen. Under the terms of our agreement with Business Roundtable, the views expressed herein are my own. The contents of this letter have not been reviewed or discussed with anyone outside our firm.

Sincerely yours,

Leon Jaworski

LJ:vm
cc: Members of the Committee on Government Operations
U. S. House of Representatives

INDIANA UNIVERSITY
Department of Telecommunications
RADIO-TV CENTER
BLOOMINGTON, INDIANA 47401

April 27, 1977

TEL. NO. 812—
337-4065

The Honorable Jack Brooks
Chairman, Subcommittee on Legislation and National Security
Committee on Government Operations
The United States House of Representatives
Washington, DC 20515

Dear Congressman Brooks:

It's my understanding that your committee is near hearings on administration proposals concerning the agency for consumer protection. Broadcast trade industry reports are that the administration bill does not attempt to keep the proposed agency out of license renewal matters before the FCC. Broadcast interests can be expected to lobby vigorously for a special-interest provision to protect their interests. I, however, am in favor of the administration bill which does not carve out such a special exception.

The industry, apparently, believes that the present licensing review that it undergoes ever three years from the FCC should be adequate. As a matter of fact, however, the review given most stations by the FCC is rather perfunctory except in cases where citizens intervene in the renewal process. As I am sure you are aware, the U.S. Court of Appeals, in opinions by now Chief Justice Burger, began the process of citizen participation - much over the objections of the FCC and the broadcasting industry - on the assumption that citizen participation in the process would add a perspective not previously seen in renewal cases. It has. With citizen participation the FCC has occasionally been prodded into action over equal employment opportunity, programing, discrimination, gross Fairness Doctrine violations, and other matters. This citizen participation should not be allowed to die.

The industry view on the exemption from the bill is that the renewal process is already open to citizen participation. This overlooks the very real problem that participation without counsel is generally ineffective before an administrative agency such as the FCC. The March 28, 1977 issue of Broadcasting, for example, recounts the recent experiences of the Rochester Black Media Coalition which shows the necessity for legal counsel. There, FCC Administrative Law Judge David I. Kraushaar has strongly urged the FCC to find some way to provide legal counsel to RBMC because, according to Kraushaar, the communications law professor now handling their case lacks the knowledge of legal procedure essential to a fair proceeding. While I am not entirely sure that Judge Kraushaar is right on this point, the whole matter attests to the need for counsel in order to effectively participate in renewal proceedings. The process is simply not as readily open as the NAB would have one believe.

There are, of course, alternatives rather than the Agency for Consumer Protection. The Comptroller General of the U.S. has ruled that the FCC could, on its own, reimburse citizen expenses in certain instances. FCC Chairman Wiley has, however, pleaded poverty and done only a minimal amount of such reimbursement. Bills presently in Congress might permit or really encourage such reimbursement, but their future seems clouded. There appears to be strong support for prompt action on the agency for consumer protection. Given that, it should not exempt broadcast renewal matters.

The FCC, like many administrative agencies, is a complaint oriented agency. It lacks the staff to actively investigate all licensees at renewal time, depending - instead - on complaints by citizens. Assistance from public agencies, such as an agency for consumer protection, is essential if the public interest movement in broadcasting is to continue to bring needed additional viewpoints to the broadcast license renewal process.

Should there be any way in which I can assist the Committee, please feel free to contact me. In the meantime, I hope my views will be considered by you and others on the committee.

Sincerely,

Herbert A. Terry

Herbert A. Terry
Assistant Professor

LAW OFFICE
JOHN B. MINNICK

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9126 GLENBROOK ROAD
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April 27, 1977

The Honorable Jack Brooks, Chairman
Subcommittee on Legislation and National Security
Committee on Governmental Operations
House of Representatives
Washington, D. C. 20515

Re: H.R.6118 on Establishing an Agency for Consumer Protection: Public Hearings

Dear Mr. Chairman:

I favor proper measures to protect consumers from the Federal bureaucracy, but question the wisdom of trying to cure the symptoms before diagnosing the real cause of the problem.

Our pressing need for consumer protection is symptomatic of the breakdown of our basic constitutional principles. The real cause of the breakdown, however, is the collapse of our constitutional concept of separation of powers under the weight of Acts of Congress. The particular Acts in question delegate legislative and judicial powers to the executive branch (including the so-called "independent" regulatory agencies) as well as legislative powers to the judicial branch. Federal regulations which create the need for consumer advocacy are based upon congressional delegations of power.

All of the delegated powers in question have been handed out by Congress without giving due consideration to the basic constitutional principles involved. As a direct result of Congressional delegations of power to the other two branches, the federal bureaucracy has mushroomed into a government of men and not of law. On the other hand, separation of powers is the only true foundation for a government of laws and not of men. Moreover, the two systems are incompatible and mutually exclusive no matter how hard we try to make them work together. Sooner or later we must face up to the breakdown of separation of powers and the sooner the better.

In essence, separation of powers means that one branch shall never exercise the powers nor perform the functions of the other two branches, or either of them. For example, please see Article XXX of the Massachusetts Bill of Rights and the correlative provisions of other State Constitutions and Bills of Rights, including Texas. Moreover, James Madison's understanding of the problem no

doubt prompted him to declare that the separation of our legislative, executive and judicial powers is the most sacred principle of our Federal Constitution. In short, separation of powers is the foundation upon which our constitutional system of government was built. Unfortunately, President Madison never told us why; and neither has anybody else for that matter. In any event, the reasons once taken for granted have long since been covered up or otherwise forgotten.

At the outset, our own unique American principle of the separation of our powers of government was first articulated on this continent by George Mason. His public work at Williamsburg in the Spring of 1776 laid the foundation for our Declaration of Independence, our State and Federal Constitutions, and our State and Federal Bills of Rights. The official public record of it all can be found in the Library of Congress. For example, please see the original Virginia Declaration of Rights, Preamble, and First Constitution of Virginia, as adopted in June, 1776. These constitutional roots of our government have not been studied nor taught as such in our schools and colleges from the beginning. Why? Simply because historians, educators, political scientists, and clergymen missed the point altogether. Judges, lawyers, politicians and newsmen covered it up. Students, voters, taxpayers and consumers never had a chance to learn what it is all about. Actually, the whole story did not begin to unfold publicly until the advent of our American Constitutional Bicentennial Era (June 12, 1976 - December 15, 1991).

One of the unaccountable facts of our history is that millions of Americans never heard of George Mason. Moreover, most of those who did happen to hear about him never learned why separation of powers is an indispensible element of a government of laws and vice versa. Regrettably, millions of Americans today do not know the difference between a government of laws and a government of men. Why? Because the difference between separation of powers and delegation of powers has never been taught. Why? Simply because there is nothing in our Federal Constitution to prevent one branch from using the powers of the other two branches. Moreover, the adverse effect of the omission has been compounded by the continuous neglect of our education along these lines for nearly two hundred years. Under the circumstances the only constitutional way to have maintained separation of powers within our federal system of checks and balances was not to have given any away.

Of course, you probably know that current thinking in and out of the federal triangle freely acknowledges that Congress has given broad legislative and judicial powers and functions to the executive branch (including the so-called "independent" regulatory agencies). Moreover, state and local jurisdictions have followed suit willy-nilly despite express provisions in most of our State Constitutions

and Bills of Rights to the contrary. (Except it took a constitutional amendment to do it in Virginia, but the voters were never told the whole story.) Besides, Congress has given specific legislative powers to the judicial branch. Likewise, it has acquiesced in and encouraged the use of other legislative and executive functions by the judicial branch while trying to control all three powers of government itself. Thus, it actually appears upon the face of the official record of the Government of the United States that Congress has broken down the principle of separation of powers by its own Acts. Furthermore, Congress has wiped out our system of checks and balances and has subverted the rule of law in the process.

One of the principal reasons why one branch should not use the powers nor perform the functions of the other two branches is because separation of powers means a government of laws, and vice versa. Our State and Federal Constitutions were written and balanced upon these two inseparable corollaries. Like love and marriage, we cannot have one without the other no matter what the breakdowners say. When we lose one we lose both, anything in President Ford's inaugural and farewell messages to the contrary, notwithstanding.

The substantive reason for separation of powers is simply a matter of the rules. That is, the rules of one branch do not work in the other two branches. As between the three branches, the rules are incongruous no matter how hard we try to make them fit. For example, the legislative branch operates under the rules of parliamentary procedure, including the committee system. The executive branch operates under administrative rules and regulations, including executive orders and agreements, and the commission system. The judicial branch operates under rules of court subject to the rules of evidence. Some overlapping is unavoidable, of course, due to the limitations of our vocabulary. As a practical matter, however, the rules of parliamentary procedure do not work in the executive and judicial branches. Administrative rules and regulations do not work in the legislative and judicial branches. The rules of court and evidence do not work in the legislative and executive branches. If you do not believe me, try to use the rules indiscriminately in practice sometime.

Another reason why one branch should not use the powers of the other two branches, or either of them, may be summarized in terms of our basic functions of government. That is, the essential function of the legislative branch is to make the law under its rules. The essential function of the executive branch is to carry out and to enforce the law as necessary under its rules and regulations. The essential function of the judicial branch is to apply the law under its rules subject to the rules of evidence. Furthermore, each branch has oversight responsibilities and functions with

respect to the other two branches. This is what our constitutional system of checks and balances is all about. As it was in the beginning, so it is today: Undue concentration of all three functions in any one branch subverts the rule of law and wipes out the equalizing effect of our system of checks and balances. Thus, instead of a government of laws, all of a sudden we wind up with a government of men not of our own creation.

Finally, separation of powers should be examined in the light of public policy. It is undisputed that the legislative power vested by the people in Congress includes the power to make national policy. But when all three branches are busy making, enforcing and applying our policies under the wrong rules, the net result is an expensive maze of conflicting opinions and trimetrically opposed positions. Such legislative, executive, and judicial confusion of the rules generates and perpetuates the artificial bureaucratic state imposed upon us by Congress. Moreover, it also spawns the principal causes of popular dissatisfaction with the administration of justice and prevents effective public participation at all levels.

Although the examples of the breakdown are legion, the chief mischief makers can be found in the Administrative Procedures Act of 1946 and the correlative provisions of the Judicial Code. Under the APA, the executive branch (including the so-called "independent" regulatory agencies) is given the power to "prescribe law or policy" as well as a wide range of judicial powers and functions. Likewise, an obscure 1949 amendment to the Judicial Code gives the judicial branch substantive rulemaking powers and functions otherwise reserved to Congress under Article III of our Federal Constitution. These particular Acts of Congress in effect were the last straws that finally broke down separation of powers and wiped out our system of checks and balances.

Obviously, there is a great deal more to all of this than meets the public eye. For openers, therefore, please try to put the following question into the context of separation of powers: Why is it OK for Congress to break down our basic constitutional principles with impunity, but wrong for others to take advantage of the situation? An agency for consumer protection may seem to be the right approach for some in the beginning, but separation of powers will produce the most satisfactory results for all in the end.

Under the circumstances, the most constructive corrective action for the benefit of consumers and the relief of taxpayers would be to repeal all unconstitutional delegations of power instead of trying to restructure our government on an ad hoc basis. This is a prime legislative function of Congress. Furthermore, it will open up the greatest possible opportunity for effective

public participation without spending a lot of money. In time, it may even come to be known as our American Constitutional Bicentennial Project.

Please include this statement in the public record of the hearings on H.R.6118.

Sincerely yours,

John B. Mannick

AICPA

American Institute of Certified Public Accountants
1620 Eye Street, N.W., Washington, D.C. 20006 (202) 872-8190

April 28, 1977

The Honorable Jack Brooks
Chairman, Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Chairman Brooks:

I was pleased to learn of your introduction of H.R. 6118, a bill to establish a new consumer agency, in which I note that the new federal agency will be called the "Agency for Consumer Protection (ACP)"

Many certified public accountants (CPAs) were concerned in the past that the agency would have the same acronym (CPA) as their professional designation. That concern has been eliminated by the selection of the proposed agency title.

On behalf of the many members of our organization, thank you for your consideration in this matter.

Sincerely,

Theodore C. Barreaux
Vice President

national home furnishings association nhfa 1025 VERMONT AVE. N.W. · WASHINGTON, D.C. · 20005 · 202/783-2622

April 29, 1977

The Honorable Jack Brooks, Chairman
Subcommittee on Legislation & National Security
Government Operations Committee
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D. C. 20515

Dear Congressman Brooks:

The National Home Furnishings Association, a national trade association of nearly 10,000 home furnishings retail stores, is grateful for the opportunity to comment on H.R. 6118, a bill to establish an Agency for Consumer Protection.

NHFA has long supported the need for a single department in the federal government to coordinate the consumer activities of the various governmental agencies. The most logical method to satisfy this need is for Congress to make permanent the White House Office of Consumer Affairs (OCA). The Association does not feel that the best interests of consumers would be served by the creation of an additional new agency of the federal government for consumer representation. For this reason NHFA opposes the creation of an Agency for Consumer Protection.

At a time when citizens are increasingly concerned about government efficiency and growth it makes better sense for Congress to review the experience of existing agencies before striking out in new directions. The White House Office of Consumer Affairs has established a solid record of accomplishments in raising the level of consumer awareness in both industry and government. This Association has enjoyed a close working relationship with the OCA in developing mutually advantageous consumer programs for home furnishings customers.

In many respects the OCA already performs several critical functions contemplated in this legislation. The OCA acts as a clearinghouse for consumer complaints and serves as a focal point for organizing voluntary business-supported consumer affairs programs. Consumer views are also expressed to other federal agencies through the OCA. This capability can easily be strengthened through the "reorganization" authority which Congress has already granted the President. It is important to note, moreover, that OCA carries out all of these functions in a spirit of cooperation and mutual respect.

The proposed Agency for Consumer Protection, in contrast, would have little choice but to carry out these functions as an adversary. Given

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the power to intervene in the proceedings of other federal agencies and to challenge their actions in court, there is little doubt that the new agency would act as an antagonist. The very nature of this legislation would likely result in confusion, delay and second-guessing whenever a federal agency attempts to issue a rule or regulation affecting the home furnishings industry.

More importantly, home furnishings retailers are concerned about the authority granted in this legislation which allows the proposed agency to intervene in other agency activities involving "adjudication", "sanction", and "relief." This includes individual complaints against business issued by agencies such as the Federal Trade Commission and the Consumer Product Safety Commission. Investigation and prosecution of alleged wrongdoing should be undertaken only by the enforcement agency authorized by Congress to perform this task. A consumer agency representative has no proper role in these proceedings. The presence of a consumer agency representative during a FTC cease-and-desist negotiation, for example, would not only be unwarranted, but would also result in the government "double-teaming" against business.

Business would have to face two agencies, either concurrently or consecutively, on the same issue.

In summary, the members of the National Home Furnishings Association support statutory authority to make permanent the White House Office of Consumer Affairs and oppose legislation to create a new Agency for Consumer Protection because:

-- the White House Office of Consumer Affairs has already proven its ability to work in harmony with both government and industry to represent the consumer viewpoint,

-- the proposed Agency for Consumer Protection would wield unwarranted authority to interfere in the rulemaking proceedings of other federal agencies, and

-- business firms would be subjected to governmental "double-teaming" in enforcement proceedings as the proposed Agency for Consumer Protection would force the firm to comply with its own interpretation of the enforcement agency's rules and regulations.

Your careful consideration of these views will be appreciated by the nearly 10,000 stores represented by the National Home Furnishings Association.

Sincerely,

William I. Levenson

William I. Levenson, Chairman
Governmental Affairs Committee

WIL/sdy

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312 236-2921
FEDERAL RELATIONS: 2033 K STREET, N.W.
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May 5, 1977

The Honorable Jack Brooks
Chairman, Subcommittee on Legislation
and National Security
Government Operations Committee
House of Representatives
Room B-373
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Brooks:

On behalf of the members of the Association of Home Appliance Manufacturers (AHAM) we respectfully request that the following comment be included in the record of the Legislation and National Security Subcommittee hearing on H.R. 6118, "The Consumer Protection Act of 1977."

AHAM is a national trade association representing both major and portable appliance manufacturers. Its membership includes the companies that manufacture the vast majority of such appliances sold in the United States. A roster of AHAM members is attached as Exhibit 1 to this letter.

AHAM's members have demonstrated a unique and far-reaching commitment to consumer interests by pioneering such programs as the Major Appliance Consumer Action Panel, the first informal complaint resolution program of its kind; the National Home Appliance Conference, a 29 year-old education program for consumer communicators; and the Recommended Advertising Practices Guidelines, to establish the highest standards for industry advertising to consumers.

With this history of consumer interest commitment and involvement, AHAM testified against legislation to establish a Consumer Protection Agency before the House Government Operations Committee in the 94th Congress. This testimony is attached as Exhibit 2 because so much of the industry's objections to earlier legislation remains pertinent to the bill before this Subcommittee.

AHAM, therefore, wishes to go on record again as opposing H.R. 6118.

A new Federal agency is not justified for the purposes set forth in the legislation. If the multi-faceted consumer interests are not now adequately considered in Federal agency activities, this is a failure best corrected by the Congress dealing with these agencies directly through its oversight function rather than delegating its authority to an additional agency.

Respectfully submitted,

Charles R. Evans

Charles R. Evans
Chairman, AHAM Board
of Directors

CRE:sk
Enclosures

EXHIBIT

Statement of the
Association of Home Appliance Manufacturers
on
H. R. 7575 and related bills
to the
House Government Operations Committee

This statement is presented on behalf of the members of the Association of Home Appliance Manufacturers (AHAM). AHAM's members manufacture such major appliances as refrigerators, home laundry equipment, room air conditioners, electric ranges, humidifiers, and dehumidifiers; and such portable appliances as coffee makers, electric knives, blenders, electric fry pans, and so on. A list of these members is attached to this statement, which is made with their strong support.

AHAM's members are opposed to the establishment of an independent Agency for Consumer Protection. The basic fallacy in the concept of a single agency to represent consumers in proceedings or activities of other federal agencies is that there is one overriding consumer interest. There are many conflicting consumer interests. In the market place one group of consumers prefers a less durable product at a lower price, while others want a more durable product and are willing to pay more for it. One group emphasizes appearance over serviceability. This diversity and industry's ability to provide goods and services to satisfy the conflicting preferences has made the American market place the envy of many nations.

The conflict between "consumer interests" in governmental activity is recorded daily in the media, as those interested in low cost fuel argue with those who would sacrifice immediate cost for purposes of conservation, as ecologists

argue with those who support the construction of power plants.

The choice of one interest to be represented, no matter how conscientiously made or how well documented, will deny representation by a federal agency of many other interests in a given proceeding. The argument that no consumer interest is now represented in federal agency proceedings, whereas business interests are alleged to be more than adequately represented, does not justify the creation of an independent agency to advocate one interest over all others and oversee the work of all other federal agencies.

This is not the time to create any new federal agency. A study of the regulatory agencies may be undertaken by a Commission on Regulatory Reform or by a Congressional committee. The purpose of the study would be to examine the regulatory agencies and to determine those that may have outlived their usefulness, the extent to which their functions overlap, the economic costs and benefits of regulation, and how the regulatory process can be made more effective, efficient and responsive to the public need. Such a study, currently languishing, could benefit the public, both as consumers and as taxpayers, to a far greater extent than an Agency for Consumer Protection.

In addition, the concern of the President, the Congress, and the taxpayers over inflation and the ever increasing federal expenditures stresses the need for caution in creating an agency whose cost to the economy is not known. Appropriations for the agency itself would be but a small part of the total cost to the economy. Costs would be incurred by other agencies and by industry as a result of the consumer agency's participation in proceedings or activities of other federal

agencies. A serious effort must be made to ascertain these over-all costs before the public is asked to assume them, through taxes and increased prices.

Consumers Not Neglected by Congress

Actually, the consumer has not been neglected by the Congress. A study by the Library of Congress, made at the request of Senator Taft (R-Ohio), reported that "almost every activity of the Federal Government touches upon the American consumer." Some 75 agencies, with hundreds of functions, were said to affect consumer affairs directly, with a current cost of many billions of dollars. (Congressional Record, May 15, 1975, p. S 8383)

Statutes enacted by recent Congresses to promote consumer interests include the Consumer Product Safety Act, the Flammable Fabrics Act, the Hazardous Substances Act, the Wholesome Poultry Act, the Radiation Control for Health and Safety Act, the National Traffic and Motor Vehicle Safety Act, the Fair Packaging and Labeling Act, the Fair Credit Reporting Act, and the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act. Now, in considering the creation of an Agency for Consumer Protection, the Congress is saying that these and numerous other statutes that promote consumer interests have gone for naught, that a consumer czar is needed to stimulate the agencies charged with administering these statutes.

If the federal agencies are not doing their jobs effectively in the public interest, the remedy lies with Congress. Congress itself should analyze the agencies' deficiencies, and correct those that are found. To place this responsibility in a permanently established agency, responsible neither to the Chief

Executive, the Congress nor the electorate, is an abdication of power.

Support for Agency Rests on
Narrow Base -- Opposition Strong

Support for legislation to establish an Agency for Consumer Protection or an Agency for Consumer Advocacy, rests on a very narrow base, the professional consumer organizations.

Business is strongly opposed to the legislation, as is shown by repeated testimony before Congressional committees by the United States Chamber of Commerce and the National Association of Manufacturers. Small business's opposition to the legislation is forcefully demonstrated by a survey of 412,000 small businessmen made late in 1974 by the National Federation of Independent Business. According to the survey, 84% of the firms opposed the creation of an agency to represent consumers, 12% supported such an agency, and 4% expressed no opinion. Only 14 or 15 major businesses were mentioned in the Senate debate on S. 200 as supporting the legislation. (Congressional Record, May 12, 1975, pp. S 7910 and S 7911)

Consumers themselves, apart from the professional consumer organizations, are opposed to the legislation. (Poll entitled "Government and the Consumer," by Opinion Research Corp., made public in March 1975)

The Administration is opposed to the legislation. (Letter of April 17, 1975 from President Ford to Congressman Jack Brooks, Chairman, House Government Operations Committee; Congressman Harley O. Staggers, Chairman, House Interstate and Foreign Commerce Committee; and Senator Abraham A. Ribicoff, Chairman, Senate Government Operations Committee)

Organized labor is opposed to the legislation, unless it is exempt. (Congressional Record, May 12, 1975, p. S 7908)

Agricultural and fishing interests are opposed, unless exempt. (Congressional Record, May 15, 1975, pp. S 8393 and S 8411)

A bill that elicits support for important segments of the economy if they themselves are exempt cannot be sound legislation for segments not exempt.

Effect on Governmental Processes

Only confusion and delay in government can result from the creation of an agency with unlimited authority to intervene or to participate in activities of other federal agencies. No agency, except those expressly exempt by the legislation, could proceed with its work free from apprehension that, at some point, the consumer agency might come in to be heard, to request information, or to take other action. No agency decision could become final until the statutory time for the consumer agency to seek judicial review of a decision had passed, or for the consumer agency to seek a "rehearing," if it had not participated in the proceeding leading to the decision.

This uncertainty as well as the main thrust of the consumer agency legislation, which is to make every federal agency, except those expressly exempt, accountable to a single agency is simply bad government. It would turn the democratic process of government completely around. Government of the "people, by the people, for the people" would become government by one entity. The consumer interest to be represented in government, how and where it would be represented would be determined by one individual and his staff, rather than by

the people speaking through duly elected legislators, or by the consumers making choices in the free market place of ideas, services and goods.

Provisions of H. R. 7575

Specific provisions of H. R. 7575 to which AHAM's members are opposed could be mentioned, but they are secondary to our opposition to the concept of the legislation. The unlimited authority with respect to the testing of consumer products and services, §9(a)(1) and (2), could make the agency the determining factor in directing governmental research in fields even remotely related to consumer interests. The information gathering authority of §10, limited only by concern for the "health or safety of consumers" or by "consumer fraud or substantial economic injury to consumers," goes, we believe, far beyond the information gathering authority of any existing governmental agency.

Areas of Legitimate Consumer Concern

There are four areas of legitimate consumer concern that perhaps are not being met adequately under current federal or state law. One is the need for a judicial forum, with minimum procedural requirements, in which redress may be otained quickly for valid complaints about goods or services. This need is addressed by H. R. 1952, entitled the "Consumer Controversies Resolution Act."

A second is the need for a thorough study of federal regulatory programs so that they may be made to promote consumer interests effectively, at reasonable cost, or be eliminated. This problem is addressed by H. R. 1956.

A third is the need for information on the cost to the government and to industry of proposed legislation as well as proposed programs to be established under existing laws, a need now recognized only in part by a House rule.

Fourth, is the possible need for in-house representation of consumers for selected agencies whose activities impinge directly upon consumers, another need not addressed by proposed legislation.

Consumer interests will be better served by addressing each of these needs than by creating an unstructured agency with unlimited power to call other federal agencies to account in the name of a monolithic, and nonexistent, consumer interest.

Conclusion

As developers and manufacturers of products that have lightened the burden of housekeeping immeasurably and have made the home a more healthful and enjoyable place to live, AHAM's members have long worked to promote consumer interests. They are convinced that the creation of an Agency for Consumer Protection, to roam at will through the federal government and to make virtually unbridled demands on industry without adequate Congressional guidance, will be detrimental rather than beneficial to consumers. They urge that H.R. 7575 not be enacted.

Respectfully submitted,

George P. Lamb, General Counsel
Association of Home Appliance
Manufacturers

June 24, 1975

Air Transport Association ata OF AMERICA

1709 New York Avenue, N.W.
Washington, D. C. 20006
Phone (202) 872-4000

LEO SEYBOLD
Vice President
Federal Affairs

May 5, 1977

The Honorable Jack Brooks
Chairman, Subcommittee on
Legislation and National Security
Committee on Government Operations
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairman Brooks:

The Air Transport Association, which represents virtually all of the scheduled airlines of the United States, wishes to express the industry's deep concern with H. R. 6118, a bill to establish an Agency for Consumer Protection to intervene in other agencies and the courts on behalf of the "interests of consumers." The bill will expand the federal bureaucracy, increase government interference with business, add to the federal deficit, slow down government regulatory procedures, and provide little real benefit to consumers.

The bill raises serious issues of public policy, not the least of which is the question of whether the public, government and business are becoming surfeited with spokesmen for "The Consumer." The following such provisions of the legislation are of particular concern to the airline industry:

1) Sweeping powers of inquiry, investigation and intervention are granted to an independent Administrator with few curbs or checks on his ability to abuse that power;

2) The Administrator becomes a superior judge of what is good and what is bad for all 225,000,000 "consumers" in this nation, and he need not check with anyone in making his decision;

3) The Administrator has no definite term of office and no specific provisions for his removal for any cause;

4) The Administrator will have tremendous power to add to the burdens of the courts merely on his own judgment or political decision;

5) A basic criticism of government has been the slowness of the decision process; but the new agency will slow decisions down even more because of its intervention in the proceedings and its ability to take other agencies to court;

6) There is substantial duplication between the consumer protection function of the proposed agency and consumer protection function of the Attorneys' Fees bill already moving through Congress under which the Federal Government will pay persons who claim to speak for the "consumers" and need financial assistance to make their agreement;

7) There are currently many agencies of the Federal Government which already have consumer protection offices functioning very efficiently. Why then, create another costly bureaucracy to accomplish the same end?; and

8) There is substantial duplication between the consumer protection function of the proposed agency and the ability and responsibility of officials of federal departments and agencies to protect the interests of the consumers.

In recent years Congress has established numerous specialized programs and agencies to protect the "consumers" environment, health, food, credit, trade, safety and other facets of his life.

In the field of transportation, regulatory agencies exist to balance in their area of expertise the various factions toward one main goal - the best public, or consumer interests. This is a massive task, as the consumers in this country are of all ages, races, sexes, economic and social backgrounds. They may be management, labor, or self-employed. They may be stockholders, officers, or employees of companies involved. Their interests are diverse, not monolithic. In short, no single

concern on any given issue before a Federal regulatory agency can be found which will be common to all. How then, can the one Administrator of the proposed new agency decide exactly which consumer's cause his agency will take up?

An example of the question of whether we are over-consumerized is the case of the Civil Aeronautics Board. Self-anointed "consumer" spokesman have attempted to make it one of the most maligned agencies of the government. It is interesting to note, however, that according to a recent survey by U. S. News and World Report, American consumers believe the airlines are doing a better job of providing the public with a worthwhile service or product than any of 19 other major industries surveyed. In another nationwide survey taken by an independent market research firm (R. H. Bruskin Associates), airline service received the highest rating measuring the quality of 15 products and services today versus 5 or 10 years ago.

Existing agencies were established in almost every case to provide for the best interest of the consumer. Does the proposal to establish a superagency to overlook the shoulders of all other agencies of government constitute a conclusion by Congress that its function of overseeing the departments and agencies it established is now breaking down?

In our opinion the negative aspects of the bill outweigh the potential benefits. We hope the Congress will agree.

We would appreciate this letter being made a part of the hearing record. Thank you.

Sincerely,

Leo Seybold
Vice President
Federal Affairs

cc: Subcommittee Members

common cause
2030 M STREET, N.W., WASHINGTON, D. C. 20036
John W. Gardner, Chairman (202) 833-1200

May 9, 1977

The Honorable Jack Brooks
Chairman
House Government Operations Committee
2157 Rayburn Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

Common Cause supports H.R. 6805 which establishes an Agency for Consumer Protection. The Agency for Consumer Protection legislation aims to meet two important objectives in furthering consumer interests: it would be empowered to represent the interests of consumers before federal agencies and courts; and it would gather consumer information, advising the President, the Congress and the public on consumer related matters. Common Cause believes this Agency would be a highly useful advocate, opening the federal decision-making process to greater public scrutiny and participation.

The time for Congress to complete action on this legislation is long overdue. Fulfillment of the purposes of H.R. 6805 would be a major step toward fairer consumer representation in the decision-making process. Common Cause urges you to oppose any weakening amendments and to vote to report out H.R. 6805.

Sincerely,

David Cohen
President

KATHLEEN F. O'REILLY, EXECUTIVE DIRECTOR

consumer federation of america

SUITE 901 • 1012 14th ST. N.W. WASHINGTON, D.C. 20005 • (202) 737-3732

May 9, 1977

MEMORANDUM

Re: Consumer Protection Agency — Consumer Federation of America's Opposition to Cost/Benefit Analysis Request

Consumer Federation of America is extremely sympathetic to the goal of requiring increased agency accountability -- a goal which has undoubtedly inspired the inclusion of cost/benefit analysis language in the legislation. However, on balance we are totally opposed to the language as presently framed in both the Senate and House bills.

Last October the Permanent Subcommittee on Oversight and Investigations of the House Commerce Committee issued a comprehensive and thought-provoking report on Federal Regulation and Regulatory Reform. That report not only analyzed the various regulatory agencies but also submitted recommendations including a particularly persuasive one as to cost/benefit analysis. It concluded:

> We recommend that benefit/cost analysis be used to organize and communicate information and that it not be allowed to operate as a substitute for conscious responsible choice. In many regulatory contexts, it is simply not applicable. While benefit/cost analysis can at times be useful in decisionmaking, it can also provide an effective disguise for subjective advocacy. . . . To ensure that benefit/cost analysis may perform its intended function, the Subcommittee urges that it be used with great caution. Special care must be taken to identify all benefits and all costs of proposed actions.

CFA very much shares that concern and based upon our experience with cost/benefit analysis, we fear that the cost/benefit language as presently framed in the Senate and House bills will not be in the public interest. It is one thing to require federal agencies to consider cost/benefit, but to require detailed statements analyzing and detailing those costs/benefits will too easily be used as a method for politically curtailing much-needed regulations, particularly in the health/safety fields. Our concern is based on the following considerations:

1) All too-often there is little if any available data before a regulation has been in effect.

The crashworthiness standards that were issued by the National Highway Traffic Safety Administration from 1967-1970 alone have saved more than 28,000 lives. Their benefits have exceeded their costs according to a GAO study but the inability of NHTSA to have made that argument in advance of the regulation,

could easily have created a disincentive for NHTSA to act aggressively. Indeed during the post-1970 period as there developed more and more political pressure for a cost/benefit analysis of standards, the agency slackened its pace for new standards.

The legislative history of the 1966 Vehicle Safety Act did not indicate a Congressional desire for cost/benefit analysis by the NHTSA. Yet auto makers, the White House and the Council on Wage and Price Stability have in the past politically exploited the absence of such data to oppose safety standards.

2) Even data which is available all too often comes from the very industry being regulated and has in the past been used by industry as an opportunity to pad the cost of a product, and to then blame and thus kill federal regulation.

For example Lee Iacocca, the President of Ford Motor Company, claimed that between 1971 and 1975, $530 of the $1010 price increase for Ford Pintos was caused by federal environmental and consumer regulations. However, the Bureau of Labor Statistics of the Department of Labor, using data supplied by the auto industry, determined that regulation was responsible for $414 in price increases -- $116 less than Ford's estimate. Further, if industrial profits and excise taxes are excluded, the true cost of the regulations is $250.

Iacocca also claimed that stricter emission controls and a passive restraint (air bag) system proposed for 1978 models would raise the price of the 1978 Pinto by $750 ($450 for emission controls and $290 for the passive restraint system). However in September of 1974 in testimony before the Department of Transportation, John DeLorean, a former GM vice president and safety engineer, reported that passive restraints should increase the cost by only $88, $202 less than the Ford estimate. The Environmental Protection Agency estimated that the cost of the emission control standards was $328, $122 less than the Ford estimate.

3) It is too easy to draw a narrow list of "benefits" with the resulting consequence that the "costs" have an overridingly negative influence on regulations.

For example: a) The Council on Wage and Price Stability issued a report in May, 1975 supporting the removal of individual pricing on supermarket items based on a tunnel vision cost/benefit analysis. They said then that consumers should not be deprived of the "significant" cost savings derived from price removal. That conclusion was later overwhelmingly rebutted. Using industry's own data, the cost savings would only be $1.13-$1.27 per year per shopping family. Also, the Council on Wage and Price Control cost savings had not included the increased cost necessary to police the supermarket shelf to maintain accuracy.

Furthermore, in March, 1975 a Michigan State University study (paid for by industry) concluded that there is a statistically significant difference between consumers who have individual price-marking and those who do not. That study proved what opponents of price removal had consistently argued: Removal of individual pricing reduces price consciousness and handicaps the consumer's ability to making meaningful comparisons at every stage of the shopping journey. b) The Council on Wage and Price Stability also issued a report criticizing the Environmental Protection Agency's proposed emission control standards as they would affect motorcycles.

The Council's myopic reasoning was that low cost foreign produced motor bikes would not be as available to the consuming public. They ignored the environmental and health consequences. c) In October, 1976 the Council on Wage and Price Stability issued a statement justifying the increasing farmer-to-retail spread (Spreads rose 5% in 1976, 9% in 1975. In 1977 the farmer's share of the food dollar is expected to be 37¢-39¢.) The report failed to address the impact which food chain concentration has had on the farm-to-retail spread. Yet a report of the Joint Economic Committee released last month dramatically describes at length the devastating effect such concentration has had. In 1974 alone, food market overcharges due to a concentrated food chain industry cost consumers at least $662 million more for food than they otherwise would have had to pay. d) Last summer the Council on Wage and Price Stability issued a statement in support of U.S. Department of Agriculture's position on mechanically deboned meat. The USDA favored the allowance of bone fragments in meat without considering the significant health and safety features which offset the "cost" aspect. The Council on Wage and Price Stability followed suit.

4) It is too easy for an agency to use cost/benefit as a convenient excuse for not fulfilling their statutory mandate.

A most graphic example of this abuse is the Environmental Protection Agency's recalcitrant action on pesticide regulations:

> By narrowly limiting the range of risks and benefits associated with the use of carcinogenic pesticides, the Environmental Protection Agency neglected to consider issues that profoundly affect the public interest. . . .The Federal Insecticide Fungicide, and Rodenticide Act prohibits EPA from registering any pesticide before an affirmative determination that it will not cause unreasonable adverse effects. EPA directly contravenes the statute by registering first and asking questions later.
>
> The Act places the burden of proof on the applicant for registration to prove the safety of his product. EPA shifts that burden from registration applicants to the Government, again directly contravening the statute.
>
> The Act gives the EPA Administrator responsibility to make sensitive policy judgments on whether to prohibit or restrict use of any given pesticide. The Administrator has shirked that responsibility. He has preferred in such situations to rely on risk/benefit analysis, an imperfect decisionmaking technique that biases decisionmaking against the public interest. (Page 555/114 of above mentioned report)

5) It is premature to require such cost/benefit statements in this legislation.

CFA submits that before imposing such a cost/benefit requirement, Congress should first hold hearings on this issue at which time special consideration should be given to the paperwork burden such a requirement would impose.

NATIONAL ASSOCIATION OF MANUFACTURERS

EUGENE J. HARDY
Senior Vice President
Government Affairs

June 16, 1975

The Honorable xxxxxxxxxxxx
U. S. House of Representatives
Washington, D. C. 20515

Dear Congressman xxxxxxx:

Within a very short time the House will be asked to consider and to vote once more on a proposal to create an extraordinary new federal agency -- an "Agency for Consumer Protection" (ACP) with intervention powers into the affairs of practically all other federal agencies and departments, including cabinet offices and the Office of the President.

Because our Association has been so prominently identified as a leading opponent of the entire concept of "intervention" it is appropriate that I share our views directly with you, and ask your thoughtful review and ultimate support of them.

While H.R. 7575 differs in several respects from S. 200, enacted recently by the Senate, we ask you to look at the broad concept embodied in both bills, rather than at the technical language. Probably you have wondered at the intensity of opposition within the business community, which has helped to prolong debate and make this a highly controversial issue (within the Congress, at least). We make no apologies for this, since each debate seems to have surfaced new problems with the concept; aroused more disquiet in both government and the private sector; and directed attention to some of the surprising and puzzling implications of the entire idea.

As you probably have sensed already, "consumer protection" has moved far from the original idea of an "ombudsman" helping average shoppers in their day-to-day problems in the marketplace. Now, the concept has moved to the point where this curious agency could intervene into every corner of American life, from income tax audits, to education, to Davis-Bacon and Walsh-Healy decisions on labor rates.

Regardless of your past position, I ask you to look again at the implications of such an agency from both a conceptual and a pragmatic view. In concept, you are asked to grant a single agency, headed by a single federal officer, the right to interfere with nearly all other federal officers, to call them to account, to demand their files, to require public explanation, to dispute their decisions and, finally, to take them to the highest courts in the event of a disagreement. You are asked further to permit these activities on the reasoning that the "consumer interest" is something different from, equal with, or even superior to the whole public interest.

1776 F Street N.W., Washington, D.C. 20006 • Phone (202) 331-3700

As a concept of government, the idea of a special single-purpose agency challenges credulity. Designed for an adversary purpose, it cannot function except by impugning the competency and integrity of all other offices, boards and commissions. It cannot take action except by substituting its judgment for that of other agencies, whether executive or bipartisan. It cannot prevail except by elevating an undefined and narrow "consumer interest" over the public interest, which the rest of government is sworn to uphold and which is the basis for all law and public policy. Most ironic of all, it would be authorized to advocate the interests of one group of consumers while disregarding or opposing the interests of others in rate-setting, agriculture, leasing, licensing, import-export issues, and the rest.

You are aware that in the Senate, as each day exposed new "problems," the final bill became riddled with political exemptions and exclusions. Some observers point out that the agency already has been "captured" by special interests, even before it has been created. Your own examination of the "idea behind the idea" may lead you to wonder how many more problems will be exposed in the forthcoming debate by the House.

Also, as a practical matter, I hope you will foresee that the entire operation is pointed toward promoting regulation of the economy -- not reducing it. Excessive regulation now has been widely identified as a major factor in higher production costs, higher prices and intensified unemployment. It has nearly wrecked transportation, nearly bankrupted utilities, depressed the centers of the auto industry and crippled many smaller companies. Neither labor, nor farmers, nor fishermen or any other special group exempted by the Senate can hope to escape the adverse impact of S. 200 on the wages they earn, the prices they pay, or the products they produce. Whether "strong" or "weak," the bill is a classic example of "bad government" and "bad management."

Our own belief is that Members of Congress are elected to serve all the people in all their interests -- and you should have no difficulty in telling your constituents why the ACP is the wrong approach to consumer problem-solving. The proper way, we believe, is to act as you have acted before -- where a problem exists, identify the problem and devise a remedy to specifically meet that problem within the existing framework of government. If you and your colleagues do this, you will be able to tell your constituents that you have looked into the heart of the intervention theory, and found there are other and better ways of serving their "consumer interests." We would be pleased to hear from you and to help you in any way we can to support these views.

Sincerely yours,

Eugene J. Hardy
Senior Vice President
National Association of Manufacturers

STATEMENT OF

THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

TO THE

SUBCOMMITTEE ON LEGISLATION AND

NATIONAL SECURITY OF THE

HOUSE GOVERNMENT OPERATIONS COMMITTEE

ON THE SUBJECT OF

LEGISLATION TO ESTABLISH AN AGENCY FOR CONSUMER ADVOCACY

Dear Mr. Chairman:

The American National Cattlemen's Association (ANCA) offers comment relative to legislation which would establish a Federal agency for consumer protection.

ANCA is the national spokesman for the beef cattle industry. The association is comprised of individual cattlemen members, plus 52 affiliated state cattle producing and feeding organizations and 15 national breed organizations. Combined, the industry represents 280,000 professional cattlemen in all parts of the nation.

The above figures were presented to you as a means of expressing our memberships' deep concern regarding the necessity for this type of legislation. The reason simply being that we as professional cattlemen along with our families are also consumers. We feel remiss that such legislation would, by interference, pit consumers against cattlemen.

We as cattlemen and consumers have recognized the right and entitlement to protection against misrepresentation, fraud, unfair and deceptive trade practices. These are basic rights afforded by our system of government.

In the event there is a compelling reason to assure consumers a representative voice, then we suggest that the President, who now has full authority, establish within the Executive Branch of Government the appropriate vehicle for responding to "consumer" needs, demands and rights.

We further stand opposed to any language in this or similar legislation which provides for an agricultural exemption.

Cattlemen, who are engaged in production agriculture, have vivid and real memories of similar such exemptions which were levied during 1973 when wage and price controls were imposed by the President. Although basic livestock production was exempt from those controls, the residual impact, as a result of controls at the slaughter and packer levels, dramatically aided in forcing live cattle price downward. The resultant effects of this action, taken in 1973 by the Federal government, lingers with the industry today.

Attached to this statement are relative documents which support cattlemen's concerns in opposition to the need for such an agency: the Appendix section deals with; (a) the effects of no grain feeding on total beef supplies and prices; (2) Breakeven Prices for Various Types of Beef; (3) Summary of Report on Feedlot Finishing Versus Non-Confinement Feeding; (4) Comparative Costs of Beef Production; (5) Cost and Efficiency of Beef Production and; (6) How Proposed Consumer Protection Legislation Affects Cattlemen.

The information contained in these documents give you an instant insight as to the complexity of the beef cattle industry. Any action, outside of normal market supply/demand functions, artificially imposed, automatically wrecks havoc with the system.

Also apparent within the documentation is visible evidence of Federal agency jurisdiction whereby any litagatory action triggered could result in lengthy and costly delays to producers....delays that compound themselves once a basic production decision is made five years previous to marketing of product.

It is for these reasons that ANCA opposes legislation of this nature to "protect" the American consumer. The Committee's consideration of our views in behalf of the beef cattle industry is appreciated.

APPENDIX I

EFFECTS OF NO GRAIN FEEDING ON TOTAL BEEF SUPPLIES AND PRICES TO CONSUMERS

In 1976, the cattle slaughter mix was as follows:

Fed Cattle	25,085,000
Non-fed Steers & Heifers	5,948,000
Cows	10,617,000
Bulls	997,000
TOTAL	42,644,000

This total slaughter resulted in production of 25.7 billion pounds of beef on a carcass weight basis. Of that total beef output, approximately 17 billion pounds came from cattle finished on grain-containing rations in feedlots. This estimate is based on a 1,090-lb. average live weight, and a 62% yield, resulting in a 675-lb. carcass.

If all of the 25 million fed cattle had been slaughtered off grass and hay, at an average weight of 750 lbs., without any feedlot feeding, they would have produced only 9.97 billion pounds of beef. (This is based on a carcass yield of 53% per animal.)

The result then would have been total 1976 beef supplies of 18.7 billion lbs., or only 73% of what supplies were with cattle feeding.

Economists agree that demand for beef is relatively inelastic. That is, a 1% change in supply results in more than a 1% change in price. However, even if the ratio were only 1 to 1, the 27% supply reduction resulting from elimination of grain feeding would have raised the retail average price of beef from the actual 1976 average of $1.39 per pound to $1.90.

The above figures assume no change in size of basic cow herd and the marketing of all steers and heifers off grass, without feedlot feeding. If steers and heifers were kept on pasture and hay until they reached normal slaughter weight, they would be at least 2 or 3 years old—at least a year older than if they went into feedlots, where they gain weight more rapidly. This procedure could reduce the range and pasture capacity available for cows by 30 to 40%. The net result would be essentially the same as outlined above—there would be a sharp drop in total annual beef production, and resulting higher prices to consumers.

—more

In a presentation to the National Livestock Feeders Association, M. D. McVay of Cargill, Inc., estimated that, without grain feeding, per capita beef supplies would drop to about 80 lbs. on a carcass weight basis, compared with approximately 120 lbs. in recent years.

The reason for reduced beef production when cattle are not grain-fed is that the energy content of a strictly grass or roughage ration is much less, and most of the feed consumed by an animal on pasture goes just to maintain the animal, not to help it grow. A steer on grass may gain an average of only 1 lb. per day, rather than 2.5 or 3 lbs., as in a feedlot.

Source: ANCA

BREAKEVEN PRICES FOR VARIOUS TYPES OF BEEF

Following is a breakdown on costs of producing different types of beef on a carcass weight basis. Note that a major difference between grass-fed and grain-fed beef is a reduced yield (carcass weight as a percent of live weight) of meat in the case of animals without grain finishing.

1. Calf Meat--A 450-lb. calf requires approximately 55¢ per pound, live weight, for the producer to break even. This amounts to $247.50 per head. A calf will yield about 50% in the form of carcass weight. Thus, the carcass cost would be approximately $1.10 per pound.

2. Non-Fed Steers or Heifers. If the calf is put on grass for the summer, after being purchased from the cow-calf operator, there will be a cost of $105 to add 300 lbs. to the animal. This makes a total liveweight cost per animal of $352.50. A 750-lb. yearling animal marketed off grass in the fall would yield approximately 53%, and the carcass cost would be 88.7¢ per pound.

3. Mature Grass-fed Animals. If a yearling is kept on grass and hay until it weighs 1,050 lbs., the cost of the additional 300 lbs. of gain will be about $120--making a total liveweight cost of $472.50. The carcass yield would be 55%, and the carcass cost would be at least 82¢ per pound.

4. If the 750-lb. animal is placed in a feedlot, it will cost approximately $135 to add 300 lbs. of gain. A fed steer will yield approximately 61%, and the carcass cost will be 76¢ per pound.

—more

Thus, the comparative costs on a carcass weight basis are:

	Per Lb.
Calf Off Grass	$1.10
Yearling Off Grass	.87
Mature Animal Off Grass	.82
Feedlot-Finished Animal	.76

The above costs are calculated simply on the basis of cattle production costs and dressing (or yield) percentage for each type of animal. For reasons of simplification, consideration is not given to variations in hide and offal value, processing costs or other factors. With smaller average weights per animal, per unit processing costs will be higher—another reason for finishing animals in feedlots.

Source: ANCA

SUMMARY OF A REPORT BY THE ECONOMIC RESEARCH SERVICE, USDA, ON FEEDLOT FINISHING VERSUS NON-CONFINEMENT FEEDING

An ERS study of the comparative economics of confinement versus non-confinement feeding arrived at these conclusions:

1. Confinement feeding requires less total feed consumption than non-confinement feeding —about 30% less total feed units by time of slaughter.

2. The feed conversion ratio (feed per pound of gain) is much less for confined beef.

3. Confinement is economically advantageous to both the livestock feeder and the consumers.

4. Much of the feed consumed, even by confined cattle, is roughage (and by-products) that cannot be consumed by other livestock species or humans. In fact, half (or more) of a steer's slaughter weight is achieved prior to confinement and before concentrate feeding, and four-fifths of all feed in beef production is pasture and harvested forage. (In 1976-77, among cattle on feed, it is estimated that the total rations will consist of 56.5% feed grain, 6.9% by-products and 36.6% harvested forage.)

5. Confined feeding results in a relatively uniform supply of beef to the consumer.

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6. If a range calf did not go into a feedlot, it would require 30% more feed and as much as an additional year to reach 1,000-lb. market weight. Without confinement, the producer's cash flow is reduced, overhead and labor per unit are increased, and the risk of death loss is greater.

7. A close look at relative feed costs, using season average prices for corn and hay (with hay serving as a proxy for all roughages), shows that, on the basis of nutrient values, corn is consistently more economical.

8. As a result of development of the feeding industry, producers have found a better and larger market for their calves, and the public has benefited from larger, more uniform, more palatable beef supplies, at a lower unit cost.

Source: ERS, USDA, November, 1976.

COMPARATIVE COSTS OF BEEF PRODUCTION

An analysis of costs of beef production was made by Dr. B. P. Cardon of Arizona, president of the Council for Agricultural Science and Technology. This was based on the average price of feedlot rations in the winter of 1975-76. The data below include all feeding costs except interest on the money invested.

The most economical beef which the industry can produce comes from an animal that is placed in the feedlot shortly after weaning and is fed a balanced high-energy ration until it reaches approximately 1,000 lbs. This animal would be expected to grade low Choice.

Roughage Break-Even Cost of Production
(Gain-1 lb./Day)

Wt x 100	$ Cost/Gain	$ Cost/Live Lb.	Dressing (%)	Break-Even $ Cost/ Carcass Lb.
>4	$ 200.00	$ 0.500	50	$ 1.00
4-5	49.80	0.500	50	1.00
5-6	57.90	0.513	50	1.02
6-7	65.70	0.533	51	1.05
7-8	73.00	0.558	52	1.07
8-9	80.00	0.585	53	1.10
9-10	87.00	0.613	54	1.14

--more

Break-Even Cost of Production
(Feedlot)

Wt x 100	$ Cost/Gain	$ Cost/Live Lb.	Dressing (%)	Break-Even $ Cost/Carcass Lb.
4	$ 200.00	$ .500	50	$ 1.000
4-5	34.70	.469	50	.938
5-6	37.70	.454	51	.890
6-7	41.00	.448	53	.845
7-8	44.30	.447	55	.813
8-9	49.00	.452	58	.779
9-10	55.00	.462	61	.757
10-11	60.20	.474	62	.765
11-12	70.00	.493	63	.788
12-13	85.00	.521	64	.814

Source: Dr. B. P. Cardon, Arizona, 1976.

COST AND EFFICIENCY OF BEEF PRODUCTION

Dr. Danny G. Fox and associates at Michigan State University analyzed the costs of beef production under various systems--including all-forage and different proportions of grain in the ration after calves are weaned from their mothers.

The following table shows results of different systems per beef cow unit. The calculations are based on feed for cows and their calves to slaughter weight. The data assume operation at 100% efficiency in use of forage and grain. The cattle on all-forage would grade standard, and those getting grain would grade low Choice.

	---Ration 1st half of post-weaning gain--- All Forage	All Forage	40% Grain
	---Ration 2nd half of post-weaning gain--- All Forage	82% Grain	72% Grain
Cow Units Maintained, Million Head	31.8	47.6	49.4
lb. of Grain per lb. of Retail Beef	0	2.89	4.33
lb. of Retail Beef per Capita per Year	50.7	75.9	78.8
Daily Consumption of Protein per Capita, Grams	15.5	23.2	24.1

The table shows that, with an all-forage system, the nation's cow herd would be sharply reduced, and amounts of edible beef and protein produced per capita would be reduced substantially, as compared with systems that involve grain feeding during all or part of the period following weaning. As less grain is fed, less beef is produced because more of the

--more

forage energy has to be used for growing and finishing calves rather than for mother cows in the basic herd. As a result, consumers would have less beef to consume, and the beef would be of lower acceptability because of increased age (less tender) at slaughter and less intramuscular fat (marbling).

The ultimate determinant of the level of grain feeding is the price of grain. Levels and periods of time of grain feeding are affected by grain costs as well as beef demand.

The following table shows data on the economics of grain feeding, with systems at 100% efficiency.

	--Ration 1st half of post-weaning gain--		
	All Forage	All Forage	40% Grain
	--Ration 2nd half of post-weaning gain--		
	All Forage	82% Grain	72% Grain
Expected Animal Performance			
Daily Gain, Lb.	1.00	1.96	2.16
Lb. Feed per Lb. of Gain, Dry Matter Basis	18.91	11.55	7.98
Turnover Rate in Production Unit per Year	.58	1.13	1.24
Feed Cost for 600 Lbs. of Gain			
Corn at $1.50 per bushel	$223.36	$149.13	$106.74
Corn at $3.00 per bushel	223.36	204.35	211.40
Non-Feed Cost for 600 Lbs. Gain	$ 82.29	$ 76.75	$ 82.62
Feed and Non-Feed Cost			
Corn at $1.50	$306.65	$225.88	$189.36
Corn at $3.00	$306.65	$281.10	$294.02

The beef produced with an all-forage program would grade standard, while the two grain systems shown would result in low-Choice beef. The all-forage beef, in addition to costing more to produce, would result in a carcass with $37.80 less value.

The above table includes just part of the data from the Michigan report. However, it helps show that, when grain is cheap, it pays to feed more of it. When it is higher priced, it pays to feed less. Actually, at this time, the grain price is between the two values shown in the table.

All-forage systems would not become least-cost until corn was at least $4.50 per bushel, and even then Choice carcasses might be high-enough priced so that grain would have to go even higher in order to force a change to an all-forage system. Also, forage would tend to increase in price if grain prices rose.

Source: Excerpts from "Producing Beef: What It Costs and Opportunities for Improving Efficiency," Michigan State University, January, 1977.

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APPENDIX II

HOW PROPOSED CONSUMER PROTECTION LEGISLATION AFFECTS CATTLEMEN

Through litigation, subpoena and paperwork delays, ACA could affect such important USDA regulatory functions as:

A. Agricultural Marketing Service (AMS)

(1) Marketing agreements and orders

(2) Beef Board (if upcoming referendum passes)

B. Food Quality and Safety Service

(1) Meat inspection

(2) Beef grading

C. Animal and Plant Health Inspection Service (APHIS)

(1) Veterinary service program

D. Packers and Stockyards Administration (P&S)

(1) Posting of public markets

(2) Bonding

E. Agricultural Stabilization and Conservation Service (ASCS)

(1) Commodity Programs (target prices)
a. Feedgrain

(2) Production adjustments (acreage allotments)
a. Feedgrain

(3) Small Watershed projects

(4) Emergency assistance

F. Conservation Research and Education

(1) Agriculture Research Service (ARS)
a. Pesticides, disease affecting livestock, marketing research

G. Forest Service (FS)

(1) Public use of grazing livestock (permits)

(2) Research for increased forage on public lands

H. Agricultural Economics

(1) Economic Research Service (ERS)
a. Economic Research

STATEMENT
by the
NATIONAL LUMBER AND BUILDING MATERIAL DEALERS ASSOCIATION
to the
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
of the
HOUSE GOVERNMENT OPERATIONS COMMITTEE
April 20, 1977

H.R. 6118
Consumer Protection Act of 1977

The National Lumber and Building Material Dealers Association consists of 29 federated state, regional and metropolitan retail lumber and building material dealers associations with an aggregate of some 15,000 companies throughout the United States. Our members supply building materials for the majority of the housing builit in the United States, as well as a considerable amount of commercial and industrial construction. We also sell building materials direct to the consumers. The great majority of our members would be classified as small businessmen and businesswomen by any definition.

We appreciate this opportunity to present our views before the distinguished Subcommittee on Legislation and National Security on the proposal, H.R. 6118, Consumer Protection Act of 1977, offered by the distinguished Chairman, Mr. Brooks, to establish an Agency for Consumer Protection (ACP) within the Federal Government.

The NLBMDA would like to state our position forthrightly that we are opposed to this legislation and to the concept of any type of additional consumer agency within the Federal structure. We do support the Office of Consumer Affairs within the Executive Branch to coordinate the existing consumer programs.

It is our feeling that the creation of the proposed Agency for Consumer Protection will only add to government complexity, delay and red tape, and thus ultimately inflation and unemployment at a time when the national economy needs strengthening instead of weakening. We strongly feel we do not need another layer

of government bureaucracy when the existing agencies and programs are adequate to function in the best interest of the American consumer. As small business, it has always been and continues to be, our experience that less government proves best for business and for the consumers.

It is our understanding that the ACP is to be an independent, non-regulatory agency to speak for the interests of the consumer, authorized to protect the interests of consumers before agencies and the courts, and to provide the public with information about consumer matters. Such an agency would have an adverse impact. Today, there exists bureaucratic over-regulation and further intervention would only add to that situation.

It would seem that the creation of an Agency for Consumer Protection is a contradiction of the President's and the Congress' efforts to reorganize and reduce both the direct and indirect costs of government and to increase its responsiveness to the American public. In view of the increasing public demand for reorganization and simplification, it would be interesting to survey the public as to their true wishes for yet another bureaucracy to complicate the existing bureaucracy.

We, as members of the business community, are concerned about fairness and good products and service to our customers and to the general public; however, we continue to hold fast to the idea that the house that polices itself, serves and works best. We realize that there may be abuses, but feel such abuses to be in the minority and certainly do not justify creation of an ACP.

The NLBMDA has certain reservations about the guidelines that will supposedly govern the jurisdiction and administration of the ACP as proposed in the legislation, H.R. 6118. We also wish to express our concern over the potential for expansion of an ACP in terms of cost, size and scope. It seems to us that it will be most difficult to have the ACP, as outlined in this legislation, to appropriately function as a protection for the consumer before Federal agencies, to have judicial review, to serve as a clearing house for complaints, to serve as an information

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gathering agency and to obtain information from other agencies, and not expand considerably beyond the legislative intent of the bill being offered in the United States House of Representatives.

The National Lumber and Building Material Dealers Association respectfully urges the members of this Subcommittee, and the members of the Congress in its entirety, to consider the alternatives to H.R. 6118. We urge your attention to the paperwork and regulatory restrictions already placed on business - small business in particular - and, subsequently the consumers, in considering whether enactment of H.R. 6118 and creation of, what we feel will be a bureaucratic Agency for Consumer Protection, is the best solution to assisting consumers at this time.

Finally, we wish to express to this Subcommittee our reservations about an agency being created to supposedly "zero-in" on problems that will be, in the end, only for certain special interests that of which this issue has sprung.

Your consideration of our views on H.R. 6118 and inclusion of our statement in the public hearing records of the proceedings of the Subcommittee will be very much appreciated.

# # #

STATEMENT of MELINDA HALPERT, EXECUTIVE DIRECTOR
NATIONAL CITIZENS COMMUNICATIONS LOBBY

The National Citizens Communications Lobby (NCCL), a membership organization devoted to broadcast reform, enthusiastically supports H.R. 6118, a bill to establish an Agency for Consumer Protection (ACP).

H.R. 6118 differs from the Senate bill (S.1262) on one key point that is crucial to citizens concerned with improving the media. The Senate bill expressly prohibits the ACP (or ACA, Agency for Consumer Advocacy) from participating in broadcast license renewal proceedings before the Federal Communications Commission, while the House bill does not.

We commend the House Subcommittee on Legislation and National Security for having the sound judgment to omit this unnecessary restriction.

We recognize that some legislators have "difficulty in determining the appropriateness of the intervention of the ACP in broadcast license renewal proceedings..." as noted in the 1975 House Report. They fear that the ACP would become mired down in myriad license challenge in which seemingly small numbers of consumers would be affected. The House Report further states that "although such license renewal proceedings were not specifically exempted in the bill...(t)ime, energy, and expertise of the ACP should be devoted to matters having a more widespread impact."

We cannot think of any proceedings that have a more "widespread impact" than that of broadcast license renewals.

The citizen movement in broadcast reform was sparked by a license challenge in the famed 1966 WLBT case in Jackson, Mississippi. The ramifications of this case go well beyond the correction of racist programing in a small Southern community. What is significant about this case is that it established the very notion of standing for citizen participation in FCC proceedings.

Just as every court case enhances and adds to the established body of law, so, too, does each license renewal proceeding set a precedent for our entire communications system. License renewal proceedings have not only clarified industry-wide programing standards and equal opportunity employment practices, but also have opened the way to meaningful dialogues between citizen groups and broadcasters.

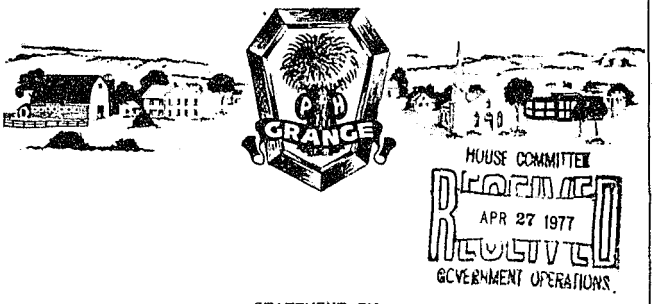
Fears of license challenges leading to instability in the broadcast industry have always been greatly exaggerated by broadcasters who seek to protect their lucrative interests. Well over 99% of all licenses are renewed!

We would neither urge nor expect the ACP to become enmeshed in every license renewal. That would be an unlikely occurrence, since the ACP will exercise full discretion in deciding which cases to pursue.

But the ACP should, at the very least, have the <u>option</u> of intervening in those few license challenges it feel to be particularly significant.

We fervently hope that the final version of the bill will reflect the House's good sense in not hamstringing this agency before it even exists.

THE NATIONAL GRANGE



STATEMENT BY

JOHN W. SCOTT

MASTER OF THE NATIONAL GRANGE

TO THE

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

COMMITTEE ON GOVERNMENT OPERATIONS

U. S. HOUSE OF REPRESENTATIVES

APRIL 22, 1977

Re: Agency for Consumer Protection

Family Farm Organization Serving Rural America

THE NATIONAL GRANGE, 1616 H STREET, N.W. WASHINGTON, D.C. 20006

Mr. Chairman and Members of the Committee:

The National Grange, the nation's oldest and second largest farm organization, is opposed to legislation that would establish, as a part of the executive branch of government, an agency for consumer advocacy.

The Grange is more than a farm organization. It has a heterologous membership -- farmers, ranchers, rural and urban residents are represented in our half-million members located in 41 states and nearly 7,000 local communities. We not only have a basic, inherent interest in agriculture as it is represented by the family farmer, but also are keenly aware of the family farmer's contribution and responsibility to his community.

One of the purposes of the Grange is to serve the total interest of its diversified membership. Thus, policies and programs of the Grange encompass a broad array of circumstances affecting the lives of rural and suburban Americans; they result from member action generated by total community and national interest -- not by agricultural interest alone.

The delegate body of the National Grange adopted the following resolution at its 109th Annual Meeting held in November of 1975:

"Agency for Consumer Protection"

"RESOLVED, that the National Grange oppose the creation of the Agency for Consumer Protection in the federal government; and be it further

"RESOLVED, that the National Grange take immediate action to express its continued opposition."

It is because of the action taken by the delegates, on behalf of our one-half million members, that the Grange is opposed to an "agency for consumer protection" or "consumer protection agency" or

"agency for consumer advocacy". Any way you phrase it, it spells trouble to government, business and consumers.

The "agency" was initially--and still is--the dream vehicle by which a few self-appointed, Washington-based guardians of the public will try to direct the government towards their view of what's best for the American consumer. Control will be indirect through litigation, subpoena, paperwork and delay.

The CPA is an idea whose time has come and gone. Since its proposal eight years ago, there have been sweeping changes in government -- including the change in Administrations -- which render the CPA concept wholly irrelevant, obsolete, and in fact disruptive of the current Administration's goals.

There has been, for example, a revolution in consumer protection legislation and reorganization -- including the establishment of the CPSC, FEA, OSHA and EPA, passage of the Magnuson-Moss FTC Improvements Act, the Hart-Scott Antitrust Improvements Act, the Toxic Substances Control Act, the Medical Devices Amendments of 1976, the "Government in the Sunshine" Act, the Freedom of Information Act Amendments and countless other consumer protection bills. Moreover, the Peterson Commission recommendations for higher government salaries and an effective code of ethics are going into effect. Oversight committees of the House and the Senate have concluded studies with recommendations to improve conflict rules and the appointment process.

The doctrine that agencies are dominated by the industries they are supposed to regulate derives from perceived conflicts-of-interest, lack of complete disclosure of regulatory contacts with industry, appointment of persons partial to industry and the "revolving-door" syndrome.

It obviously makes more sense to attack these problems directly than to create a new bureaucracy that is no more immune from "capture" than any other bureaucracy. The President and Congress are already taking the direct actions necessary -- financial disclosure, open decision-making, effective conflict-of-interest rules (including termination of the "revolving door"), higher salaries to attract and retain personnel and more consumer-oriented appointments (such as Joan Claybrook at NHTSA, Mike Pertschuk at FTC and Carol Foreman at USDA.

We find it difficult to understand why a President who was elected in part on a promise of more responsive, efficient and open government, and has moved rapidly to implement that promise, now finds it necessary to endorse and have introduced a consumer protection bill. The Administration's ACA consumer package is as confusing and bewildering as the complexity of government bureaucracy itself. Indeed, the Administration's lack of any clearly-defined role for the ACA underscores the fundamental weakness of the premise of the ACA -- namely that the problems of the bureaucracy can be cured by creating more bureaucracy. The fact that the Administration would retain the Office of Consumer Affairs in the White House and most of the consumer functions of agencies in the present departments of government is clear indication that the Administration is not sure of the purpose of the new agency or of its chances of success.

The National Grange wishes to express its concern over certain features of the bills now being considered by the committee. We are firmly convinced that these bills go too far and that such legislation would disrupt the orderly process of administration of federal laws, result in damaging delays in necessary government regulation and,

on balance, harm rather than help consumer interests. Whenever the consumer protection agency so created (whatever its name) decided that a consumer interest was involved in any activity of any other federal agency or department, it would be empowered to intervene on behalf of consumers as an adversary with full powers to subpoena witnesses and evidence and, most important, to appeal to the courts any action taken, with almost no statutory limitation or restriction.

In an effort to improve consumer representation and perhaps to correct shortcomings in the operations of some agencies, the bills would create a new level of bureaucracy in the federal government instead of setting out to improve consideration of consumer interests within the existing framework. Taking into consideration past activities of consumer activist groups in the nation and the current climate of challenge of almost every government action, we fear that the proposed agency would use its powers to the utmost and create havoc in established federal procedures. Delay and additional cost to the government and interested parties would be considerable.

While it is our understanding that the proposed legislation would affect the powers of about thirty-five major federal agencies and well over a thousand proceedings and activities, we are primarily concerned about the impact on the long-standing and well-settled activities of the United States Department of Agriculture (USDA). USDA alone has about 75 types of formal proceedings and twice that number of informal activities in which the new consumer protection agency could intervene. We understand that these include such wide-ranging activities as marketing agreements; regulation of packers and stockyards and the marketing of fresh fruits and vegetables; food standards, inspection, grading and labeling; plant patent proceedings; seed standards; issuance of licences to warehousemen and others; conservation programs;

price support and adjustment programs; Commodity Credit Corporation activities generally; feeding programs; quarantines; agricultural chemicals; export programs; rural assistance programs; and Forest Service programs. The list could be extended and many other activities of indirect concern to farmers could be added.

USDA has operated effectively under its regulatory role for two-thirds of a century. There is no reason to disturb the role it has performed and inject an "eager beaver" into the situation.

We urge the defeat of the proposed legislation to establish a consumer agency.

Please make this statement a part of the hearing record on this legislation. Thank you.

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Legislation and National Security Subcommittee

THE NATIONAL LIVESTOCK FEEDERS ASSOCIATION STRONGLY OPPOSES HR6118, "CONSUMER PROTECTION ACT OF 1977," FOR THE FOLLOWING REASONS: 1. ACA INTERVENTION IN AGRICULTURAL MATTERS SUCH AS GRAIN EXPORTS, MEAT INSPECTION, GRADING, FEED ADDITIVES ETC, WOULD DRASTICALLY DEPRESS FARM PRICES; 2. ACA WOULD SPEAK VOICE OF A FEW SELECTED OR SELF APPOINTED ACTIVISTS-NOT CITIZENRY; 3. CONSUMERS NOT HOMOGENOUS-NO ONE CONSUMER INTEREST ON MOST ISSUES; 4. ACA ADMINISTRATOR WOULD BE ALL POWERFUL, DICTATORIAL-RESPONSIBLE TO NO ONE; 5. ACA WILL DUPLICATE EFFORTS OF PRESENTLY ESTABLISHED AGENCIES-GROW INTO A BUREAUCRATIC MONSTER; 6. FEDERAL GOVERNMENT ALREADY EXCESSIVELY INVOLVED IN CONSUMER PROTECTION AND BUSINESS REGULATION; 7. ACA CONTRARY TO NEED TO REDUCE BIG GOVERNMENT SPENDING AND INFLATION, COSTS WILL EXCEED BENEFITS; 8. LABOR EXEMPTION IGNORS THE IMPACT OF LABOR DISPUTE PROCEEDINGS UPON CONSUMERS AND IS A BIAS AGAINST THE BUSINESS COMMUNITY; 9. BEST CONSUMER REPRESENTATION AND PROTECTION IS THROUGH PURCHASING POWER AND SELECTIVITY; 10. ACA WILL HAMPER GOVERNMENTAL PROCESSES BY INTERFERING WITH NECESSARY AND RESPONSIBLE GOVERNMENT FUNCTIONS, 11. FOSTERING ACA ABANDONS RESPONSIBILITY OF CONGRESS TO MAKE EXISTING AGENCIES MORE RESPONSIVE AND RESPONSIBLE.
WE REQUEST THAT THIS MAILGRAM BE INSERTED IN THE RECORD.

R H (BILL) JONES
EXECUTIVE VICE PRESIDENT
NATIONAL LIVESTOCK FEEDERS ASSN
309 LIVESTOCK EXCHANGE BLDG
OMAHA NE 68107

15:11 EST

MGMCOMP MGM

STATEMENT OF THE NATIONAL LP-GAS ASSOCIATION
IN HEARINGS OF THE SUBCOMMITTEE OF THE COMMITTEE
ON GOVERNMENT OPERATIONS ON H.R. 6118 TO ESTABLISH
AN AGENCY FOR CONSUMER ADVOCACY

April, 1977

This comment is submitted by the National LP-Gas Association for consideration in the Government Operations Subcommittee hearings on H.R. 6118, a bill calling for establishment of an Agency for Consumer Protection, or an Agency for Consumer Advocacy (ACA).

The members of the National LP-Gas Association, a trade association, supply an energy source, principally propane, to approximately 13 million installations throughout the United States. It represents over 5400 members, including 43 affiliated states. Our member companies are predominately small businesses. This comment reflects the opinion of our members, particularly of these small businesses.

In presenting this statement we do not imply lack of concern with consumer protection. However, our members are now overwhelmed with governmental regulation. The superimposition of another agency adds to a present heavy burden. We are now confronted with regulatory matters or information seeking in varying degree by Departments of Agriculture, Commerce, Defense, Interior, Labor and Transportation. A heavier burden appears in aspects of agency regulation by CPSC, FEA, FRB, FTC, ICC, and OSHA. It is our impression that these governmental arms are dedicated to the public interest, including consumers. In some agencies protection of the consumer is their prime purpose. In others, specific offices for consumer representation have been created and are functioning. While it is proposed to transfer to ACA consumer activities of other Agencies, we question the feasibility of discarding

the more specific expertise that these Agencies have within their jurisdictional areas. Accordingly, we consider that the consumer interests are adequately, if not fully, represented. To superimpose the ACA is both a costly and injudicious duplication of bureaucracy.

ACA represents unnecessary cost to government, and to the regulated businessman, that must ultimately be borne by the consumer. We question that this represents consumer interest or protection. The propane supplier is particularly distressed in that he must first contend with the requirements of Departments and Agencies earlier listed in this duplication or overlap of government.

To briefly point out a few such areas presented by this legislation, Section 5(b) directs that ACA

> "(2) encourage and support research, studies, and testing x x x x x x to the extent authorized in Section 9 of this Act". (CPSC and DOT provide these services.)

Section 9 states:

> "(b) all Federal agencies which in the judgment of the Administrator, possess testing facilities x x x x are authorized and directed to perform promptly, such tests as the Administrator may request etc.".

This is a direct superimposition of ACA over other agency functioning. Section 9(b)(2) further requires other agencies "to supply such statistics, data, progress reports and other information as the Administrator deems necessary".

Section 5(b) further authorizes the Administrator to

> "(4) publish and distribute material x x x x x which will inform consumers of matters of interest etc.". (CPSC, FTC, and other Agencies, in varying degrees, so function.)
>
> Again, the Administrator is authorized to
>
> "(5) conduct conferences, surveys, and investigations, including economic surveys concerning the needs, interests and problems of consumers which are not duplicative in a significant degree etc.".

While apparently recognizing the duplication that will be created with other agencies, it is sought to limit it to that which is of a "significant degree". Here is a ripe opportunity for interagency conflict with the businessman caught in the middle. Section 8(b) provides

> "(b) all Federal Agencies which, in the judgment of the Administrator, possess information which would be useful to consumers are authorized and directed to cooperate etc.".

This is a direct superimposition of ACA over other Agency functioning.

In addition to the unnecessary cost that ACA poses in duplication, an added element of cost, and damage to business appears in the delay in handling of regulatory matters that is inherent in the superimposition of an added agency, beyond those in existence, to enter into regulatory development or change. We have been fully frustrated by the delays encountered in present agency action, without the governmental gift of an added layer of bureaucracy.

Section 10 of the bill provides extensive information gathering power. As related to information gathering, it should be noted that the Commission on Federal Paperwork recently completed its study with strong criticism of the paperwork burden. The creation of ACA is a reversal of the Commission's recommendation in adding ACA to the lengthy list of agency information gatherers. While ACA would be required to obtain available information from other agencies, it still has the authority to add to the burden. It will be unusual for an agency not to do its own thing.

We realize that there is an attempt to moderate the burden on small business. However, apart from this, other provisions make the exemption

somewhat meaningless. The Administrator can still request "voluntary" production. LP-gas dealers have experienced being harassed with "voluntary" submissions that have the guise of being mandatory. Again, the Administrator has the power "if necessary to prevent imminent and substantial danger to the health or safety".

It is our impression that this is one of the duties imposed upon, and being carried out by, CPSC. Here is obvious duplication. To further negate the protection for small business, there is no protection from the stimulous to litigation that is inherent in the bill's provisions. While the intent to protect small business may exist, Section 10 does not provide this protection.

Continued viability of many small businesses is now threatened by governmental overregulation. In the past three years of FEA allocation and price controls we have seen LP-gas dealers sell out, or simply close their doors. The Agency for Consumer Advocacy will add to this destruction of viability.

It is our strong recommendation that the burden of bureaucracy be not increased through the creation of an Agency for Consumer Advocacy. We consider it to be unnecessary and costly duplication, and the imposition of another layer of government regulation. If additional consumer interest

representation is considered necessary in agency functioning, we suggest that in the interest of economy and moderation of the regulatory burden it be accomplished through the existing facility available in the agencies.

Respectfully submitted,

ACK:mm

Arthur C. Kreutzer
Executive Vice President and
General Counsel
National LP-Gas Association
1800 N. Kent Street
Arlington, Virginia 22209

April 22, 1977

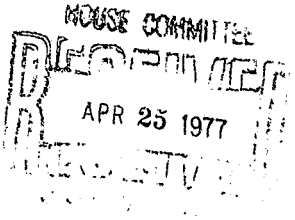
STATEMENT BY ODESSA KOMER
VICE PRESIDENT AND DIRECTOR
OF THE CONSUMER AFFAIRS
DEPARTMENT, UNITED AUTOMOBILE
AEROSPACE & AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA
(UAW)

to the

HOUSE SUB-COMMITTEE ON
LEGISLATION & NATIONAL SECURITY
OF THE COMMITTEE ON
GOVERNMENTAL OPERATIONS

for

LEGISLATION TO CREATE AN AGENCY
FOR CONSUMER ADVOCACY (HR 6118)



On behalf of the
International Union, UAW
April 22, 1977

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) with its 1.4 million active members, has vigorously and consistently supported the creation of a federal consumer advocacy agency ever since the issue was first raised many years ago by the late Senator Phillip A. Hart of Michigan.

It is, in fact, difficult to believe that we still do not have an agency to advocate consumer interests so long after the obvious need for and the importance of such an agency had been demonstrated over and over again.

There is an adage that nothing worthwhile is ever easy. If the effort needed to create it were a measure of its worth, the agency by now is practically invaluable.

For consumers, of course, an independent consumer interest advocacy agency at the federal level was invaluable from the start. There was really never much doubt that consumer needs would have been taken into account more completely and adequately if such an agency had been around to advocate consumer interests at the federal level. The more effective and efficient implementation of consumer protection laws would have been the undoubted result of that consumer interest advocacy.

Business, after all, spends untold millions of dollars every year advocating its interests at the federal level. They assuredly do not expend this kind of money and other resources if the effort was worthless or pointless.

Unfortunately, the advantages business derives from its' advocacy are all too often purchased at the consumer's expense. The presence of effective consumer advocacy could at least have assured that the benefits from or the costs of federal actions would have been more equally balanced between the two sides than when only one side was a part of the action.

The time that has elapsed since the proposal to create the consumer advocacy agency was advanced, has already cost American consumers dearly in actual lives and dollars lost to marketplace practices which could have been curbed or eliminated by the more forceful or effective actions federal agencies would undoubtedly have been induced or compelled to take by such an advocate.

We are, therefore, very hopeful that no more time be lost and that the agency will shortly become a reality rather than just a consumer dream.

We are, of course, very encouraged by the fact that some of the major obstacles to success have been cleared away and that your committee has seen fit to act on this legislation so promptly.

Since this issue has been debated for so long, it is practically impossible to say anything about it which has not already been repeated countless times. The proposal has been examined under a microscope. It is a product of compromise which has fine tuned the Senate and House bills to the point that only a few adjustments need to be made between the two versions.

In fact, we feel very strongly that the bill the committee is now considering has been stripped down to the minimum necessary to enable the agency

to live up to its name as a consumer advocate. Any further limitations on its authority or functions would turn it into just another of those mirages that undermine public confidence in government.

The proposal now before the committee is a reasoned and reasonable one which will allow the agency to do the minimum necessary to get the job done.

Since this issue has been debated for so long, we see little point in commenting on or reviewing each of the important provisions contained in the bill.

However, we do wish to re-emphasize the significance of a couple of especially important provisions and to show why these are especially vital for the effective operation of the agency.

1. Agency Independence and Administrator Qualifications.

It is imperative that the agency be independent; that the administrator appointed to head it be required to have the qualities which demonstrate that he or she is likely to be a forceful consumer advocate; and that the administrator be sufficiently insulated from political pressures in this sensitive position by permitting his or her removal only for not doing the job.

No other arrangement can work and still result in effective consumer advocacy.

We can just imagine how effectively the rights of our members would be protected under a collective bargaining agreement if the failure by management to comply with it were policed solely by a labor advocate appointed by management.

Yet that is almost precisely the type of solution some have proposed as an alternative to an independent consumer protection agency. This seemingly reasonable alternative amounted to having each federal department or agency head appoint a consumer advocate who was expected to hold his or her superior accountable when the department or agency failed to take sufficient account of consumer interests, including taking the superior to court.

It should not possibly take anyone very long to figure out why such a scheme could not possibly work, and why the agency must be independent and headed by an especially qualified person if consumer interests are to be effectively advocated.

2. Intervention and Participation in, and Judicial Review of, Agency Proceedings.

The statutory right to intervene and participate in agency proceedings is, of course, the essence of the bill. There is simply no way that isolated consumers could participate in these proceedings individually, or even do it collectively on a consistent and continuous basis. The effort and resources required to do the job on the thousands of issues which come up annually are simply not available.

This inability to participate in these proceedings can be, and has been very costly to consumers.

One excellent example of this cost is the so-called "double dip" provision in the old FEO oil regulations which the House Small Business Subcommittee on Regulatory Activities unearthed in 1974. The provision designated the methods oil companies were to calculate crude oil costs which

could be passed on to their customers. Some companies interpreted the regulation to mean that they could include the cost of crude oil they had sold to other refiners under the crude oil allocation program in the cost of raw materials they used for their own production.

According to testimony before the House Small Business Sub-Committee on Regulatory Reform, consumers had been double billed for $40 million as of October, 1974.

The FEO quickly eliminated this provision (in fact, claiming the regulation never allowed for the practice) when the spotlight was turned on it.

An effective agency could have monitored the complicated regulations the FEO turned out and intervened right at the beginning to prevent this massive double billing.

The right to seek judicial review of agency actions is vital, and in fact necessary, for the effective implementation of the intervention and participation provisions. An agency will give the consumer advocate's recommendations the full weight they deserve only when it knows that it can be taken to court when it fails to do so. Consequently, the mere ability to seek judicial review is likely to reduce the need to use it.

3. Information Gathering.

It is vitally important that the agency be able to gather the information and data it will need to make sound decisions.

The authority to obtain information from business by the use of interrogatories, to conduct testing and to have available the processes granted to regulatory agencies during interventions are the minimum necessary if the

agency is to obtain the information required to act wisely and responsibly.

The addition of PBB into the food chain which occurred in Michigan more than three years ago is an excellent example of how these powers would have enabled the agency to get the facts about the problem. It would then have been in a position to minimize the catastrophy which has now developed.

The fact is that in this case the agencies which might have done something sat around for far too long instead of getting the information needed to determine the extent of the problem. Moreover, it now appears that the testing initially performed to evaluate the PBB danger was done more as a means to allay fears than to assess the potential dangers.

The agency could have insisted on having the proper tests performed and obtained information from the chemical firms about the extent of the food pollution which occurred. Prompt action, instead of the initial bureaucratic whitewashing which took place, would very likely have minimized the problem which now exists.

Instead, consumer confidence in food has been shaken to the point that some packers are refusing to buy any Michigan meat products, and are openly saying so in an effort to rebuild consumer confidence in the products they sell.

4. Evaluation of Agency Performance.

The ACA's obligation to evaluate the effectiveness of other agencies, and its own advocacy before these agencies is an important part of regulatory reform.

The ACA's activities would expose those agency procedures and actions which were unresponsive or inadequate, and thus point the way to reform. Injecting effective advocacy into the regulatory process would, by itself, revitalize and reform it by transforming it into an effective adversary proceeding.

Finally, contemplated regulatory reform will be adequate only if they are based on unbiased and comprehensive evaluations of an agency's performance and limitations and of the proposed alternatives.

The ACA could perform the vital job of providing that unbiased and comprehensive evaluation, without which any proposed reform cannot possibly be effectively judged.

It is simply too much to expect that the candidate for reform, or the industries it regulates, will furnish the unbiased information needed to implement effective reforms which also protect vital consumer interests.

5. Adequate Budget.

The agency must have adequate budget to carry out the responsibilities the act confers upon it.

The proposed budget authorizations grant the agency the minimum it would require to do the job it has been assigned.

It is really a very small price that consumers would pay for the substantial and tangible benefits which they will receive. After all, the proposed budget amounts to only 25¢ per tax paying family. It is also only 1/60th of the budget of the Department of Commerce.

If that Department can be funded at that level and charged with the duty to "foster, promote and develop commerce and industry", we can certainly devote the much smaller amount to an agency which would represent and advocate consumer interests.

As we have already noted, the provisions we outlined above, as well as the others which are now incorporated in both the House and Senate versions, are absolutely essential if we are to have an effective agency.

Not only are all the essential ingredients incorporated in both versions, but there appears to be only relatively minor differences between them. In fact, the differences appear to be so small that we are convinced these can be resolved without difficulty and without impairing the agency's potential effectiveness.

While we again wish to avoid going into details about these differences, we do want to urge that the following differences be resolved as suggested below:

1. Conflict of Interest Provision.

While both versions address the conflict of interest problems of agency employees during their employment, the House version also places some limitations on certain professional activities following employment.

The House version (Sec. 3 (d)) more adequately addresses this problem and would minimize the revolving door shuffling of policy-making personnel between government and business which has undoubtedly undermined the impartiality of the regulatory process.

2. Functions of the Agency.

The Senate version (Sec. 5) includes a more complete and comprehensive description of the agency's functions than the House version. Although the agency might not be precluded from engaging in the activities mentioned in the Senate, but not the House version: the inclusion of the items listed in the Senate bill would eliminate any possible uncertainties.

3. Consumer Complaints.

The provision in the House version pertaining to complaints is unfortunately too limiting (Sec. 7). This provision apparently authorizes various actions only with respect to complaints which involve probable violations of law or federal court orders. The Senate version, on the other hand, would clearly enable the agency to act on complaints involving trade practices which were detrimental to consumer interests but not necessarily violations of law. The broader Senate version would clearly give the agency the authority to deal with complaints it will undoubtedly receive concerning such matters.

4. Information Gathering.

The small business exemption contained in the House version is more reasonable (Sec. 10 (d)). The $2.5 million net worth test contained in the Senate version is likely to be much too limiting. For example, the Dun and Bradstreet Million Dollar Directory, listing firms with net worths of over $1,000,000, states that firms of this size represent about 1% of all U.S. firms, or about 42,000 out of 4.2 million firms.

The House exemption would clearly ensure that only sizeable firms likely to have a considerable impact on the marketplace are going to be covered by this provision without the exemption being so large that too many will be excluded.

There are, of course, additional differences which will have to be resolved. However, we are sure that these are more a matter of language than substance, and that they can be resolved without limiting the overall objectives incorporated in both bills.

We, therefore, urge that the Committee and Congress act quickly to make this agency a reality for American consumers.

Although we have strongly urged for some time that the ACA be created, we want to make sure that our support for it is not interpreted as meaning that we believe it is an alternative to or substitute for the citizen participation in government bills (HR 6221 and S 270).

The fact is that both are vital if consumer interests are to be adequately represented. The ACA's limited budget will never allow it to intervene effectively in all issues affecting consumers. Moreover, in some cases, direct participation by consumers can bring out more information about an issue than if the advocacy were left solely to one agency.

However, the ACA is the only vehicle through which the necessary expertise and information can be obtained to make effective advocacy possible on the major and technically complicated issues which arise, and which

individual consumers could never be able to tackle individually or through consumer organizations.

We therefore urge the speedy enactment of not only the bills to create the ACA, but the bills to fund public participation in government.

STATEMENT OF THE UNITED STATES INDUSTRIAL COUNCIL
ON H.R. 6118, A BILL TO ESTABLISH AN
INDEPENDENT CONSUMER AGENCY
FOR THE LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE HOUSE GOVERNMENT OPERATIONS COMMITTEE

During the campaign which led up to his election to the nation's highest office, President Carter repeatedly promised the American people that he would reduce the size and scope of the federal bureaucracy. Since taking office, he and his advisors have promised businessmen that every effort will be made to free business of our unwarranted federal regulations and red tape that have been strangling our private enterprise system. Introduction of Administration-sponsored legislation to create a new federal bureaucracy, the so-called Agency for Consumer Advocacy, flies in the face of both these promises.

In a speech introducing this legislation in the Senate, one of its sponsors, Senator Abraham Ribicoff, stated that the President has indicated he intends to implement the legislation to a great extent through reorganization by consolidating and eliminating duplicating existing consumer functions in the Federal bureaucracy. Yet the proposed legislation plainly states that the authority of the ACA to carry out its purpose "shall not be construed to supersede, supplant, or replace the jurisdiction, functions, or powers of any other agency to discharge its own statutory responsibilities according to law." This provision of the bill seems to make it clear that it can only

add another layer of federal bureaucracy, despite what the President may have indicated.

The United States Industrial Council and its 4,000 members employing some 4,000,000 people will yield to no one in our interest in the welfare of consumers. The survival of our member companies depends on their ability to serve the needs of consumers and provide them with products and services of a quality that meets with their approval and at prices they are willing to pay. In our free enterprise economy, the consumer occupies top position. By conferring or withholding their patronage, the consumer determines which business enterprises shall succeed and which shall fail. When government tries to think for the consumer and make decisions for him or her, we move away from the private enterprise system that has produced such a wealth of goods and services at affordable prices, and further along the road to a socialist state.

The fallacy of the ACA bill is in the premise that consumers are a separate and distinct class whose interests are distinct and different from those of other citizens. Every citizen is a consumer. The decisions and actions of every agency should, therefore, give the fullest consideration to the best interests of every citizen as a consumer, as well as taxpayer, and producer -- for each of us plays these multiple roles.

In its Statement of Findings and Purposes, the bill says: "The Congress finds that the interests of consumers are inadequately represented and protected within the federal government... Each year, as a result of this

lack of effective representation before federal agencies and courts, consumers suffer personal injury, economic harm, and other adverse consequences..."

If this be true, it is a strong indictment of the Congress and the federal agencies it has created. It shows that Congress has failed miserably in meeting its responsibility for oversight of the federal agencies. Enactment of legislation creating an Agency for Consumer Advocacy to make sure that federal agencies are considering the welfare of consumers would be simply buck-passing.

Instead of setting up one more agency -- another level of bureaucracy -- Congress should start riding herd on the agencies that it already has created to make sure they are doing their job of looking out after the interests of consumers.

The ACA legislation is nothing more than politics, pure and simple. Every member of both the House and Senate wants to be on the side of the consumer -- as they should be. They shouldn't have to prove it by setting up another federal bureaucracy. The people of the United States have begun to recognize they are the victims, not the beneficiaries of "big brother" government. They hoped the present Administration would get "big brother" off their backs, cut the federal government down to size, and lift some of the tax burden caused by having to support more and more federal bureaucrats. That hope will be dashed if Congress, with the support of the President, sets up the ACA bureaucracy.

Sponsors of the ACA legislation say it is not a "major" new spending

program since it would authorize the spending of only $60 million the first three years for the new agency. It is a sad commentary on how far we have gone in flinging around federal dollars that a federal spending program is not considered "major" unless it involves billions, rather than millions, of dollars. Furthermore, if the ACA follows the same path as other government spending programs, the costs of operating it will grow year after year.

Instead of creating the efficiency and good management practices in the federal government that are the announced aim of the President, the proposed legislation would lead to inefficiency in the functioning of federal agencies by authorizing the ACA to intervene in agency proceedings and administrative hearings virtually at will. It would deprive agencies staff time and facilities needed to perform the functions with which they are charged, since the bill provides that each federal agency is "directed to make its services, personnel and facilities available to the greatest practicable extent within its capability to the Agency (ACA)..." Federal agencies also are directed to provide statistics and information when requested by the ACA, which means added work loads for the agencies.

In an attempt to silence critics of the independent consumer agency proposal, a number of changes intended to answer criticisms have been made in the legislation since it originally appeared in earlier sessions of Congress. For example, special exemptions for small business and family farmers have been written into the bill to keep down opposition from those quarters. Some protections against the revelation of trade secrets have been included. A whole new section requiring cost-benefits justification for new agency rules

and regulations has been added. The result, however, is an exceedingly long, complex and cumbersome bill. The changes are mainly cosmetic. They do not correct the basic fallacy in the bill -- that we don't need another federal bureaucracy to meddle with, and interfere in, the work of other agencies and to intervene in, and initiate, litigation in the courts purportedly to help consumers.

Despite protestations of its sponsors to the contrary, the legislation establishing an ACA would lead to harassment of business and could cause irreparable injury to business firms. It requires companies to answer written interrogatories from the ACA. This authority given to the ACA could easily be abused and lead to "fishing expeditions." At the best, it could cause the lost of considerable amounts of time and money, and create numerous headaches, for companies in trying to provide all the information that some ACA bureaucrat decides he needs.

The testing of products by the ACA and dissemination of test results would give federal bureaucrats the power to make some companies rich and put others out of business. This is too much power to place in federal employees who are subject to human error and prejudices. Like other sections of the bill, it would move us away from a market economy, which has been the source of our strength as a nation, and expand the scope of government control.

We have faith in the American consumer and in his ability to make his own independent decisions on what meets his needs and the prices he is

willing to pay. As businessmen, we are willing to leave our fate in his or her hands.

As far as the effect of federal agency actions and regulations on the consumer, we believe this is best determined at the point where the actions are taken and the regulations determined -- rather than in a new federal agency to serve as a watchdog over the other agencies. The role of watchdog over the actions of federal agencies properly lies with Congress, and Congress should not try to shirk that responsibility by setting up one more agency.

Setting up an independent consumer protection agency would be a fraud upon consumers because it would not produce the benefits for them they would be led to expect but would just set up another bureaucracy. If Congress wants to help consumers, the best thing it can do is to stop creating new agencies, reduce the bureaucracy, cut federal spending, and eliminate a substantial portion of government regulations and red tape. In that way, it will reduce inflation so that the consumer's dollar will buy more, and ease the tax burden so he will have more dollars to spend. It also will enable the free enterprise system to function in a way that will produce more goods and services at lower cost.

The Agency for Consumer Advocacy is an idea whose idea has come and gone. It should now be put away for all time.

COMMENT OF
THE POWER TOOL INSTITUTE
BEFORE THE
HOUSE GOVERNMENT OPERATIONS COMMITTEE
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
ON THE CONSUMER PROTECTION ACT OF 1977

In response to the request of the Subcommittee on Legislation and National Security for public comment regarding the hearings on H.R. 6805, a bill to establish an Agency for Consumer Protection, the Power Tool Institute (hereinafter "PTI") wishes to submit these comments. PTI is a national trade association whose members manufacture in excess of 95% of the electric power tools manufactured in the United States.

PTI'S GENERAL POSITION

American business is already subject to a variety of federal, state, and local laws aimed at curbing false, deceptive or misleading practices. Numerous federal agencies now conduct a multitude of programs related to consumer protection. No less than 37 federal agencies now have 1,300 functions protecting consumers.

Within the business community itself, there has been developing a wide range of new mechanisms with which to respond to public criticism by both governmental and private groups. Individual companies, industry associations, and such national groups as the Better Business Bureau have set in motion a variety of consumer complaint handling techniques which have improved consumer relations. It is doubtful the government could match this improvement by creating a new bureaucracy.

Likewise, there has been a rise of well-organized citizen groups with militant national leadership. The private consumer advocate structure consists of nearly 200 autonomous groups. It has a network of volunteer groups in urban centers and smaller cities. It has a substantial and articulate press of its own. It has a variety of money sources, including fees from highly paid speakers, public subscriptions and grants from private foundations. It has many legal arms and has even developed a professional sector of newsletters, consumer research bureaus and consultants. The subject is taught in colleges and universities, many of them with action centers. Finally, it enjoys a highly sympathetic press, and the public criticism and allegations concerning consumer products and services are daily fare on radio and television. Today's consumers are not unrepresented.

Consequently, although PTI believes the consumer establishment is beneficial as a voluntary public critic, in the sense that it attracts its own adherents and raises its own funds, a consumer movement sponsored by government is another matter. A consumer protection agency would be a federally financed movement to function as critic and adversary in the same manner that militant consumer organizations are already doing outside of government, but with much more disruptive powers.

First of all, an independent consumer protection agency would be a needless agency, with the principal objective of involving itself in the great economic issues affecting the

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country. These issues are already the responsibility of the Executive Departments and the regulatory agencies created by the Congress specifically to protect the interests of the public, including consumers.

It also would be a disruptive and unworkable agency, because it will be mandated as an adversary and deliberately equipped with legal authority to oppose, dispute, and litigate the decisions of other government agencies. Such power, without responsibility for solutions, cannot fail to produce confusion as federal officials lose accountability for their decisions and actions. The present regulatory agencies, such as the FTC or CPSC, are hardly business-dominated. Quite to the contrary, there is already a high degree of consumer awareness within the federal government. A consumer protection agency would disrupt the orderly process of regulation within the government itself.

Furthermore, it would be a special interest agency, employing federal funds, to advocate laws and regulations on behalf of a "consumer interest" which the agency itself would decide and which would be favored over the public interest as a whole. In practice, it would be an agency facing the impossible task of choosing fairly between competing consumer interests, and of protecting some consumers at the expense of others. To vest such authority in any one agency, let alone a single agency administrator of the remotest accountability to the electorate, is not merely dangerous; it is a substantial departure from the

principles of representative democracy.

PTI supports direct approach legislation such as the new law that strengthens the powers for the Federal Trade Commission. This Commission, long recognized as the major consumer protection agency in day-to-day marketplace transactions, today is equipped with authority to make detailed rules over selling and other commercial trade practices; to impose penalties for violation of those rules and of its own orders; and to sue on behalf of consumers or classes of consumers to bring about redress of their complaints, including the awarding of damages. Moreover, it is supplied with a $1 million fund for private legal representation of consumers and their organizations who are otherwise unable to finance themselves. PTI also supports President Ford's transferrance of the Consumer Affairs Office to the Department of Health, Education and Welfare, to coordinate existing programs.

Finally, this would be a costly agency. Savings from the consolidation of all of the existing consumer bureaus of federal agencies into one super agency are illusory. Each Federal department, Commission and agency will still need to establish its own internal consumer protection agency liaison office to communicate and implement the new agency's decisions. This will expensively expand the total number of personnel, desks, files, and paperwork to cope with the new agency.

As each commission - such as the CAB or Agriculture Department - functions to serve and represent a particular

segment of the economy, differences arising between the consumer protection agency and other agencies dealing with specialized segments of the economy will need to be debated before numerous proceedings, resulting in the expensive hiring of additional batteries of attorneys and staffs for each agency. Also, existing agencies often have the expertise to obtain and evaluate data dealing with a specialized area of the economy. It is impossible to see how a small agency instilled with tremendous power but no expertise can avoid the expenditure of more government man-hours on problems which are most properly evaluated and dealt with by existing agencies.

Although some deregulation is to be hoped for, a consumer protection agency's basic mission, as freely stated by most proponents, is to bring about new and stricter regulations and more rigid enforcement - with all the costs falling upon the economy. One company made a study of the expected annual costs of keeping a single type of safety information - under one regulation proposed by one agency - and found it to be $295,000. These are the kind of unproductive costs that add into the billions, raise consumer prices and contribute to both inflation and unemployment.

PTI believes that there would be numerous adverse effects should Congress create a Consumer Protection Agency. In the field of law, a new criteria may be established for both statutes and administrative policy, under which an undefined "interest of consumers" will be equal to, or prevail over, the <u>whole public</u>

interest to which all government is accountable. The complex field of administrative procedures will be challenged and impeded by injection of a third party, with a single special interest having legal standing to oppose the interests of both private parties and the government itself.

In addition, the federal courts will be further burdened and clogged with the task of adjudicating intra-government disputes in a myriad of new issues in which they may have little expertise or are otherwise ill equipped to assume. Private persons and companies involved in federal agency proceedings (even those involving fines and penalties) now may be confronted with two adversaries, and possibly two conflicting decisions of the U.S. Government.

Within the government establishment, the decision-making responsibilities of federal officers will be blurred by the spectacle of one government administrator disputing with others over powers, rules, procedures, programs and decisions of all kinds. A new bureaucracy will be required as the consumer protection agency seeks to cope with a multitude of complex matters ranging over the national economy and requiring expert knowledge of nearly every arm of government. Also, the Congress will transfer its historic responsibility to exercise oversight over its regulatory bodies and other Federal agencies to a single federal administrator.

In the private sector, the budgeted cost of operating the agency will be dwarfed by the burdensome expenses to be placed

upon enterprises and perhaps whole industries in any situation in which the agency chooses to intervene--to be translated into higher prices of goods to the consumer. Attendant publicity against companies, products, and services, will be costly in terms of someone's sales, someone's job, and someone's savings (and the jobs and incomes of those in the community dependent upon the enterprise affected). Competitive damage is inevitable through release of private financial data, trade secrets, and other proprietary information which is permitted to the Agency Administrator.

OTHER ALTERNATIVES WHICH WOULD HELP CONSUMERS

The proponents of H.R. 6805 fallaciously believe that the American people favor a consumer protection agency. A general public poll by the highly regarded Opinion Research Corp., found that 75% of the American people do not want another consumer agency. There is a great deal that can be done for consumers within the government without imposing additional government and costs on them.

First, if there is found to be a failure by any regulatory agency or Executive branch to perform as Congress intended when dealing with problems of consumers, Congress should proceed to identify the particular problem and, as it has done many times before, enact specific legislation to remedy the situation. This

does not preclude new powers, new programs, or even new agencies, where the problem is substantial, and where special expertise is justified.

If any existing agency is found lacking in resources to adequately protect any segment of the consuming public, we recommend use of the appropriation process by the Congress to provide funds and the competency to deal properly with fraud, deception, unfairness or other inequity affecting the consumer's health, safety or economic welfare.

Because the execution of our laws is vested, constitutionally, in the Executive branch, we believe the responsibility for protecting all public interests would best reside there. A prototype for consumer protection already exists in the Office of Consumer Affairs of the Department of Health, Education and Welfare, which is now performing some of the functions which a new bill would assign to a consumer advocate agency. Its role can be expanded. It could be utilized to monitor consumer-related programs and activities of the government, with a view towards identifying problem areas. It would then move to correct noted deficiencies. This could be done either by seeking to upgrade the administration or coordinate existing laws and programs or, where indicated, by developing and recommending innovative legislation. This office could also serve as a forum for the input of views from all elements of the private sector having a concern in consumer affairs. A balanced problem-solving approach

CONTINUED

5 OF 6

such as this would truly benefit the interests of consumers. At the same time, it would place such interests in proper perspective with all other elements of the public interest.

Finally, Congress should neither ignore nor underestimate the inherent forces and mechanisms of the free market itself as the best guarantee of consumer protection. These forces are continuously functioning with an effectiveness not matched by new laws and agencies, and they have not failed the American consumer. The broadest of these forces are the competitive system and the full and fair enforcement of traditional laws against monopoly and restraint of trade. The mechanisms for consumer protection also exist in every step of the production-distribution process. The producer's technical competence seeks out the best materials for his processes and components. The distributor or a chain of distributors interpose their relentless judgment to select the products which perform best for the consuming markets served by them. At the end of the line the retailer, who is in daily contact with his customers, is a final screening of the products he offers for the ultimate judgment of consumers.

CONCLUSION

In a representative form of government Congress itself is the ultimate advocate and protector of more than 200 million citizens in their diverse interests. It has created scores of agencies and hundreds of programs to protect its citizens. Where problems and inadequacies are found, Congress should

identify these defects and devise specific remedies to correct them. If it is determined that consumers need greater protection in this country, then Congress should first of all make necessary adjustments in existing laws or make new laws to address specific problems. However, the creation of an independent "superagency" will not serve the interests of consumers nor of the country as a whole, and would represent an abdication of Congressional power and responsibilities as yet unparalleled in the history of our representative government.

Respectfully submitted,
THE POWER TOOL INSTITUTE

STATEMENT OF

THE AMERICAN NATIONAL CATTLEMEN'S ASSOCIATION

TO THE

SUBCOMMITTEE ON LEGISLATION AND

NATIONAL SECURITY OF THE

HOUSE GOVERNMENT OPERATIONS COMMITTEE

ON THE SUBJECT OF

LEGISLATION TO ESTABLISH AN AGENCY FOR CONSUMER ADVOCACY

Dear Mr. Chairman:

The American National Cattlemen's Association (ANCA) offers comment relative to legislation which would establish a Federal agency for consumer protection.

ANCA is the national spokesman for the beef cattle industry. The association is comprised of individual cattlemen members, plus 52 affiliated state cattle producing and feeding organizations and 15 national breed organizations. Combined, the industry represents 280,000 professional cattlemen in all parts of the nation.

The above figures were presented to you as a means of expressing our memberships'deep concern regarding the necessity for this type of legislation. The reason simply being that we as professional cattlemen along with our families are also consumers. We feel remiss that such legislation would, by interference, pit consumers against cattlemen.

We as cattlemen and consumers have recognized the right and entitlement to protection against misrepresentation, fraud, unfair and deceptive trade practices. These are basic rights afforded by our system of government.

In the event there is a compelling reason to assure consumers a representative voice, then we suggest that the President, who now has full authority, establish within the Executive Branch of Government the appropriate vehicle for responding to "consumer" needs, demands and rights.

We further stand opposed to any language in this or similar legislation which provides for an agricultural exemption.

Cattlemen, who are engaged in production agriculture, have vivid and real memories of similar such exemptions which were levied during 1973 when wage and price controls were imposed by the President. Although basic livestock production was exempt from those controls, the residual impact, as a result of controls at the slaughter and packer levels, dramatically aided in forcing live cattle price downward. The resultant effects of this action, taken in 1973 by the Federal government, lingers with the industry today.

Attached to this statement are relative documents which support cattlemen's concerns in opposition to the need for such an agency: the Appendix section deals with; (a) the effects of no grain feeding on total beef supplies and prices; (2) Breakeven Prices for Various Types of Beef; (3) Summary of Report on Feedlot Finishing Versus Non-Confinement Feeding; (4) Comparative Costs of Beef Production; (5) Cost and Efficiency of Beef Production and; (6) How Proposed Consumer Protection Legislation Affects Cattlemen.

The information contained in these documents give you an instant insight as to the complexity of the beef cattle industry. Any action, outside of normal market supply/demand functions, artificially imposed, automatically wrecks havoc with the system.

Also apparent within the documentation is visible evidence of Federal agency jurisdiction whereby any litagatory action triggered could result in lengthy and costly delays to producers....delays that compound themselves once a basic production decision is made five years previous to marketing of product.

It is for these reasons that ANCA opposes legislation of this nature to "protect" the American consumer. The Committee's consideration of our views in behalf of the beef cattle industry is appreciated.

APPENDIX I

EFFECTS OF NO GRAIN FEEDING ON TOTAL BEEF SUPPLIES AND PRICES TO CONSUMERS

In 1976, the cattle slaughter mix was as follows:

Fed Cattle	25,085,000
Non-fed Steers & Heifers	5,948,000
Cows	10,617,000
Bulls	997,000
TOTAL	42,644,000

This total slaughter resulted in production of 25.7 billion pounds of beef on a carcass weight basis. Of that total beef output, approximately 17 billion pounds came from cattle finished on grain-containing rations in feedlots. This estimate is based on a 1,090-lb. average live weight, and a 62% yield, resulting in a 675-lb. carcass.

If all of the 25 million fed cattle had been slaughtered off grass and hay, at an average weight of 750 lbs., without any feedlot feeding, they would have produced only 9.97 billion pounds of beef. (This is based on a carcass yield of 53% per animal.)

The result then would have been total 1976 beef supplies of 18.7 billion lbs., or only 73% of what supplies were with cattle feeding.

Economists agree that demand for beef is relatively inelastic. That is, a 1% change in supply results in more than a 1% change in price. However, even if the ratio were only 1 to 1, the 27% supply reduction resulting from elimination of grain feeding would have raised the retail average price of beef from the actual 1976 average of $1.39 per pound to $1.90.

The above figures assume no change in size of basic cow herd and the marketing of all steers and heifers off grass, without feedlot feeding. If steers and heifers were kept on pasture and hay until they reached normal slaughter weight, they would be at least 2 or 3 years old--at least a year older than if they went into feedlots, where they gain weight more rapidly. This procedure could reduce the range and pasture capacity available for cows by 30 to 40%. The net result would be essentially the same as outlined above--there would be a sharp drop in total annual beef production, and resulting higher prices to consumers.

In a presentation to the National Livestock Feeders Association, M. D. McVay of Cargill, Inc., estimated that, without grain feeding, per capita beef supplies would drop to about 80 lbs. on a carcass weight basis, compared with approximately 120 lbs. in recent years.

The reason for reduced beef production when cattle are not grain-fed is that the energy content of a strictly grass or roughage ration is much less, and most of the feed consumed by an animal on pasture goes just to maintain the animal, not to help it grow. A steer on grass may gain an average of only 1 lb. per day, rather than 2.5 or 3 lbs., as in a feedlot.

Source: ANCA

BREAKEVEN PRICES FOR VARIOUS TYPES OF BEEF

Following is a breakdown on costs of producing different types of beef on a carcass weight basis. Note that a major difference between grass-fed and grain-fed beef is a reduced yield (carcass weight as a percent of live weight) of meat in the case of animals without grain finishing.

1. Calf Meat--A 450-lb. calf requires approximately 55¢ per pound, live weight, for the producer to break even. This amounts to $247.50 per head. A calf will yield about 50% in the form of carcass weight. Thus, the carcass cost would be approximately $1.10 per pound.

2. Non-Fed Steers or Heifers. If the calf is put on grass for the summer, after being purchased from the cow-calf operator, there will be a cost of $105 to add 300 lbs. to the animal. This makes a total liveweight cost per animal of $352.50. A 750-lb. yearling animal marketed off grass in the fall would yield approximately 53%, and the carcass cost would be 88.7¢ per pound.

3. Mature Grass-Fed Animals. If a yearling is kept on grass and hay until it weighs 1,050 lbs., the cost of the additional 300 lbs. of gain will be about $120--making a total liveweight cost of $472.50. The carcass yield would be 55%, and the carcass cost would be at least 82¢ per pound.

4. If the 750-lb. animal is placed in a feedlot, it will cost approximately $135 to add 300 lbs. of gain. A fed steer will yield approximately 61%, and the carcass cost will be 76¢ per pound.

Thus, the comparative costs on a carcass weight basis are:

	Per Lb.
Calf Off Grass	$1.10
Yearling Off Grass	.87
Mature Animal Off Grass	.82
Feedlot-Finished Animal	.76

The above costs are calculated simply on the basis of cattle production costs and dressing (or yield) percentage for each type of animal. For reasons of simplification, consideration is not given to variations in hide and offal value, processing costs or other factors. With smaller average weights per animal, per unit processing costs will be higher--another reason for finishing animals in feedlots.

Source: ANCA

SUMMARY OF A REPORT BY THE ECONOMIC RESEARCH SERVICE, USDA,

ON FEEDLOT FINISHING VERSUS NON-CONFINEMENT FEEDING

An ERS study of the comparative economics of confinement versus non-confinement feeding arrived at these conclusions:

1. Confinement feeding requires less total feed consumption than non-confinement feeding --about 30% less total feed units by time of slaughter.

2. The feed conversion ratio (feed per pound of gain) is much less for confined beef.

3. Confinement is economically advantageous to both the livestock feeder and the consumers.

4. Much of the feed consumed, even by confined cattle, is roughage (and by-products) that cannot be consumed by other livestock species or humans. In fact, half (or more) of a steer's slaughter weight is achieved prior to confinement and before concentrate feeding, and four-fifths of all feed in beef production is pasture and harvested forage. (In 1976-77, among cattle on feed, it is estimated that the total rations will consist of 56.5% feed grain, 6.9% by-products and 36.6% harvested forage.)

5. Confined feeding results in a relatively uniform supply of beef to the consumer.

Break-Even Cost of Production
(Feedlot)

Wt'x 100	$ Cost/Gain	$ Cost/Live Lb.	Dressing (%)	Break-Even $ Cost/Carcass Lb.
4	$ 200.00	$ .500	50	$ 1.000
4-5	34.70	.469	50	.938
5-6	37.70	.454	51	.890
6-7	41.00	.448	53	.845
7-8	44.30	.447	55	.813
8-9	49.00	.452	58	.779
9-10	55.00	.462	61	.757
10-11	60.20	.474	62	.765
11-12	70.00	.493	63	.788
12-13	85.00	.521	64	.814

Source: Dr. B. P. Cardon, Arizona, 1976.

COST AND EFFICIENCY OF BEEF PRODUCTION

Dr. Danny G. Fox and associates at Michigan State University analyzed the costs of beef production under various systems--including all-forage and different proportions of grain in the ration after calves are weaned from their mothers.

The following table shows results of different systems per beef cow unit. The calculations are based on feed for cows and their calves to slaughter weight. The data assume operation at 100% efficiency in use of forage and grain. The cattle on all-forage would grade standard, and those getting grain would grade low Choice.

	--Ration 1st half of post-weaning gain-- All Forage	All Forage	40% Grain
	--Ration 2nd half of post-weaning gain-- All Forage	82% Grain	72% Grain
Cow Units Maintained, Million Head	31.8	47.6	49.4
Lb. of Grain per Lb. of Retail Beef	0	2.89	4.33
Lb. of Retail Beef per Capita per Year	50.7	75.9	78.8
Daily Consumption of Protein per Capita, Grams	15.5	23.2	24.1

The table shows that, with an all-forage system, the nation's cow herd would be sharply reduced, and amounts of edible beef and protein produced per capita would be reduced substantially, as compared with systems that involve grain feeding during all or part of the period following weaning. As less grain is fed, less beef is produced because more of the

6. If a range calf did not go into a feedlot, it would require 30% more feed and as much as an additional year to reach 1,000-lb. market weight. Without confinement, the producer's cash flow is reduced, overhead and labor per unit are increased, and the risk of death loss is greater.

7. A close look at relative feed costs, using season average prices for corn and hay (with hay serving as a proxy for all roughages), shows that, on the basis of nutrient values, corn is consistently more economical.

8. As a result of development of the feeding industry, producers have found a better and larger market for their calves, and the public has benefited from larger, more uniform, more palatable beef supplies, at a lower unit cost.

Source: ERS, USDA, November, 1976.

COMPARATIVE COSTS OF BEEF PRODUCTION

An analysis of costs of beef production was made by Dr. B. P. Cardon of Arizona, president of the Council for Agricultural Science and Technology. This was based on the average price of feedlot rations in the winter of 1975-76. The data below include all feeding costs except interest on the money invested.

The most economical beef which the industry can produce comes from an animal that is placed in the feedlot shortly after weaning and is fed a balanced high-energy ration until it reaches approximately 1,000 lbs. This animal would be expected to grade low Choice.

Roughage Break-Even Cost of Production
(Gain-1 lb./Day)

Wt x 100	$ Cost/Gain	$ Cost/Live Lb.	Dressing (%)	Break-Even $ Cost/ Carcass Lb.
>4	$ 200.00	$ 0.500	50	$ 1.00
4-5	49.80	0.500	50	1.00
5-6	57.90	0.513	50	1.02
6-7	65.70	0.533	51	1.05
7-8	73.00	0.558	52	1.07
8-9	80.00	0.585	53	1.10
9-10	87.00	0.613	54	1.14

Break-Even Cost of Production
(Feedlot)

Wt'x 100	$ Cost/Gain	$ Cost/Live Lb.	Dressing (%)	Break-Even $ Cost/Carcass Lb.
4	$ 200.00	$ .500	50	$ 1.000
4-5	34.70	.469	50	.938
5-6	37.70	.454	51	.890
6-7	41.00	.448	53	.845
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The following table shows results of different systems per beef cow unit. The calculations are based on feed for cows and their calves to slaughter weight. The data assume operation at 100% efficiency in use of forage and grain. The cattle on all-forage would grade standard, and those getting grain would grade low Choice.

	--Ration 1st half of post-weaning gain-- All Forage	All Forage	40% Grain
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The table shows that, with an all-forage system, the nation's cow herd would be sharply reduced, and amounts of edible beef and protein produced per capita would be reduced substantially, as compared with systems that involve grain feeding during all or part of the period following weaning. As less grain is fed, less beef is produced because more of the

forage energy has to be used for growing and finishing calves rather than for mother cows in the basic herd. As a result, consumers would have less beef to consume, and the beef would be of lower acceptability because of increased age (less tender) at slaughter and less intramuscular fat (marbling).

The ultimate determinant of the level of grain feeding is the price of grain. Levels and periods of time of grain feeding are affected by grain costs as well as beef demand.

The following table shows data on the economics of grain feeding, with systems at 100% efficiency.

	--Ration 1st half of post-weaning gain-- All Forage	All Forage	40% Grain
	--Ration 2nd half of post-weaning gain-- All Forage	82% Grain	72% Grain
Expected Animal Performance			
Daily Gain, lb.	1.00	1.96	2.16
lb. Feed per lb. of Gain, Dry Matter Basis	18.91	11.55	7.98
Turnover Rate in Production Unit per Year	.58	1.13	1.24
Feed Cost for 600 lbs. of Gain			
Corn at $1.50 per bushel	$223.36	$149.13	$106.74
Corn at $3.00 per bushel	223.36	204.35	211.40
Non-Feed Cost for 600 lbs. Gain	$ 82.29	$ 76.75	$ 82.62
Feed and Non-Feed Cost			
Corn at $1.50	$306.65	$225.88	$189.36
Corn at $3.00	$306.65	$281.10	$294.02

The beef produced with an all-forage program would grade standard, while the two grain systems shown would result in low-Choice beef. The all-forage beef, in addition to costing more to produce, would result in a carcass with $37.80 less value.

The above table includes just part of the data from the Michigan report. However, it helps show that, when grain is cheap, it pays to feed more of it. When it is higher priced, it pays to feed less. Actually, at this time, the grain price is between the two values shown in the table.

All-forage systems would not become least-cost until corn was at least $4.50 per bushel, and even then Choice carcasses might be high-enough priced so that grain would have to go even higher in order to force a change to an all-forage system. Also, forage would tend to increase in price if grain prices rose.

Source: Excerpts from "Producing Beef: What It Costs and Opportunities for Improving Efficiency," Michigan State University, January, 1977.

APPENDIX II

HOW PROPOSED CONSUMER PROTECTION LEGISLATION AFFECTS CATTLEMEN

Through litigation, subpoena and paperwork delays, ACA could affect such important USDA regulatory functions as:

A. Agricultural Marketing Service (AMS)

(1) Marketing agreements and orders

(2) Beef Board (if upcoming referendum passes)

B. Food Quality and Safety Service

(1) Meat inspection

(2) Beef grading

C. Animal and Plant Health Inspection Service (APHIS)

(1) Veterinary service program

D. Packers and Stockyards Administration (P&S)

(1) Posting of public markets

(2) Bonding

E. Agricultural Stabilization and Conservation Service (ASCS)

(1) Commodity Programs (target prices)
a. Feedgrain

(2) Production adjustments (acreage allotments)
a. Feedgrain

(3) Small Watershed projects

(4) Emergency assistance

F. Conservation Research and Education

(1) Agriculture Research Service (ARS)
a. Pesticides, disease affecting livestock, marketing research

G. Forest Service (FS)

(1) Public use of grazing livestock (permits)

(2) Research for increased forage on public lands

H. Agricultural Economics

(1) Economic Research Service (ERS)
a. Economic Research

STATEMENT BY

WILLIAM H. TANKERSLEY

PRESIDENT

COUNCIL OF BETTER BUSINESS BUREAUS, INC.

on the

"CONSUMER PROTECTION ACT OF 1977"

(H.R. 6118) (S. 1262)

submitted to

GOVERNMENT AFFAIRS COMMITTEE

UNITED STATES SENATE

and the

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

UNITED STATES HOUSE OF REPRESENTATIVES

April 27, 1977

INTRODUCTION

Mr. Chairman, I am William H. Tankersley, President of the Council of Better Business Bureaus, Inc. I appreciate this opportunity to submit for your consideration comments relating to the proposed Consumer Protection Act of 1977.

These views are expressed on behalf of the Council of Better Business Bureaus, the national organization for the Better Business Bureau system consisting of 143 Better Business Bureaus and satellites in 41 states and the District of Columbia. Our statement is presented with the approval of the Council's Executive Committee.

For 65 years, the Better Business Bureaus have been the prime organization to which consumers turn when they have problems in the marketplace. Independent polls have reflected that more than half of the American people would turn first to the Better Business Bureau if they could not resolve their marketplace problem with business. More than half of the people surveyed by Roper Reports stated that they would "most likely get satisfaction" from the Better Business Bureau if they were to take their problem to it. According to Roper Reports, the Better Business Bureau "overshadowed all other places or people to whom to turn for help."

The Consumer Protection Act of 1977 focuses on two important areas: one relates to the representation of the consumer within the federal establishment; the other relates to issues involving business and its customers in the marketplace.

Representing the Consumer in the Federal Government

To date, most attention relating to this proposed legislation has been directed to the Agency for Consumer Advocacy roll of representing the consumer before federal agencies and courts. Because this issue involves the internal oversight functions of the Federal Government, itself, we deem it inappropriate to take a position on any section of the proposed Act which relates to this issue.

The legislative, executive and judicial branches of government all have oversight functions which are parallel to the activities contemplated for the proposed Agency for Consumer Protection in representing consumers within the federal establishment. However, if Congress deems a new agency essential to create a consciousness of public obligation within government, we express only the hope that any such Agency would seek to achieve this objective within the existing Federal establishment, rather than duplicating staffs and costs already committed to these functions.

We note with approval the language in the proposed Senate version, calling for an evaluation of the proposed Agency by the Comptroller General; and we note with similar approval the automatic termination on "sunset" provision in the House version. Both are important, in our view, to assure continuing oversight of the proposed Agency.

However, we urge that Congress consider the fact that, since this legislative proposal first came before Congress many years ago, the scope of the Federal Trade Commission powers has been significantly expanded, the Consumer Product Safety Commission has been created, special consumer offices and functions have been established in 17 federal agencies, and substantial budgetary increases have been made in the interest of better service to the consumer.

Finally, to the extent that the oversight function of the proposed Agency may be interpreted as a criticism of those federal agencies concerned with consumer protection, we must note that in our many dealings with these agencies we have found them dedicated to the public interest and specifically cognizant of the consumer aspect of that interest.

Cost-Benefit Analysis

An element in the proposed law that impels comment is the omission in the House version of a requirement of cost-benefit analysis for taxpaying consumers, and we urge the Congress to take a hard look at the proposal in these terms. We wholeheartedly endorse the principle that, for all laws and regulations relating to consumer-business issues, cost-benefit analyses be applied prior to their promulgation. The absence of formal recognition of this element in the House version, in our judgment, is an omission of vital importance.

Business-Consumer Issues in the Marketplace

Our statement is primarily directed to those sections of the proposed law which relate to the Agency's powers to deal with business-consumer issues in the marketplace. Too little attention has been directed to these provisions during Congressional debate, and this is one area where we have professional interest and expertise. As an organization, we stand for the same basic goal of protecting consumer interests in the marketplace; however, we must oppose the proposed powers of the Agency to deal with this objective.

At the outset of this statement in opposition to these portions of the proposed Act, let me state that we do not hold out the Better Business Bureaus as the complete answer for all consumer problems in the marketplace. However, we believe that the private sector, through individual company efforts, through industry associations and through the Better Business Bureaus, is doing an increasingly better job of resolving consumer concerns.

Recent years have also seen increased activity and effectiveness at the federal, state and local levels of government to accomplish the same goal, especially where violations of law are found.

Our primary areas of concern with this measure relate to Sections 7 (Consumer Complaints), 8 (Consumer Information and Services), and 10 (Information Gathering) in both the Senate and House versions of the bill, and to Section 9 (Testing and Research) in the House version.

CONSUMER COMPLAINTS

The proposed Agency for Consumer Protection would have the power to deal with any consumer complaint regardless of its source and nature. Specifically, the Agency would be empowered to receive any complaint "concerning actions or practices which may be detrimental to the interests of consumers." The term "interests of consumers" is further defined to include every aspect of the marketplace.

Such an unlimited definition would establish a function of massive proportions for an Agency headquartered in Washington, D.C. Complaints would be received ranging from a minor scratch on an article of furniture that has been damaged during delivery to a multi-thousand dollar housing complaint by a homeowner against a contractor. If added frustrations are to be avoided for the complaining consumer, the Agency must be prepared to handle each of these complaints in a fast, consistent and thorough manner.

Judging from our experience, it would be extremely difficult and costly for a centralized national office to undertake effectively the full scope of complaint handling as required in Section 7. Of course, both versions of the bill would give the Administrator of the Agency authority

to establish as many regional offices as necessary; however, in our view, this would be an unnecessary and confusing addition to the many state and local authorities and private sector agencies already in existence.

We perceive other problems for the Agency in conducting the complaint handling functions directed by the proposed legislation. Section 7 requires the Agency to notify producers, distributors and retailers of "...complaints of any significance concerning them...." This requirement adds a significant burden to an already massive task. As we read this section, a controversy relating to service on an automobile by a gas station should be referred to (i) the auto manufacturer, (ii) the auto dealer, (iii) the service station, and (iv) the parent oil company, on the ground that all are or should be "concerned." Moreover, in the nicked furniture example cited on the preceding page, the law would require the same type of notification be given to the manufacturer and retailer.

Finally, there is no direction to the Agency to avoid duplication of contact under this section and we can envision many situations where a retailer or manufacturer would receive multiple notifications of the same kind from various public and private agencies. Indeed, these requirements, taken together, would seem to encourage duplication on the part of public agencies, and the total cost of handling complaints would be greater, thereby leading to the possible increase in the cost of consumer products to the public.

But, Section 7 goes one step further by requiring all of these multiple notifications, together with Agency and business responses as well as every other document relating to a single case or a single company, to be maintained in a "public document" room.

It is predictable that such a room would eventually grow to a size comparable to the Library of Congress with a vast accumulation of records, many of which would be of little value to either the government or the public.

Reports which have been accumulated by Better Business Bureaus on individual companies, and complaints about such companies, total in the millions even though our filing systems are purged from time to time to permit the elimination of outdated reports and complaints. The costs to maintain a document room required by this Act would grow from year to year and very likely would soon consume the entire authorized budget for such an Agency.

In summary, the Agency is directed to deal with large numbers of complaints requiring multiple notifications and extensive storage, seemingly without any real study or knowledge of the extent of work actually required.

Apart from the complaints which were handled satisfactorily on a direct basis by business itself, last year local Better Business Bureaus processed approximately 400,000 written complaints and handled another half million on the telephone. If consumers were encouraged to send all of their complaints to the proposed Agency rather than to exercise their own competence to deal directly with the business or already established mechanisms, the Agency would be innundated to the extent that it would be incapable of devoting its activities to the accomplishment of major projects.

However, limiting the Agency's complaint handling functions to those involving violations of U. S. laws, federal rules and orders, or federal court judgments, decrees and orders, and then only when other federal agencies are unwilling or unable to handle them, the Agency for Consumer Protection would be able to undertake those other functions which have been discussed most frequently in the debate by Members of Congress.

It is our strong belief that there must be a delineation of the respective roles for the government and the private sector in this admittedly important area of resolving consumer grievances. It is clear that government should and must be capable of handling all clear violations of the law such as outright fraud in the marketplace. Also, governmental mechanisms should exist for handling consumer grievances when the private sector refuses or is unable to resolve marketplace disputes voluntarily. But the private sector should be the first line of action and the means for prompt, fair and inexpensive resolution of consumer complaints. Only when this line of action has been exhausted should governmental mechanisms be utilized. In short, government should serve as the remedy of last resort, when parties are unable through the mechanisms of the marketplace to resolve their differences by agreement, mediation or arbitration.

Today the private sector is devoting a large investment of time and money to provide an effective means for resolving customer complaints. Through individual corporate programs, collective industrywide endeavors, and the network of Better Business Bureaus, complaint-handling mechanisms are resolving with increasing efficiency, the product and service difficulties that are an inevitable result of an active marketplace involving millions of transactions each day. These privately supported actions demonstrate the rising determination of the private sector to improve the marketplace and to be increasingly responsive to the consumer. They also reflect the proper decision of the consumer to represent his own interests and to achieve appropriate recognition of those interests through his own efforts. The consumers' interest obviously is to be neither a ward of the state nor a captive of business.

The growing importance of consumer programs in the private sector is reflected by the increasing numbers of consumer affairs offices in many major corporations. This in turn, has spawned a four-year old organization -- The Society of Consumer Affairs Professionals in Business (SOCAP), which was formed with the assistance of the Council of Better

Business Bureaus. This organization of corporate executives, who are responsible for the handling of consumer affairs in their respective businesses, has more than 700 members and a goal of further upgrading the consumer affairs profession in the business community. This organization promotes the establishment of meaningful consumer affairs policies, the development and implementation of effective internal consumer programs within individual corporations and the exchange of proven techniques for handling consumer grievances. The programs developed within corporations by this group of professionals are contributing significantly to the resolution of marketplace problems.

In recent years, the Better Business Bureaus have demonstrated an increased capability for effecting final resolutions of consumer problems. Outstanding examples of these efforts are the National Consumer Arbitration Program and the National Advertising Review Program.

Five years ago the Council of Better Business Bureaus announced the beginning of a national program to arbitrate those consumer disputes which could not be resolved through informal means. The program is underway and expanding. To date, more than 100 Bureaus in major marketplaces throughout the country have arbitration programs and other Bureaus are adopting this program to provide a final resolution of complaints that might otherwise constitute a burden on the courts.

One emphasis of these programs is to precommit business to arbitrate in any dispute which it and the Better Business Bureau are unable to resolve and to give the customer a choice of utilizing this free public service or turning to the small claims courts. To date, more than 23,000 businesses have precommitted to this process.

Our experience has demonstrated that arbitration becomes an extremely popular alternative for resolving consumer grievances when the public is adequately educated.

We are experiencing an expanding partnership with federal, state and local governmental bodies under this program. The Federal Trade Commission has written Better Business Bureau arbitration into five consent orders; the Attorneys General in Ohio, Texas and Louisiana have done the same. Small claims courts in Washington, California and North Carolina have either referred or directed consumer-business disputes to Better Business Bureau arbitration.

The National Advertising Division/National Advertising Review Board mechanism is designed to handle consumer complaints as well as advertising representations which give rise to such complaints. These grievances originate through the monitoring of advertising by our National Advertising Division or through complaints from consumers, consumer groups, government agencies or competitors. An investigation by NAD determines whether a reasonable question exists with respect to the accuracy of an ad, and if so, it attempts to eliminate or correct the advertising through direct negotiations with the advertiser. Most cases are resolved through this procedure. If a satisfactory resolution is not achieved, the matter is brought before the National Advertising Review Board, co-sponsored by the American Association of Advertising Agencies, the Association of National Advertisers, the American Advertising Federation, and the Council of Better Business Bureaus. A panel of distinguished individuals drawn from advertisers, advertising agencies and the public sector reviews the dispute and renders a decision as to whether or not the ad is false or deceptive.

The effectiveness of this mechanism in eliminating advertising capable of inducing consumer complaints is immeasurable. Commerce Secretary Juanita Kreps recently pointed to this program as an example of self-regulation by business. While the procedure provides for prompt public reference to the appropriate law enforcement agency should any advertiser not be willing to eliminate objectionable advertising, to date with more than 1200 cases handled, no advertiser has forced us to take this action. This emphasizes the Better Business Bureau function of maintaining an orderly and effective marketplace, and, as such, it must foster the interests equally of the consuming and business communities.

Although this proposed legislation contains little or no recognition of, or reliance on, the considerable resources and efforts now being exerted by the private sector, it has been the announced policy of Congress to encourage the public use of private mechanisms. For example, in the Consumer Product Warranty-FTC Improvement Act, Section 110 specifically authorizes the writing of informal dispute settlement mechanisms into the actual warranty itself. The Conference Report on that bill stated that it was the intention of Congress to encourage such mechanisms. Yet this proposed law purports to establish a federal agency to accomplish the same results with tax dollars rather than private means. We hope that Congress will follow the direction established in the warranty law and adopt a legislative approach which encourages private efforts rather than one which seeks to duplicate or supplant them.

Other Congressional Committees have addressed their activities to the question of resolving consumer controversies in the best possible way. In the last Session of Congress, the Senate passed the "Consumer Controversies Resolution Act," a measure designed to strengthen state and local mechanisms for resolving consumer complaints. At the suggestion of the Council of Better Business Bureaus, that bill was amended to reflect involvement by the private sector. The same measure has now been introduced for consideration by both Houses of Congress in this Session. Surely it is not the intent of Congress to move in such a duplicative fashion on such an important issue at such great cost to the taxpaying consumer.

CONSUMER INFORMATION AND SERVICE

Another function of the Agency for Consumer Protection is the development, publication and distribution of information and material designed to inform consumers of "matters of interest to them." While we applaud any activity which would increase consumer confidence in the marketplace, we would point out that today millions of dollars are already being spent for this very purpose.

Public schools, colleges, universities, companies, industries, associations, consumer advocates and groups, and innumerable other organizations, including governmental agencies at the federal, state and local levels, are conducting consumer information programs.

In addition to the educational and informational activities being undertaken by the organizations listed above, the Better Business Bureaus have substantial programs aimed at preventing disputes from arising in the first instance. Examples include informational efforts to tell consumers how to be more effective in the marketplace both in terms of wise buying decisions and the avoidance of deception. With the cooperation of all of the major networks, the public service radio announcements developed by the Council of Better Business Bureaus are aired on a regular basis over approximately 4,000 radio stations across the nation.

Nor have we overlooked America's children. A television series of "Junior Consumer Tips," designed to inform children about good nutritional habits, saving and spending money wisely, etc., has been developed and is exposed to more than six million youngsters each week. "Tips for Consumers," a weekly newspaper column, is now provided by the Council of Better Business Bureaus at no charge to more than 600 newspapers with a combined circulation of over nine million.

These efforts by the Better Business Bureaus are part of a national effort by many public and private agencies to accomplish similar goals. If federal legislation were going to be meaningful in this area it might establish a program to coordinate these already duplicative activities in such a way that the private and public sectors can make current expenditures more productive, rather than spending more at a time when costs of government are becoming a topic of intense public concern.

TESTING AND RESEARCH

In the House Version, this proposed law specifically directs the Agency for Consumer Advocacy to support the testing of consumer products. Again, we have difficulty understanding why the Congress would direct the spending of additional monies in an area where millions are already being spent by the public and private sectors. For example, in the all-important areas of food purity, product safety, and product standards, the Food and Drug Administration, Consumer Product Safety Commission, Department of Agriculture, Bureau of Standards and others, are already functioning, and the proposed law is silent with respect to specifying other areas for the Agency to undertake independent testing. Private concerns such as Consumers Union and Consumers Research, are currently undertaking independent testing and research in areas of consumer interest. Additionally, colleges and universities from coast-to-coast are involved in this important area. But all of the expenditures by all of these organizations and institutions are small when compared to the millions of dollars now being expended for testing and research by business.

Since one of the major functions of the Council of Better Business Bureaus relates to the way in which products are advertised to the public, we raise serious question about the provisions of both versions. which would permit the publication of test data. Our question relates to the way competitors might use this information, which could be incomplete and, hence, misleading in their comparative advertising.. At a very minimum, we hope that some restrictions would be made on the use of such test data in advertising, especially where the public could be led to believe a product has been given "government approval."

INFORMATION GATHERING

The section relating to the gathering of information has generated extensive comment and we will not repeat such comments here. However, to the extent that such information gathering includes the conducting ". . . of conferences, surveys and investigations including economic surveys concerning the needs, interests and problems of consumers which are not duplicative in significant degree in other government agencies, . . " this again fails to recognize the substantial activity in the private sector and by state and local levels of the public sector. Moreover, there is no showing anywhere that another function of this type is even needed but, as with the educational and informational functions, perhaps some coordinating efforts would be welcomed.

We applaud the directives in the proposed law which would require cooperation "with State and local governments and private enterprise in the promotion and protection of the interests of consumers." However, this fails to provide more specific direction to the Agency by delineating the kind of partnership that exists today and should exist in the future between an Agency, the state and local consumer protection agencies, consumer groups and the Business sector. This failure could well result in unneeded bureaucratic procedures, unnecessary expenditures and, most important, added frustrations for the consumer.

CONCLUSION

In summary, Mr. Chairman, it has been our intention in this statement to:

1. question but take no position on the proposed function to represent the consumer within the federal establishment. This is an internal oversight function of government itself and outside the ambit of our special competence;
2. oppose as ill conceived, duplicative, costly, bureaucratic and legislatively unwise those portions of the Act relating to proposed Agency functions in dealing with business-consumer issues in the marketplace;
3. point out the current state of consumer protection activity by the private sector and by the state and local levels of the public sector, while urging that there be greater recognition of such activities in all portions of this proposed legislation. For example, a booklet recently published by the Better Business Bureaus of Massachusetts for the State, entitled The Commonwealth of Massachusetts Consumer Resource Guide, contains a listing of more than 400 public and private agencies in that state which serve consumers (copies of this booklet are being sent to you under separate cover).

It is our view that this legislation should be restudied, with unnecessary and duplicative sections removed or referred to more appropriate Congressional Committees which are already considering legislation to meet the objectives sought.

Statement Submitted
for the Record to
Senate Government Affairs Committee
and

House Committee on Government Operations,
Subcommittee on Legislation and National Security

on Proposed Legislation for

an Agency for Consumer Advocacy
(H.R. 6118 and S. 1262)
by Robert O. Aders
President, Food Marketing Institute

I am pleased to submit for the record this statement on behalf of our members in regard to the legislative proposals before the Congress to establish an independent consumer agency (H.R. 6118 and S. 1262). The Food Marketing Institute (FMI) represents some 850 food retailing and wholesaling members. In submitting this statement our desire is to insure that the Congress in its efforts to establish a mechanism for more direct consumer input into the government decision-making process takes into account every possible consideration as it prepares this legislation.

The creation of an independent consumer advocacy agency represents an important step in providing a centralized avenue or forum for the citizen's voice into the Federal government's process of creating policies and regulations which impact directly or indirectly the consumer. This hopefully will enable government and industry to be more responsive to consumer needs.

Consumer advocacy or input is no stranger to the members of this association. Food retailers and wholesalers justifiably are proud of the progress they have made in providing a "consumer voice" within their own industry.

Having made a substantial investment in consumer affairs programs as one element of improved operations, our members have found that this function offers within their own companies a two-way communication process which not only enhances consumer rights in the marketplace, but also improves business performance.

Also, within the Food Marketing Institute, our members have established a mechanism to provide consumer input into the development of overall policy formation. FMI's Consumer Affairs Department was established to coordinate that important consumer input, to effectively represent the consumer's point of view in the overall industry decision-making process and to advise industry policy makers on consumer considerations.

This consumer commitment on the part of FMI and its members was an important cornerstone in the Institute's formation. FMI's by-laws begin by recognizing the food retailers' and wholesalers' responsibility as the purchasing agent for the customer. These by-laws, adopted by the membership, state:

> "The grocery store retailer, from the smallest corner store to the largest supermarket company, is the purchasing agent for the customer...and, in all of its activities and actions the interests

of the customer will be given first consideration."

The Food Marketing Institute believes the establishment of a separate, independent agency for the advocacy of consumer interests within the Federal government and the intention of these legislative proposals can, if properly constructed, provide a system for much needed public participation within our growing bureaucratic and complex government structure.

Presently, there are numerous, and often conflicting, voices seeking to represent the consumer in federal matters, with the result that clamor, more often than constructive input or coherence, has been the case. Consequently, much of the work of the substantive agencies has been unnecessarily disrupted and the orderly and responsible management of agency proceedings impaired. If government's consumer advocacy function could be formulated through a single responsible agency and duplication minimized, substantial public benefits could be realized. Consolidating the consumer advocacy function within the federal government would, naturally, make possible the transfer of consumer advocacy responsibilities now existing in other agencies to a single agency.

It is particularly important, I believe, that the FMI approved position on an independent consumer agency be included in this statement. That position adopted on March 15, 1977, states:

"Support the concept of an independent consumer agency that would accomplish the following:

* promote the interest of consumers regarding the safety, quality, availability and dependability of goods and services;

* preserve the consumer's freedom of choice;

* provide accurate and appropriate information on goods and services of interest to consumers;

* provide a central place, without duplication by other agencies, for the receipt and transmittal of consumer complaints directed to the Federal government.

and provided that:

* such proposals be designed within the concept of the President's desire for more efficient government management;

* the coverage of those subject to the activities of such an agency be all-inclusive (exemption of labor, agriculture or any other economic segments would be unfair and inequitable and not in the consumer interest);

* such an agency be established to represent the consumer interest before Federal agencies and courts and in other proceedings, where appropriate but in carrying out this purpose it should not supercede, supplant or replace the jurisdiction of any other

Federal agency over any subject matter, nor deprive any agency of any responsibility to exercise its statutory authority according to law;

* such an agency, in a proceeding or in preliminary activities that might lead to such a proceeding, not be provided the use of unilateral subpoena power or other procedural or discovery devices not available to all persons;

* such an agency, in the dissemination of public information of importance to consumers, be required to protect the confidentiality of proprietary information;

* the proposals of such an agency should be subject to a cost-benefit analysis.

While FMI endorses the concept of H.R. 6118 and S. 1262, it is our position that the best interest of all can be served only if modifications are made in several important areas within the existing legislative proposals. These modifications are based on two underlying concepts held by FMI about an Agency for Consumer Advocacy and designed to insure that the agency is structured within a framework of equity and fairness to all.

First, while it is appropriate for an ACA to have a voice equal to that of other interested parties (business, labor, farmers, etc.) the overall public interest will not be served by any tilting of the power balance toward such an agency, and...

Second, a consumer advocacy agency should be just that -- an advocate -- not an agency with substantive adjudicatory rulemaking or investigatory power to be exercised independently of the substantive agencies. In this context, the following modifications are proposed to the current legislative proposals under consideration.

1. If the agency is to be given some investigatory power, that power, regardless of limitations currently proposed, should not be exercised independently of the substantive responsibilities of other agencies. An acceptable procedure might be to require ACA to operate through the substantive agency, petitioning the agency for the issuance of whatever investigative discovery process might be available to them and receiving the responses through them. This approach, while furnishing interrogatory power to an ACA, would be more compatible with the advocacy role of working with and through the substantive agencies than the proposal in the pending legislation. It is not the function of an ACA to make law, but most importantly, to advise other agencies of consumer interest with regard to the actions of those agencies.

2. In keeping with an ACA's advisory functions, it is important to preclude disclosure by ACA of all materials exempt from disclosure under the Freedom of Information Act, particulary those exemptions related to trade secrets and materials gathered for law enforcement purposes.

Such a limitation would not affect the power of ACA to make any appropriate disclosure in connection with any agency proceeding in which it is participating, or in matters affecting public health and safety. While the current proposed legislation contains some limitations on disclosure, those limitations are not fully satisfactory. The proposed legislation does not make clear, for example, that information obtained from a Federal agency, which might be subject to exemptions to the Freedom of Information Act, could not be disclosed by ACA where the agency provided the information has not notified the ACA that the material is exempt from disclosure.

3. The legislation creating an ACA should contain no exemption for various interest groups on grounds of political expediency. Specifically, labor and agriculture should be included in the legislation. Two major factors affecting the consumer in the food distribution system are the cost of raw materials and labor productivity. Neither of these exemptions in the legislation is justified, If the ACA is truly going to fully represent the interests of consumers, the jurisdiction of any consumer advocacy agency should be as inclusive as possible.

4. Authority to initiate judicial review of a final substantive agency action should be granted to an ACA only

only if two court requirements are met: (1) such a review would avoid a substantial detriment to the interest of justice and (2) that ACA has some new and important factor to add. The public interest -- and that of affected parties -- generally would not be well served in situations where a protracted agency adjudication leading to a final order could be attacked after its effective date by an ACA which had not shown prior interest.

5. An ACA, when it is participating in a formal proceeding, should not be granted greater access to substantive agency subpoenas than that granted to other parties. As the statutes and rules of the substantive agencies presently stand, the present legislative proposals require far less of an ACA to obtain a subpoena, for example in an FTC proceeding, than is required of a private respondent in such a proceeding. Such inequitable treatment under the law is certainly not in the public interest.

The Food Marketing Institute considers the above legislative modifications critical to any legislation which has as its design the creation of a workable, effective and equitable Agency for Consumer Advocacy.

In summary, because of FMI's inherent commitment to consumers- our customers - and because of our realization of the important benefits derived from consumer inputs to the food retailing and wholesaling business, we support the concept of an independent consumer advocacy agency.

The Food Marketing Institute, however, believes that it is imperative that the framework for such an agency be designed to assure efficient, fair and equal treatment to all sectors of the economy which are involved in producing goods and providing services for America's consuming public. We feel our proposed modifications assist in meeting these objectives.

With proper legislation, such an agency could; fulfill its intent to ensure that the consumer's viewpoint is represented in the government's decision-making process; promote the interests of consumers regarding the safety, quality, availability and dependability of goods and services; gather and disseminate appropriate information of importance to consumers; and guarantee the customer's freedom of choice.

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