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in both Houses of Congress before any such proposed agreement could go into effect.

Several events now make consideration of that amendment timely.

First, there have been reports that the AEC must make its decision to give fuel to Egypt and Israel by June 30, 1974. Apparently the requests for fuel, a scarce resource, have created a backlog of unfilled but potential demands on the United States. Therefore, it is appropriate that the Senate consider this issue as quickly as possible and before long-term arrangements are worked out that have a momentum of their own.

Second, it is quite apparent that the United States, offer to Egypt and Israel, coupled with the testing by India, has created a prospect of proliferation of nuclear warhead technology throughout the world. The Shah of Iran has expressed direct interest in acquiring the bomb. India may be testing again soon with an improved device, possibly a hydrogen bomb. One press report indicates that Japan's ratification of the Non-Proliferation Treaty may be in doubt.

All of these factors make it imperative that the Senate vote on the question of transferring such technology at the earliest possible time.

Therefore, I am introducing an amendment to Senate Joint Resolution 216, the extension of the Export Administration Act of 1969, which will set the stage for a vote on this issue. The substance of this amendment is identical to my amendment 1489.

Mr. President I ask unanimous consent that my amendment be printed in the Record and held at the desk until Senate Joint Resolution 216 is reported to the floor.

The PRESIDING OFFICER. Without objection it is so ordered.

Amendment No. 1520 is as follows:

AMENDMENT NO. 1520

At the end of the Joint Resolution, add a new section as follows:

SEC. 2. Notwithstanding any other provision of law, no cooperation with any nation or regional defense organization shall be undertaken pursuant to section 54, 57, 64, 82, 91 (c), 103, 104 (d) 123 or 144 of the Atomic Energy Act of 1954 (42 U.S.C. 2074, 2077, 2094, 2112, 2121 (c), 2133, 2134 (d), 2153 and 2164) on or after 1 June 1974 until the proposed agreement for cooperation has been submitted to Congress by the President and the Congress has adopted a concurrent resolution stating in substance that it favors the proposed agreement for cooperation.

CONSUMER PROTECTION AGENCY ACT—AMENDMENT

AMENDMENT NO. 1521

(Ordered to be printed, and to lie on the table.)

Mr. MONDALE. Mr. President, I am today introducing an amendment to S. 707, the Consumer Protection Agency bill. I believe this amendment will provide a useful adjunct to the resources of the Agency and will help the Agency fulfill its goal of protecting, informing, and representing the American consumer.

In brief, my amendment authorizes the Administrator of the Consumer Protection Agency to provide information and financial assistance to private consumer organizations for the purpose of assisting such organizations in intervening or participating in any agency or judicial proceeding which substantially affects consumer interests.

Private consumer groups have become increasingly important as State courts, Federal courts, and administrative agencies cope with litigation stemming from newly created statutory rights, increased concern with consumer and environmental interests, and public awareness. These groups have provided decisionmaking bodies with helpful input and have brought important controversies to the forefront of public attention.

Only last term, the U.S. Supreme Court decided *United States* v. *Students Challenging Regulatory Agency Procedures* (SCRAP), 412 U.S. 669 (1973). This suit was originally brought by a private consumer group made up of law students at George Washington University. Although the students ultimately lost on a jurisdictional question, they did settle an important standing question and brought the case all the way to the Supreme Court.

Similar groups have litigated important questions involving the environmental impact of highway construction, the right of access to the media, the rights of the consuming public, and other important environmental issues. See *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971); *Calvert Cliffs Coordinating Committee* v. *Atomic Energy Commission*, 449 F. 2d 1109 (D.C. Cir. 1971); *Office of Communications of the United Church of Christ* v. *Federal Communications Commission*, 359 F. 2d 994 (D.C. Cir. 1966); *Scenic Hudson Preservation Conference* v. *Federal Power Commission*, 354 F. 2d 608 (2d Cir. 1965).

It seems abundantly clear that private, consumer groups play an important part in the raising and settling of critical issues that affect the American consumer.

I propose to allow the Administrator of the Consumer Protection Agency the power to aid—with information and financial assistance—private, consumer organizations that wish to intervene in or participate in agency or judicial proceedings which affect consumer interests.

I believe this amendment will serve several important purposes.

First, by its very nature, the Consumer Protection Agency will be forced to arrive at a single "consumer" position and urge that position before the court or administrative agency. In fulfilling his duty under section 6 of the bill to "represent the interests of consumers before Federal agencies and Federal courts," the Administrator will decide the position he feels is in the best interest of the consumer and represent that position. Yet, the "consumer interest" is seldom monolithic. One can easily envision circumstances where it is in the interest of consumers to have a safety device installed on a vehicle, but it is also in the interest of the consumer to see the vehicle sold at the lowest possible price. In such circumstances, the Administrator might remain neutral, might blandly present both positions, or choose to represent one interest to the exclusion of the other. Allowing the Administrator to aid a private, consumer group would enable him to, in effect, assign representation of one of the competing interests to a private advocate who could effectively represent that interest in court or agency. The decisionmaking body would be served, because it would have full, effective input on all sides of the question; the Administrator would be free to forcibly represent the interest he believes paramount; and the consumer would be served because all possible consumer views would be represented in the proceeding.

Second, in the process of considering applications for Consumer Protection Agency aid, the Administrator will be exposed to ideas for possible involvement of the Agency in proceedings and, in addition, consumer views on a variety of matters. Although the bill provides, pursuant to section 9, for notice to the Administrator by Federal agencies of "any action which may substantially affect an interest of consumers," it is possible that the application process will notify the Administrator far in advance of imminent agency action. Of course, many important consumer interests do not achieve full agency or judicial fruition until long after they surface as legitimate consumer concerns. The Administrator may be greatly aided in his efforts if he has this "early warning" system built into the Agency's procedures. Surely, the application process will aid in the section 11 information gathering functions and the section 12 information disclosure functions.

Third, although private, consumer groups have played an important role in recent judicial and agency proceedings, their role has been limited by the high cost of intervention and participation and the lack of resources available to such groups. They are frequently faced with high filing fees, printing costs, personnel salaries, and research costs. Resources are limited to private contributions or foundation grants. Allowing the Administrator to aid such groups would take the financial burden off of their more important projects and allow them to do the job they do so well—representing the consumer.

Finally, but surely not of least importance, the program envisioned by this amendment would serve as a pilot for State and local governments thinking of introducing similar projects. Needless to say, State and local programs along these lines would enable private, consumer groups to play an important role in State and local courts and agencies.

The authority conferred by this amendment is carefully defined and limited. For instance, assistance may not be provided for intervention or participation in any proceeding in which the Administrator himself is prohibited from intervening or participating under the bill. Also, any organization receiving assistance pursuant to this amendment must abide by the requirements of section 7 of the bill relating to compliance with agency statutes and rules of procedure and the orderly conduct of proceedings.

Also, applications for aid must include several important safeguards including:

First, substantial control of any program by or under the supervision of the applicant;

Second, the proper and efficient administration of such program;

Third, fiscal control and fund accounting;

Fourth, assurances that the funds will not be used for prohibited purposes;

Fifth, full reporting to the Administrator; and

Sixth, any other information and assurances the Administrator may require.

Finally, the amendment provides for means of termination of any grant and for judicial review of such a decision.

The Administrator will, of course, grant applications on the basis of criteria which are consistent with the purposes of the Consumer Protection Agency bill and which further his duties under the bill. I would envision the issuance of rules and regulations to implement this amendment and to further define its operation.

The bill seeks to encourage the representation of consumer interests before Federal courts and agencies but ignores one of the most important potential sources of such representation. Private, consumer organizations have a proven track record of effective representation. This amendment would tap their talents to aid in the important goals of this bill.

Congress has frequently acted to encourage private litigation and representation in the public interest by, for instance, authorizing double and treble damages to successful litigants. Similarly, Congress and the courts have awarded expenses and attorney's fees to litigants who bring suits in the public interest. I encourage my colleagues, as they consider the most important single piece of public interest legislation to come before this body in many years, to facilitate the use of able and potent private resources in the representation of the consumer interest.

I am proud to say that Prof. John Banzhaf, professor of law and legal activism at George Washington University National Law Center, and Prof. Louis B. Schwartz, Benjamin Franklin professor of law and the University of Pennsylvania Law School, have indicated their support for this amendment. Both professors are experts on private litigation in the public interest, having engaged in such efforts themselves, and are extremely able to judge the beneficial effects of this provision. Both Professor Banzhaf and Professor Schwartz are champions of the public interest, and I am proud to have their support for this amendment.

I ask unanimous consent that the letters to me from Professors Banzhaf and Schwartz, followed by the text of this amendment be printed in the RECORD at this point.

There being no objection, the letters and amendment were ordered to be printed in the RECORD, as follows:

THE NATIONAL LAW CENTER,
June 5, 1974.

HON. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: I am very happy to accept your kind invitation to comment on your proposed amendment to the Consumer Protection Agency Bill [S. 707], which would authorize the reimbursement of public interest organizations for their expenses in participating in certain agency proceedings. I believe that your amendment is a very worthwhile and necessary addition to the bill, and goes a long way towards remedying what many have suggested are weaknesses in the bill.

In the first place, there has been some doubt whether the creation of still another governmental entity is the most effective way to insure that the consumer or public interest point of view will be represented before major federal regulatory agencies. When each of the agencies was created, it was initially assumed that both the staff and the commissioners of the agency would be vigorous in expressing and protecting the public interest. Sadly, experience has shown that this is generally not true, and that after a reasonably short period most agencies seem to lose their initial drive, and the public interest point of view is heard less and less. As I understand it, one of the major purposes of the proposed Consumer Protection Agency would be to serve the function originally delegated to the staffs of the respective agencies of representing the consumer or public interest point of view. Yet what guarantee is there that such an agency will be different from all others and will continue to effectively represent this point of view as the years go by? Indeed, is it not possible that 10 years from now Congress will be asked to set up still another agency to represent the consumer or public interest point of view before the Consumer Protection Agency, to insure that it, in turn, represents this viewpoint before its federal regulatory agencies?

The provision for reimbursement as provided in your amendment would be a most effective means of dealing with this problem. Many of the public interest organizations which presumably could be reimbursed under your amendment have demonstrated a continuing interest and ability to speak strongly for various consumer points of view. Indeed, many of them depend for their continued survival on the effectiveness of their representation, since without it they will be unable to raise funds from those they seek to represent. In addition, the constant interaction between such vigorous outside organizations and the staff of the Consumer Protection Agency would tend to keep the latter vigorous in their representation of consumer interests, both by setting an example, and by constant encouragement and serving in a watch dog capacity.

It has been suggested by some supporters of the original bill that the Consumer Protection Agency would be effective in its advocacy of consumer interests where the staffs of the individual agencies have failed, because with no power of its own the C.P.A. would not be the recipient of industry and lobbyist pressure which have done so much to cripple the major regulatory agencies. With all due respect, I think that argument is erroneous. To whatever extent the Consumer Protection Agency is effective in influencing proceedings at other agencies related to strong vested interests, these interests will, in turn, seek to neutralize the effectiveness of the Consumer Protection Agency, presumably by using the same techniques which have proven so effective at other government agencies. There therefore remains a very strong and pressing need for non-governmental organizations to represent the consumer and public interest point of view before major federal regulatory agencies.

A second reason why I believe your amendment is both worthwhile and necessary is because of the extreme difficulty, even impossibility, of determining what "The Public Interest" is in any given situation. Indeed, it is probably presumptious for any individual private organization or government agency to presume to represent "The Public Interest" in any given proceeding, since it is the function of most regulatory proceedings to determine how public interest can best be served with regard to a particular factual and/or legal situation. No matter how the proposed Consumer Protection Agency would determine which positions it wishes to espouse, these positions may not accurately or completely reflect the consumer interest it seeks to protect. No one entity, whether private or governmental, can always be sure that the view it is advocating on behalf of consumers is the most appropriate one. It can be said with some assurance, however, that by permitting a multiplicity of voices on any given issue the Government will greatly increase the chances that one among those positions is the most correct. Your amendment would permit private organizations whose views on a given issue may differ from that of the Consumer Protection Agency to nevertheless have them heard by the regulatory agency. Thus, the general public interest will be served by permitting the decision-maker to be exposed to a wide variety of different views and suggestions and to adopt from among them, on the basis of his own expertise, that best calculated to serve the public interest.

Thirdly, even assuming that the Consumer Protection Agency in a given situation fortuitously represents the interest of consumers, there may, nevertheless, be different proposals to achieve generally agreed upon ends. It is very difficult for an individual attorney or organization to forcefully advocate two or more different approaches to the same problem. Thus, it is more likely to choose one which it believes to be the most appropriate, and to advocate that to the exclusion of all others. On the other hand, the regulatory agency, having a wider perspective, might choose to adopt an alternative solution to the same problem, if only it were presented to it by a forceful advocate sharing the concerns of the Consumer Protection Agency, but not its ideas with regard to specific remedies. Your amendment, again, would permit different organizations sharing the same general viewpoint and orientation to submit to the regulators alternative proposals for dealing with the same problem. Such an approach can only make the regulatory system fairer and more effective, which is, after all, the goal of the Consumer Protection Agency Bill.

Finally, I believe your amendment would lead to far more effective and efficient representation before regulatory agencies. Consumers have a very wide spectrum of interests, many falling in areas of great legal and technical complexity. Were the Consumer Protection Agency forced to develop sufficient expertise in each of these many areas so as to present and espouse the consumer interest, it could do so only with an inordinent expenditure of time and resources. Moreover, as the individual responsible for a given area—e.g., food product labeling—educated himself on these issues, it is not unreasonable to suppose that he would leave the agency, creating a lack of continuity and the need to re-educate a new staff member. To put the same thought in different words, it is impossible for an agency the size of the Consumer Protection Agency to develop a continuing expertise in the many areas of direct interest and impact on consumers. On the other hand, there are a large number of organizations which have developed considerable experience and expertise in many of these areas. Your amendment would permit

the Government to avail itself of this expertise directly, without the need in each case for a Consumer Protection Agency staff member to become educated in what may be a highly complex area.

For all of the reasons stated above, I very strongly support your proposed amendment, and hope that your colleagues will agree to accept it. Space has prohibited me from amplifying on many of the ideas expressed above, or in providing concrete examples. I would be very happy to provide to you or to an appropriate committee concrete examples of each of the ideas discussed above, as well as to answer any questions you or members of your staff may have. I again thank you for providing me with this opportunity to comment.

Yours truly,

JOHN F. BANZHAF,
Professor of Law and Legal Activism.

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., June 3, 1974.

HON. WALTER F. MONDALE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MONDALE: I have just had an opportunity to examine your proposed amendment of S. 707 to provide for financial assistance to consumers organized for self-help. It seems to me this is an excellent complement to, and should be regarded as an integral part of, any effort to institutionalize consumer protection.

Self-help is the first, most pervasive, and traditional reliance of the citizen in a democracy; but he needs the means to employ the professionals who can make his case effectively. The regulatory agencies have, by and large, failed him. Even a Consumer Protection Agency cannot be everywhere at once, and in the husbanding of its resources must leave most of the potential controversies to those directly affected. Under the Antitrust Laws, the concept of the "private attorney general" has long been established, and the mere possibility of private treble damage suits has in the opinion of some observers contributed more to compliance with the law than official prosecutions. In other fields of law, the Courts have recently shown a marked sympathy with organized private self-help, by awarding attorneys' fees and costs against the Government, even in a case where the judicial relief had to be denied but, where the litigation succeeded in bringing a Department into compliance with the law. Wilderness Society v. Morton, Court of Appeals for the District of Columbia, April 4, 1974.

Although I have been familiar with earlier versions of the CPA bills, I have not seen S. 707, and therefore do not know the significance of your § 17(b)(1), excluding grants to finance private litigation in proceedings from which the Administrator is excluded. I submit that the exclusion is not necessarily desirable: it may well be fitting for the persons directly concerned to be given the means of vindicating their position even if it be deemed best that the CPA itself not intervene.

I should also like to renew my earlier suggestion that any program of grants in aid to state consumer protection plans envision the inclusion in such plans of grants to consumer self-help organizations.

Sincerely,

LOUIS B. SCHWARTZ,
Benjamin Franklin Professor of Law.

AMENDMENT NO. 1521

On page 85, between lines 22 and 23, insert the following new section:

ASSISTANCE TO CONSUMER GROUPS

SEC. 17. (a) The Administrator is authorized, subject to the provisions of this section, to provide information and financial assistance to private organizations of consumers representing a substantial number of individuals for the purpose of assisting such organizations in intervening or participating in any agency or judicial proceedings which substantially affect consumer interest.

(b)(1) Assistance under subsection (a) of this section shall not be provided to any organization for the purpose of intervening or participating in any agency or judicial proceeding in which the Administrator is prohibited from intervening or participating.

(2) Any organization receiving assistance under subsection (a) of this section shall, as a condition of receiving such assistance, agree to abide by the requirements of section 7 of this Act insofar as such requirements relate to compliance with agency statutes and rules of procedure and the orderly conduct of the proceedings.

(c)(1) No financial assistance shall be made under this section unless an application therefor has been submitted to, and approved by, the Administrator. Such application, in accordance with regulations prescribed by the Administrator, shall provide for—

(A) substantial control of any program by or under the supervision of the applicant;

(B) the proper and efficient administration of such program;

(C) such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds received under this section;

(D) adequate assurances that the funds made available under this section will not be used by any grantee to advance any partisan or nonpartisan political activity associated with a candidate for public or party office, or to conduct any voter registration activity or any activity to provide voters or prospective voters with transportation to the polls;

(E) adequate assurances that funds made available under this section will not be used to require any act which is prohibited by Federal law, to prohibit any act which is required by Federal law, or take any action which is contrary to the purposes of this Act;

(F) such reports, in such form and containing such information, as the Administrator may reasonably require; and

(G) such other information and assurances as the Administrator may prescribe to provide for effective programs under this section.

(2) Payments under this section may be made in advance or by way of reimbursement and in such installments as the Administrator may determine.

(3)(A) Each recipient of financial assistance under this section shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the program for which such assistance is provided and the amount and the portion of the total cost supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this section.

(4)(A) Whenever the Administrator, after reasonable notice and opportunity for hearing, finds that the Administration of any program funded under this section no longer substantially complies with the provisions of this section, he shall notify such recipient that no further payments will be made under this section, or that further payments will be limited to portions of the application not affected by such failure, until he is satisfied that there will no longer be any failure to comply.

(B) Any recipient of assistance under this section which is dissatisfied with a decision of the Administrator under subparagraph (A) of this paragraph may obtain judicial review, pursuant to chapter 7 of title 5, United States Code, in the United States District Court for the district in which the recipient resides or has his principal place of business. The commencement of proceedings under this paragraph shall not, unless so specifically ordered by the court, operate as a stay of the action of the Administrator.

On page 85, line 24, strike out "Sec. 17." and insert in lieu thereof "Sec. 18.".

On page 87, line 21, strike out "Sec. 18." and insert in lieu thereof "Sec. 19.".

On page 87, line 20, strike out "Sec. 19." and insert in lieu thereof "Sec. 20.".

On page 88, line 4, strike out "Sec. 20." and insert in lieu there of "Sec. 21.".

On page 88, line 15, strike out "Sec. 21." and insert in lieu thereof "Sec. 22.".

On page 89, line 21, strike out "Sec. 22" and insert in lieu thereof "Sec. 23."

TEMPORARY INCREASE IN THE PUBLIC DEBT LIMIT—AMENDMENTS

AMENDMENT NO. 1523

(Ordered to be printed and to lie on the table.)

TERMINATING DISC BENEFITS

Mr. MUSKIE. Mr. President, I send to the desk an amendment, cosponsored by Senators CLARK, HASKELL, HUDDLESTON, HUMPHREY, KENNEDY, MONDALE, and STEVENSON, that would terminate DISC benefits under the tax code, and recover $815 million in lost revenue in calendar year 1974. Under DISC, specially organized export corporations can defer indefinitely the tax on one-half of their income. Recent reports indicate that most of this lost revenue constitutes tax breaks for large, profitable exporting corporations—and that there is no evidence that DISC provisions are serving their intended purpose of stimulating extra exports. Finally, the new international monetary system of flexible exchange rates make the theory of DISC obsolete.

HOW DISC PROVISIONS WORK

Under existing law, a corporation may elect to be a DISC—a Domestic International Sales Corporation—if at least 95 percent of its gross receipts, and at least 95 percent of its assets, are export-related. DISCs are completely free from normal income taxes. Shareholders, however, are taxable on one-half of the DISCs income each year, or the amount distributed as dividends, whichever is greater. Thus, DISCs in effect allow indefinite tax deferral on one-half of export income.

In practice, DISCs are most often paper corporations established by other large corporations merely for the purpose of receiving tax benefits for export. A DISC need not satisfy normal requirements of corporate capitalization, but need have only $2,500 in assets. In 1972, 22 percent of the income received by all DISCs was earned by eight DISCs with gross receipts over $100 million, and over 80 percent of the 2,249 DISCs were owned by corporations with assets of over $100 million. These large corporations can channel their exports, on either a sale or commission basis, through DISCs they have created, and thus receive substantial tax benefits.