



NEWS from U.S. Senator Bob Dole

(R.—Kans.)

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REMARKS OF SENATOR BOB DOLE
AMERICAN ADVERTISING FEDERATION
WASHINGTON, D.C.
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Mr. Chairman, distinguished officers and members of the American Advertising Federation and Madam Commissioner:

We live in a time of full disclosure. Therefore, let me confess that part of my opposition to the Consumer Protection Act, as it humbly entitled by its sponsors, arises from personal considerations. The principal advocate of the Act, Mr. Ralph Nader, described the bill in dramatic terms early in its troubled history on Capitol Hill. He said that it would create a "strike agency" to "revolutionize" the government and to "reform its entire apparatus". I want no such thing to happen to our previous speaker.

Before I turn to the other reasons why I oppose the legislation, let me disclose also that I am shamelessly biased in favor of Commissioner Dole, who is a distinguished member of the Federal Trade Commission and the very best advocate that any consumer could want in Washington. She is, I submit, living refutation of her own belief that consumers are unrepresented in our government.

Supported Last Year's Bill

My final disclosure is that I am a convert. I voted for and actively supported the Consumer Protection Act in 1970, 1974, and 1975, for some of the reasons that our prior speaker has just addressed. You may be interested to know why I have changed my mind.

The tired argument that the consumer is unrepresented has been the bill's shibboleth since the time, many years ago, when it was a mere gleam in Mr. Nader's eye. I have come to believe that this is not the case--a view shared by the General Federation of Women's Clubs, the largest women's organization in the world, when they adopted a resolution last Wednesday opposing the establishment of the Consumer Protection Agency as currently proposed.

Cost of Existing Agencies: \$1.2 Billion

We rely in this country on the marketplace as the principal consumer advocate, and we have the antitrust division of the Justice Department and the Federal Trade Commission to make certain that markets operate fairly and efficiently. And there is a cluster of other consumer protection agencies in our bureaucratic galaxy, most of which have been created within the past decade, whose powers now extend to practically every commercial activity in the United States. They include the Consumer Product Safety Commission, the Food and Drug Administration, the Environmental Protection Agency, the Federal Energy Administration, the Occupational Safety and Health Administration, the National Highway Traffic Safety Administration and the Nuclear Regulatory Commission, among others. Why not increase the effectiveness of these existing agencies rather than superimpose on them a further level of federal bureaucracy. Did you know that these agencies alone will cost us an estimated \$1.2 billion in fiscal year 1978.

Another reason why I have changed my mind is my decision to take the President of the United States at his word. He campaigned hard on several themes; and it seems to me that practically every one of them is contradicted by the creation of a new independent agency to tie up the Executive Branch in litigation whenever that agency, not President Carter, feels that consumer interests need to be protected.

Candidate Carter challenged Mr. Nader as the nation's high priest of consumer advocacy. He said that he personally would be the number one consumer advocate, and he has taken steps to vindicate this promise by plucking many of the most ardent consumerists in the land from their private domain and placing them in high positions throughout the government. In fact, it's been said there would be no one left to run the new agency. He cannot be the nation's top consumerist by creating a Nader-inspired litigation strike force that will operate beyond his control. They will outdo him every time.

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Candidate Carter said, and President Carter continues to say, that he is pledged to cut down on government spending, to reorganize the government more efficiently, to reduce bureaucratic harassment of business, and to control inflation. If these pledges are sincere, and I hope and believe that they are, it is an odd time indeed to create a new agency of the kind now urged upon us. It isn't enough to say, as he did on August 9, 1976, while addressing a group of consumerists from the "Public Citizen Forum" that, "This agency is different."

The new agency will cause a direct increase in government spending of \$15 million during its first year of existence. After that, as is the case with any government agency, the sky is the limit. For example, you all know about OSHA -- its first full year's authorization was \$376,000, and OSHA's budget for this year is \$133,300,000. And the Environmental Protection Agency's authorization for its first full year was \$679 million, but EPA's total budget for this year is \$6 billion. The CAB's original authorization was \$14,026,480, and its present budget calls for \$92,812,000.

What about government reorganization that we hear so much about and that we on Capitol Hill have been doing something about by creating, for example, a new Department of Energy? If reorganization to make government more responsive and efficient is a sincere concept, why then do we need a super-agency to police that government? I find the two concepts utterly inconsistent, and I find the reorganization course far more appealing. We should follow the President's lead in putting our governmental house in order before we create an independent agency to do it for us.

GOOD GUYS AND BAD GUYS

I have welcomed President Carter's assurances that governmental harassment of business and government-inspired inflation will be controlled by his Administration. But I see none of that in the consumer protection bill.

The premise of the bill -- an unfortunate one I believe -- is that there are good guys and bad guys in this world of ours. The bad guys are businessmen who captivate the government and line their pockets with gold at the expense of the good-guy consumers. Now the good guys will have their own super good guy in government.

I won't bore you with my views on the ancient debate over who wears the white and who wears the black hat. It will suffice to say that the Consumer Protection Act is anti-business. The new agency can use compulsory process to impose burdensome information demands upon businessmen; it can tie up expeditious government decision-making on which businessmen rely by intervention and litigation; and it can generally increase the climate of suspicion and distrust of business.

PRICE TAG FOR MORE GOVERNMENT

Nor will the President's wish to control inflation be served by consumer advocates. There is a price tag for more government, and it is a vast mistake to assume that business pays that price. Costs incurred by government intervention are passed on to consumers in the form of higher prices for goods and services. More bureaucracy will not serve President Carter's expressed desire to limit inflation.

So the basis for my new opposition is founded largely in the hope that our new President will succeed as the nation's premier consumer advocate, that government reorganization will trim away the fat and make our bureaucratic complex more responsive, that businessmen will be less harassed, and that inflation can be controlled. The Consumer Protection Act will work directly against the President in these efforts.

We hear a lot about "consumers" these days, and I am all for them. Everyone is a consumer, so perhaps the new agency should be called the Agency for Everyone's Advocacy.

But if you think of it in those terms, you come to realize that we already have such an agency in Washington. We call it the Congress, and just in recent years we have enacted a host of consumer-oriented legislation. For example: the Toxic Substances Control Act; Consumer Product Safety Act; Magnuson-Moss Warranty - Federal Trade Commission Improvements; the Anti-Trust Improvements Act; Meat, Egg and Poultry Inspection Acts; Truth in Lending Act; Fair Credit Billing Act; the Equal Credit Opportunity Act; and a host of related consumer laws. I was informed as recently as yesterday by the Library of Congress that in this Congress alone some 531 bills touching on consumer concerns have been introduced; and in the 94th Congress, some 831 bills were introduced.

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If we pass this bill, we are saying in effect that Congress, and indeed the President, are incapable of making certain that the government represents the interest of the people. I am unprepared to make that statement.

If the Federal Trade Commission or the Consumer Product Safety Commission or any other entity of this government is not performing its mandate to serve the Public Interest, then Congress and the President should do something about it. The Congress can and does exert enormous influence by virtue of its oversight authority. In the past several years the President has installed vigorous consumer representation offices within every major department of the Executive Branch. The great attention given to consumer problems by both branches over the past several years is additional evidence that now persuades me that there is no need for a new independent agency.

CREATE NEW AGENCY TO POLICE THE OLD ONES?

The old ostrich approach of funding a new bureaucracy to solve a particular problem is a practice whose time has come and, to the relief of most Americans, gone. Consider first the illogic of creating a new agency to police the old ones. I find little comfort in the concept that more bureaucracy is the answer to problems created for the most part by too much bureaucracy.

Moreover, an independent super-agency is not the proper solution to the ancient dilemma of who shall guard the guards themselves. The Constitution, as I understand it, places that burden elsewhere. Congress and the President serve that function as the only elected officials in our federal system. It is our job to assure that every agency of this government serves the best interest of all the people all the time. If the job is not being done, it is our fault. The creation of a new ship of state flying the flag of consumerism does not relieve us of the burden.

Getting back to the question of identifying who "consumers" are, the promoters of the consumer protection legislation have contrived a neat way to get around the fact that a consumer is no different than a person. One can also ask what is a "consumer interest". The advocates define a particular "consumer interest", and they say that this "consumer interest" is unique and separable from our other interests.

CONSUMERS NOT ALL THE SAME

This, I have concluded, makes no sense. There is no palpable consumer interest that one designated bureaucrat can or should represent. What is your interest in foreign grain sales? Well, this depends very much on who you are, does it not? Are you a farmer? A city-dweller? A baker? A foreign consumer? A taxpayer? What about balance of payments, international agreements, or foreign relations generally? When the new consumer advocate rushes headlong into this terribly complex issue, whose interest will be advocated? What role would such an agency play in a saccharin ban?

The point is that you can't put on blinders and vigorously advocate what may be the interest of one consumer without doing violence to the interests of others. And you can't single-mindedly run the government for the benefit of the "consumer interest", even if there were such a thing. We have enough polarization institutionalized in our government now. The broad public interest, as defined and addressed by the Congress and the President, is the only interest that government has any business representing.

All of this brings me to a crucial point -- the new consumer agency will have too much power. It is simply naive to accept, as some apparently do, that it will always be a small agency, that it will have no direct regulatory authority, and that it cannot impose its will on anyone.

BUREAUCRATIC GROWTH

That it will be a small agency is refuted by history. I can see it now. Fifteen million in the first year, twenty million in the second year, and twenty-five million in the third year as authorized in the bill, will be woefully inadequate, they will tell us. The Agency will have only scratched the surface of regulatory abuse, they will tell us. A few million more next year and the next year and the next is very necessary, they will tell us. What disturbs me even more is that we on Capitol Hill hardly blink at millions anymore.

And remember, this will be the representative of the American consumer speaking. By clothing the consumer advocate with the apparent authority of the people, we will have created a very potent political force.

By the same token, the lack of direct regulatory authority should be no problem for the new agency. The power of compulsory process, the power to intervene, and the power to sue -- all on behalf of the American people -- will afford immense leverage to the consumer advocate. These powers, even the threat of their use, will be sufficient to make the best established government official wither.

PRESIDENTIAL AUTHORITY

With all this power, whether legal or political, it would seem that there should be substantial accountability at the very least to the President. Try as I might, I see no practical controls on the agency. Although the legislation places it technically in the Executive Branch, it can sue the Executive Branch. The Courts have said that you cannot sue yourself, even if you are the President of the United States. The power to sue is the crux of the bill; so there is no way that the consumer advocate can be controlled by the President. He or she will be a free agent, roaming in the pastures of high government policy, speaking loudly and carrying a big legal and political stick.

Let me turn briefly to some specific areas of concern. Energy is one that is on everyone's mind. Less than one week after the President called upon a confused, skeptical nation to face the energy crisis, the Consumer Agency's principal advocate questioned the President's conclusion that this nation faced a critical shortage of energy resources. Now suppose that this were the officially-designated consumer representative speaking. Can you imagine the frustrating, confounding effect of such a statement and its potential for deterioration of the national will?

FOOLHARDY AND IRONIC VENTURE

Fake grain sales, which I mentioned earlier. The President made numerous campaign commitments against future grain embargoes, which he may or may not find himself able to keep. But the point is that decisions on issues of this magnitude should be arrived at by the President and the Congress. The enabling of a collection of lawyers with a narrow view to tie up these decisions by lawsuits, public statements, or any other means is a foolhardy venture at best.

There are still many unanswered and unanswerable questions about the scope and responsibilities of a Consumer Protection Agency: How will the Consumer Protection Agency decide what is a "consumer interest"? Will the agency be permitted to intervene in informal activities as well as formal proceedings of other agencies? Should the Agency be allowed to petition for or intervene in judicial review of other agency actions?

Should the Agency be given the right to directly subpoena trade secrets and other confidential information from business and industry? What will be the extent of exemptions? This latter area of concern is particularly controversial.

There has been no argument over the issue that national security agencies, such as the FBI and the CIA, should be completely exempt from the new agency's activities.

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There is great irony in the legislation as it now stands. Labor supports the bill, because labor is exempt. Others would support the legislation if they were exempt. Everyone would support the legislation if everyone were exempt.

What consumers need now is protection from this agency. I shall continue to vote to protect the consumer -- by voting against the so-called Consumer Protection Act of 1977.