

40



# NEWS from U.S. Senator Bob Dole

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## REMARKS OF SENATOR BOB DOLE

### DRUG AND CHEMICAL ASSOCIATION DINNER

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During the past two to three years, I and many of my colleagues detected a very noticeable shift in the character of the constituent inquiries we were receiving.

The shift has become a trend and the trend shows promise of solidifying into a routine.

We are getting many, many more letters that start, "I have never written a member of Congress before, but . . .", and many of these -- many more than in the past are coming from businessmen.

Since from time-to-time, I have urged that the business community increase its involvement with government, you might think that this trend is a welcome one.

#### FRUSTRATION OVER GROWTH OF CONTROL

But, the period 1971 to 1973 saw this country's first experiment with peace-time wage and price controls. Frustration by members of the business community was widespread and understandable and it was frustration, in most cases, that prompted the influx of letters.

The reaction to wage and price controls, for example, did prompt a greater involvement with government by the business community, but not the kind of greater involvement I have been urging.

To cite another, contemporary example, one of my constituents said recently that the only way he would welcome an OSHA inspector on his property would be with the business end of his shotgun.

That's not what I mean by greater involvement with government either.

#### CHOICE OFFERED

One thing characterizes both responses. It's a question of timing, both are too little, too late, unless you and your colleagues in business are content with being reduced to the status of a negative, objecting and ineffectual minority. But I don't think you are, certainly, you shouldn't be.

The alternatives may not be easy, but they can be simply stated. Either you can continue voicing objections to what has already been done, giving reasons why it isn't working and worrying about the future, or you can step in "ahead of the curve," voice your objections to what might be done, give your reasons why it won't work -- and change the future.

#### CHANGING PUBLIC MOOD

The mistake some of us have made is, in a sense, over-reacting to the future. It is easier to anticipate some kind of direct assault on the free enterprise system, gear ourselves up for some imagined future battle royal, perhaps over nationalization of one industry or another, and then sit back and wait.

-2-

But nationalization isn't very likely. It is just the kind of overt, direct act against our free enterprise tradition that might be easiest to defend against. It is the least likely option to materialize.

Rather, the rights and responsibilities -- the freedom of managerial action -- by the business sector may be nibbled to death by regulations. Each new regulatory restriction may be minor and tolerable enough in its own right, but one day, the total may exceed the sum of its parts -- total management by government and total helplessness for you.

It wasn't so long ago, really, that Calvin Coolidge, speaking the common wisdom of his time, announced that "The business of America is business."

That common wisdom has changed. Business is still important, but today's consensus seems to hold that it is too important to be left to the businessman.

#### REGULATION OF BUSINESS

Some see the change in public attitude and expect it to lead to nationalization. I do not. More likely, without action to change the present mood, a society so inclined as ours will tend instead to support its government's increasing resort to regulation.

Regulation -- always well-intended, always pursued in the public interest -- nonetheless is often counterproductive, inefficient, anti-competitive, costly and arbitrary.

Government regulation of drugs, for example, is well-intended, and a certain amount of regulation is necessary. The process of regulation, sometimes, can be questioned. The government says, let us protect the consumer from the hazard, the expense, the human suffering of untested drugs. Government says, let there be administrative processes to certify new drugs before they are available on the market.

It is even attempting to expand the very definition of a "drug" by seeking to include vitamins and food supplements. The Supreme Court indicates it may indeed have that authority under the law. But that isn't the question. The question is, should the law be changed?

In a related matter, HEW is now saying -- with the recently proposed "Maximum Allowable Cost" regulations for Medicare and Medicaid prescriptions -- that we are paying too much for drugs; that we need to phase-out brand names and go to dispensing "therapeutic equivalent" generic substitutes. This is necessary, it maintains, to prepare for the advent of National Health Insurance -- when a cost-conscious reimbursement system will be essential to keep prescription drug benefits from becoming prohibitively expensive.

While I'm certainly not opposed to the basic consumer principle of "paying less for the same thing," I think there may be some important considerations being overlooked in this particular action. The idea of "cheap drugs," for example, is not new, and we have any number of fly-by-night companies already in existence who send out their catalogues advertising "cost-for-less" prescription medications.

So the question is, will the bureaucratic "drug experts" who establish the Maximum Allowable Cost list be infallible in their determinations of potency and Biological equivalence, and will even the FDA have the capacity to ride herd on all the supposed "chemically identical drugs" being manufactured?

This leads to the other major problem of the actual "savings" to be realized in this whole effort. For, if estimates prove valid, that it will cost \$275 million annually to administer and enforce (through institutional audits) this program -- in an effort to save \$89 million -- one must certainly take issue with the practicality of it all.

But I stress again that unless the public -- through your urging -- tells it otherwise, this is going to be yet another instance in which the government will regulate, then look at what it has done, and say, "It is good."

But it may not be so good -- at least all good -- as you very well know. According to some studies I have seen, during the certification process, just to cite an example, for every one person who escapes unexpected side effects of a new drug, there may be another who escapes getting cured by it. And estimates are that the consumer ends up paying an extra 200 to 300 million dollars because of the delay.

#### Complex Considerations

The trade-off is there. Delay for the sake of safety versus earlier marketing for the sake of cure -- and lower costs.

I am not taking up with the critics of the Food and Drug Administration. I don't prejudge their decisions. Just as I don't prejudge the decisions of the Environmental Protection Agency when it bans the use of DDT. You know far better than I the arguments for and against delay in certification of drugs. You know far better than I the arguments for and against the use of DDT.

#### Debate Dominated

But the public doesn't. And, again, that's my point. The public knows the regulators' side of the argument only. Not yours. And so the public is on the side of more regulations, not less.

And much more regulation than we have now could make our supposed worst case -- nationalization -- look good by comparison.

The FDA and EPA already have the power to decide how you make your product. EPA can decide where you make your product. The Labor Department can tell you who will make your product and how much you have to pay them. OSHA can tell you what the people you hire will wear when they make your product. The FTC will tell you what to say when you advertise your product. And, on top of all that, the Price Commission, for two and a half years, told you what you could charge when you sold your product.

It was only then that I started getting the letters.

Why not before?

With a history of so much government intervention in your operations, it should not have taken the fairly recent trauma of price controls to move the business community to action.

In spite of all the restrictions placed on you by government, you can sell what you make. You have good products, good advertising, good marketing.

If you can sell your product, why can't you sell the system that makes it possible for you to sell your product. I urge you to try.

#### On Guard Against Beneficence

In theory, nationalization means government "ownership" of the means of production. I repeat, I don't see that as a real threat -- not even with the oil industry.

But, as a recent Industry Week article suggests, maybe the U. S. is developing a new way to control business short of ownership. There are other ways of exerting control over the means of production, and those are the threats we ought to be worrying about. As the late Justice Brandeis said, "Experience should teach us to be more on our guard to protect liberty when the Government's purposes are beneficent."

#### Who's In Charge?

In pursuit of various, very beneficent government purposes, more and more of your managerial decisions are being made for you by people in government. They are being made by people who, quite properly, couldn't care less about your profit sheets. They are being made by agencies of government. And, increasingly, more and more of the statutes under which these agencies operate are being framed in a context which, less properly, is actually hostile to your profit motive, and suspicious of your good faith.

There is occurring in a very real sense, a revolution. It's a revolution

-4-

in public perceptions. And it has come without a significant shot being fired by the other side.

And rest assured, in the minds of many, you in business today are the "other side".

Normally, however, when there are two sides, they enter into debate. There has been little meaningful dialogue yet on this whole question of what the appropriate limits and objectives of government regulation might be.

The regulators have the rhetorical advantage. Though there may be some substance to the view that regulatory agencies tend to become the captives of those they regulate, it is still true that when there is a dispute, the advantage is theirs, not yours. It is they who protect. It is they who conserve. It is they who are the "watchdogs" on guard against you who are presumably the predators.

I believe that you ought not to hesitate to plunge into the debate. Assert your own belief in the value of the marketplace as the ultimate regulator. In the words of an Industry Week magazine correspondent, "We need to spell out, in one syllable words, what free enterprise means, and what benefits it can bring -- and to admit where it needs changes."

I stress, we need to do that, you need to do that. Don't only defend free enterprise, but admit where it needs changes and begin to make those changes yourself -- or government will continue doing it for you.

#### Enterprise -- Free or Sterile

In a recent article in Commentary magazine, Patrick Moynihan argues that the United States must vigorously assert to the rest of the world our belief in the principles which underlie our society. At present, in international discourse, he suggests we are apologetic about our prosperity, defensive about our principles. He is right. We are embarrassed to proclaim what we believe and super-sensitive about the feelings of other nations. We allow others to determine what we should, and what we shall, do. We present the image, internationally, of what Moynihan describes as a "sterile enterprise which awaits total redefinition".

I agree with him, as I agree when he says, "It is time ... that the American spokesman came to be feared in international forums for the truths he might tell."

And, analogously, it is time, on the domestic scene, for the American free enterprise spokesman to assert -- firmly and in one syllable words -- what it is he believes. It is time for him to be feared in domestic circles "for the truths he might tell".

Or else, it is time to recognize that American free enterprise has become a "sterile enterprise" awaiting total redefinition by regulation.

I am not calling for massive resistance of any sort. I am suggesting that you enter the dialogue about this country's future. It takes place every day in the living rooms of America and the Halls of Congress. So far, to much too great an extent, the dialogue has gone on without your voice being heard.

And your failure to be heard can be noted in the public's attitude and in the public's laws.

#### Don't Go Halfway

In a recent study by former Assistant Treasury Secretary, Murray Weidenbaum, for Washington's American Enterprise Institute, there is a list of 29 major pieces of legislation passed since 1962, which extend government regulation of business. These include the Food and Drug Amendments of 1962, the Clean Air Act Amendments of 1970, the Consumer Product Safety Act, to name a few. The study doesn't include any instances where regulation has been diminished over the period, by the way.

But among other things, it cites numerous examples of inefficiencies in the organization of governmental regulatory efforts. Weidenbaum cites as an example that there is a "division of authority for pollution control of the

-5-

Hudson River between the State authorities of New York and New Jersey. Each has jurisdiction from its own shore to the middle of the river."

Government regulation of private industry is here to stay. I believe it can be useful and positive and I am sure you agree. But it won't work if business acquiesces in self-defeating agreement to let government take its half of the river. Inevitably, what government does on its side, no matter what you do on yours, will either pollute your side, or clean you out altogether.

My message, I hope, is clear. Your side, "the other side", is not being heard. The way to make sure your voice is heard is to work, individually through your own companies and collectively through this Association to take your point of view to the public and to the Congress.

You have a contribution to make to the dialogue about the direction this country is taking. You have, in defense of the free enterprise ethic, yourselves to defend.

And, it is my belief that if you defend that system -- the free enterprise system, which has given the people of this country a freer and more prosperous life than any other -- then you will have much that is true to bulwark that defense.

And it is time for an unhesitating free enterprise spokesman to take active part in the domestic policy forums of America and "to begin to be feared for the truths he might tell".

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