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*F- Business Roundtable
(p.4)*

FOR RELEASE AFTER 10 a.m, May 2, 1977

For: Consumer Issues Working Group

FORMER CONSUMER PRODUCT SAFETY COMMISSION CHAIRMAN

SAYS PROPOSED CONSUMER AGENCY IS "ESCAPE MECHANISM"

WASHINGTON, May 2, 1977 -- The proposed "Agency for Consumer Advocacy" is little more than an escape mechanism for federal officials already charged with the responsibility of guarding consumer interests, Richard O. Simpson, former chairman of the Consumer Product Safety Commission, told a news conference here today.

Simpson, who was the CPSC's first chairman and served in that capacity until 1976, also praised Attorney ~~Leon~~ ^{cx} Jaworski, former Watergate Prosecutor, for his analysis of H. R. 6118, the bill creating an ACA. Jaworski has concluded that the bill creates "the potential for disruption of our political system."

"Establishment of an 'Agency for Consumer Advocacy' would provide a convenient escape mechanism for those who already have been given the mandate of ensuring that the public's views are honestly solicited and reasonably considered in the regulatory process," Simpson said.

"Every official in a regulatory agency already has the assigned responsibility to consider all societal interests, including consumer views, when he makes decisions on behalf of our citizens.

"The most difficult and elusive part of that decision process is to identify the consumer's point of view. The creation of the ACA would have the effect, in practice, of lifting this burden from the individual commissioner and placing the responsibility for articulating the consumer's viewpoint on the ACA officials.

"You will have removed a difficult task from the regulator, but the votes remain as before -- with the regulatory official.

(M O R E)

"The net effect can only be a cop-out for the regulatory commissioner and a reduction in the consumer's voice and influence in our federal regulatory decisions," Simpson said.

During his news conference, Simpson referred to Attorney Leon Jaworski's letter to Rep. Jack Brooks, chairman of the House Government Operations Committee, in which Jaworski said:

"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."

Jaworski also noted that there are no checks in the bill against abuse.

"That alone is sufficient to justify laying the concept to rest once and for all," Jaworski said.

"The new Agency for Consumer Protection, as it is called in the (House) 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 former Watergate Prosecutor said.

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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.

*/ See United States v. Nixon, 418 U.S. 683 (1974).

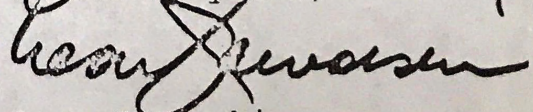
I do not mean to concentrate on the negative. There are positive aspects to the bill, particularly its purpose, which is to make the processes of government more responsive to the needs of citizens. I applaud that goal, but cannot understand why the least desirable alternative to achieve it has been 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