

Voting Record in 1985 Reveals Partisan, Regional Splits on Consumer Issues

Fifty-four members of Congress have been named "Consumer Heroes" in recognition of their strong pro-consumer voting records in 1985.

The heroes—seven senators and 47 representatives—were cited in CFA's 1985 Congressional Voting Record. Ratings were based on 15 key votes in the Senate and 12 votes in the House.

CFA Legislative Representative Alan Fox said the voting record indicated "a return to strong partisan divisions on consumer issues in the Senate." Senate Democrats averaged 71 percent support for consumer positions, while Republicans averaged 25 percent. This 46-point gap more than tripled the 14-point gap recorded in 1984. In the House, partisan divisions remained roughly the same in 1985 as in 1984, with Democrats averaging 67 percent and Republicans 34 percent.

Fox noted that regional differences were still significant on consumer issues. "Both Houses can be thought of as divided into three rough groups: Democrats from outside the South, who are solidly pro-consumer; Republicans from outside the Northeast, who usually oppose consumer positions; and Southern Democrats and Northeastern Republicans, both of which groups vote with consumers about half the time.

"Obviously, Southern Democrats and Northeastern Republicans are the key swing votes on important consumer issues," Fox concluded.

In addition to the Consumer Heroes, six senators and 27 representatives were named Consumer Zeroes for their poor records.

The record's key findings include:

1. *Sharp partisan differences in the Senate.* Senate Democratic support for consumer issues reached its highest point ever, 71 percent. A promising trend of increased GOP pro-consumer voting in recent years evaporated, as Republican scores averaged only 25 percent, fifteen points below the 1984 average. The 46-point gap between Democrats and Republicans is the largest in the fifteen years CFA has analyzed voting in Congress, and is more than triple the 1984 gap of 14 percent.

This pattern is consistent with findings by *Congressional Quarterly* and other observers that 1985 was a year of deep partisan divisions in Congress. The pattern is particularly clear on consumer issues in the Senate because of the nature of the most controversial votes. In 1984, the key votes included a number of issues on which barriers to competition or direct subsidies to business were at stake. On these issues, a coalition of "neo-liberal" Democrats and "free-market" Republicans supported pro-competitive or anti-subsidy positions. In 1985, only one Senate vote of fifteen involved such issues.

2. *Partisan differences continue to narrow in the House.* In contrast to the Senate, the difference between House Democrats and Republicans continued to narrow. House Democrats averaged 67 percent, Republicans 34 percent, the narrowest gap since 1981. Four House Republicans are listed as Consumer Heroes with records of over 90 percent. Three of them, Reps. Silvio Conte (Mass.), Christopher Smith (N.J.), and Claudine Schneider (R.I.), received 100 percent ratings, an unprecedented occurrence.

The nature of House votes did not change significantly between 1984 and 1985, with one exception: Two of the twelve House votes concerned price supports in the Farm Bill for sugar and tobacco. Some farm state Democrats, fearful of losing support for other farm programs, supported these subsidies. Urban and suburban Republicans, largely from the Northeast, opposed the

subsidies more frequently than did other Republicans. These votes on price supports contributed to the modest decline in the average for House Democrats, and to the modest improvement in House Republicans' average.

3. *Democrats from outside the South are the bedrock of consumer support.* Analysis of a combination of partisan and regional voting patterns reveals even sharper distinctions in both Houses. Democrats from regions other than the South supported consumers over 70 percent of the time in both Houses, with Eastern Senate Democrats scoring a phenomenal 88 percent. While these Democrats constitute only 33 percent of the membership of the Senate and 39 percent of all House members, they cast over 55 percent of all pro-consumer votes cast by all members in each House.

4. *Southern Democrats and Eastern Republicans provide the swing votes.* Eastern Repub-

Regional and Party Differences Key in Both Houses

SENATE	
Region/Party	1985 Average
ALL DEMOCRATS	71
ALL REPUBLICANS	25
East—Dems	88
West—Dems	73
Midwest—Dems	70
South—Dems	54
East—GOP	53
Midwest—GOP	24
West—GOP	17
South—GOP	10
HOUSE	
Region/Party	1985 Average
ALL DEMOCRATS	67
ALL REPUBLICANS	34
East—Dems	79
West—Dems	74
Midwest—Dems	73
East—GOP	57
South—Dems	50
Midwest—GOP	34
South—GOP	23
West—GOP	22

Senate Heroes scoring 100 percent are:

Howard Metzenbaum (D-OH) Paul S. Sarbanes (D-MO)

Senate Heroes scoring 93 percent are:

Thomas F. Eagleton (D-MO) Edward M. Kennedy (D-MA) John F. Kerry (D-MA)
Frank Lautenberg (D-NJ) Daniel P. Moynihan (D-NY)

Heroes in the House who scored 100 percent are:

Silvio D. Conte (R-MA) James J. Florio (D-NJ) Barney Frank (D-MA)
Sam Gejdenson (D-CT) Edward J. Markey (D-MA) Bruce A. Morrison (D-CT)
Peter W. Rodino, Jr. (D-NJ) Claudine Schneider (R-RI) Patricia Schroeder (D-CO)
Christopher Smith (R-NJ) Stephen J. Solarz (D-NY) Gerry E. Studds (D-MA)
Robert Torricelli (D-NJ) Henry A. Waxman (D-CA) Ted Weiss (D-NY)

House Heroes with 92 percent scores are:

Frank Annunzio (D-IL) Michael D. Barnes (D-MD) Jim Bates (D-CA)
Anthony C. Beilenson (D-CA) Mario Biaggi (D-NY) Barbara Boxer (D-CA)
George E. Brown, Jr. (D-CA) Cardiss Collins (D-IL) John Conyers, Jr. (D-MI)
Ronald V. Dellums (D-CA) Brian J. Donnelly (D-MA) Bernard J. Dwyer (D-NJ)
Lane Evans (D-IL) Robert Garcia (D-NY) Frank J. Guarini (D-NJ)
Dennis M. Hertel (D-MI) Marcy Kaptur (D-OH) Barbara B. Kennelly (D-CT)
William Lehman (D-FL) Mel Levine (D-CA) Joseph M. McDade (R-PA)
Matthew F. McHugh (D-NY) Barbara A. Mikulski (D-MD) Parren J. Mitchell (D-MD)
Jim Moody (D-WI) Henry J. Nowak (D-NY) James H. Scheuer (D-NY)
Lawrence J. Smith (D-FL) Fortney (Pete) Stark (D-CA) Bruce F. Vento (D-MN)
Howard Wolpe (D-MI) Sidney R. Yates (D-IL)

The following Senate Zeroes failed to vote for consumers even once.

James A. McClure (R-ID) Mitch McConnell (R-KY) Larry Pressler (R-SD)
Steven D. Symms (R-ID) Strom Thurmond (R-SC) Malcolm Wallop (R-WY)

Four House members also recorded no pro-consumer votes:

John E. Grotberg (R-IL) Marvin Leath (D-TX) Charles W. Stenholm (D-TX)
Michael L. Strang (R-CO)

Also named Consumer Zeroes are the following representatives with 8 percent ratings:

Herbert H. Bateman (R-VA) Carroll A. Campbell (R-SC) William W. Cobey, Jr. (R-NC)
Larry Combest (R-TX) William E. Dannemeyer (R-CA) Bill Emerson (R-MO)
Thomas F. Hartnett (R-SC) Earl Hutto (D-FL) Tom Loeffler (R-TX)
Ron Marlenee (R-MT) Alfred A. McCandless (R-CA) J. Alex McMillan (R-NC)
David S. Monson (R-UT) G. V. Montgomery (D-MS) John T. Myers (R-IN)
Pat Roberts (R-KS) Harold Rogers (R-KY) Eldon Rudd (R-AZ)
Dan Schaefer (R-CO) Joe Skeen (R-NM) Robert F. Smith (R-OR)
Gene Snyder (R-KY) Bob Stump (R-AZ)

licans and Southern Democrats are the average scores ranging between 50 percent and 57 percent. On most close issues, these 25 senators and 125 representatives will generally decide the outcome. Republicans from other regions, particularly in the Senate, seldom supported consumers' interests in 1985.

5. *Individual senator's scores changed dramatically between 1984 and 1985.* A look at individual scores reveals some dramatic changes in just one year. Nearly half of the 93 senators who served in both years either improved or worsened their consumer voting record by 20 points or more. These shifts are largely attributable to the change in the nature of the most important votes, as noted above.

Twenty Democrats and three Republicans improved their records by 20 or more points. In contrast, 19 Republicans and one Democrat dropped by 20 points or more. At the extremes were: Sen. Gary Hart (D-Colo.), whose 1984 record of 33 percent, caused in part by absences during his presidential campaign, improved to 87 percent in 1985; and Sen. Larry Pressler (R-S.D.) who fell from 58 percent in 1984 to 0 percent in 1985. In the House, individual changes were generally less dramatic, with only 62 members recording 20-point changes.

6. *Senate Democratic freshmen made a difference.* The five Democrats who were first elected to the Senate in 1984 were solidly pro-consumer, voting for consumer interests 80 percent of the time. Their effect is even more impressive when compared to the 50 percent average compiled by their predecessors in 1984. On one issue tabulated in the voting record, the maintenance of auto fuel-efficiency standards, the freshman Democrats provided the deciding margin for a 48-46 consumer victory.

House Passes Bill Limiting Check Holds

The House of Representatives, in its first item of business in the second session of the 99th Congress, has passed a bill strictly limiting the length of time banks and other depository institutions may hold deposited checks. But over strong consumer objections, the House also adopted an amendment to the bill that may give financial institutions broad leeway to ignore the law.

As expected, H.R. 2443, sponsored by House Banking Committee Chairman Ferdinand J. St Germain (D-R.I.), passed overwhelmingly, 282-11. Opponents attempted to weaken the bill in the guise of "flexibility" and "fighting fraud." After six hours of debate and some unusual parliamentary maneuvering, one such amendment was adopted, 156-146.

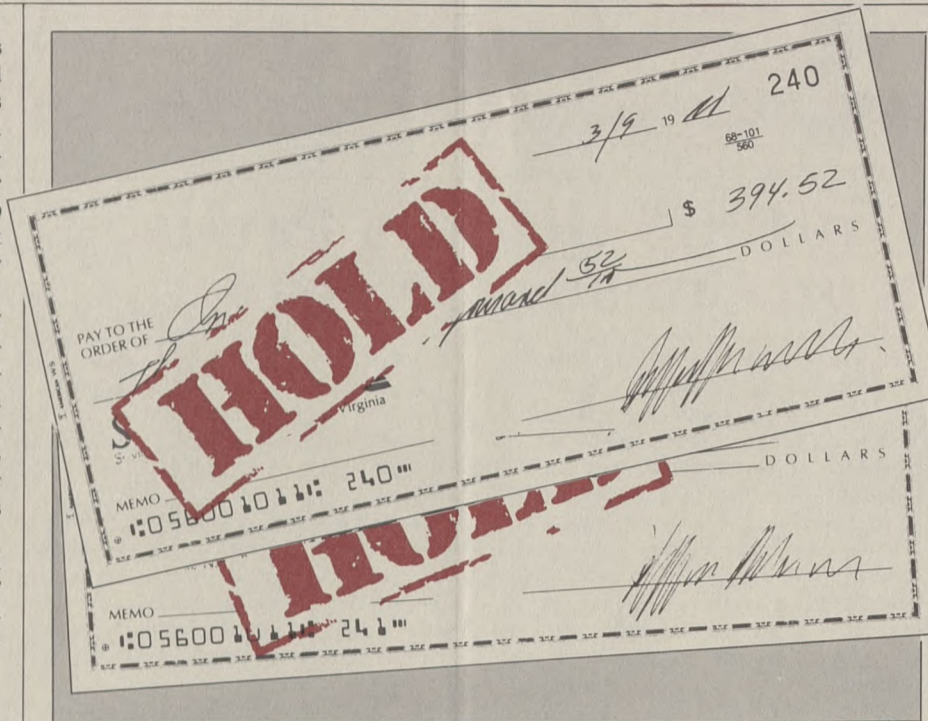
That amendment aside, the bill would mandate sweeping changes in many banks' treatment of customers' deposits. Immediately after the law takes effect, next day availability would be required for:

- Checks under \$100
- Most checks drawn on the bank in which they are deposited
- U.S., state and local government checks
- Cashier's checks, certified checks and teller's checks.

Other in-state and some local, but out-of-state, checks would have to be available on the third business day after deposit. A year after the law goes into effect, this period would be reduced by one day. Other out-of-state checks could be held no longer than six business days and would be available on the seventh day.

Within three years after passage, after adoption of rules by the Federal Reserve Board, next-day availability would be required on all in-state and local out-of-state checks. Other out-of-state checks would have to be available no later than the fourth day after deposit.

The bill includes several exceptions to these time periods designed to reduce opportunities for fraud. The limits would



not apply in the first 30 days after a new account is opened, and would only apply to the first \$5,000 deposited in an account in any day. Banks could also place holds on depositors with histories of writing bad checks. The Federal Reserve Board was granted authority to suspend hold limits in specified emergency conditions. Supporters of a strong bill, including CFA, argued that these specific exceptions made sweeping exceptions, such as those proposed by Rep. Shumway, unnecessary.

The full effect of the amendment is uncertain, however, because procedural difficulties required its backers, led by Rep. Norman Shumway (R-Calif.) to graft two overlapping, but not identical, amendments together.

The resulting amendment begins by allowing depository institutions to ignore limits on holds if they have reason to "doubt the collectability" of the check. It goes on to specify that the limits may be ignored

if an institution "reasonably believes" that the writer of the check is, or is about to, become bankrupt, or that "a situation involving fraud or kiting exists."

It is unclear whether this later language modifies and explains the more general "collectability" language, or if it constitutes a separate set of reasons a bank may use to refuse to provide funds in the time period specified. It also remains unclear whether a requirement in the second half of the amendment requiring notice to a consumer that a check has been held applies to the entire amendment, or only to the second half of the amendment.

Widespread Support

H.R. 2443 was backed by a wide variety of organizations, ranging from the Rural Coalition to the National Urban League, and including most major consumer, senior citizen, labor and credit union organizations.

The fight for expedited funds availability legislation now shifts to the Senate Banking Committee, chaired by Sen. Jake Garn (R-Utah).

"The battle in the Senate will be much tougher," CFA Legislative Representative Alan Fox predicted. "We will need redoubled efforts by all the groups that worked in the House to pass this bill."

Fox said an effort will begin immediately to urge Sen. Garn to schedule action on funds availability legislation. "All supporters of this bill should write Senator Garn asking him to speedily move legislation similar to the bill that passed the House. We are also asking organizations and individuals in states represented by members of the Senate Banking Committee to ask their senators to support strong legislation and to encourage early consideration of the bill."

Along with Garn, members of the Senate Banking Committee are Republicans John Heinz (Penn.), William Armstrong (Colo.), Alfonse D'Amato (N.Y.), Slade Gorton (Wash.), Mack Mattingly (Ga.), Chic Hecht (Nev.) and Phil Gramm (Tex.); and Democrats William Proxmire (Wis.), Alan Cranston (Calif.), Donald Reigle (Mich.), Paul Sarbanes (Md.), Christopher Dodd (Conn.), Alan Dixon (Ill.) and Jim Sasser (Tenn.).

CFA Elects Officers

Jean Ann Fox from the Virginia Citizens Consumer Council was re-elected president of CFA at the federation's annual meeting in February. Fox, who formerly headed the Pennsylvania Citizens Consumer Council, also serves on the board of directors of Consumers Union.

Also re-elected for a one-year term were secretary-treasurer Ken Kovack of the United Steelworkers of America and eight vice-presidents: Ann Brown of the Americans for Democratic Action's Consumer Affairs Committee, Jake Clayman of the National Council of Senior Citizens, Ellen Haas of Public Voice, Bill Matson of the Pennsylvania League for Consumer Protection, Arnold Mayer of the United Food & Commercial Workers Union, Alex Radin of the American Public Power Association, Lee Richardson of the Maryland Citizens Consumer Council, and Mark Silbergeld of Consumers Union.

Ten persons were elected to three-year terms on the board of directors: Bob Bergland of the National Rural Electric Cooperative Association, Bill Holayer of the Machinists Union, Karl Hoyle of the Credit Union National Association, Ruth Kobell of the National Farmers Union, Stewart Kohl of the National Business Cooperative Association, Ken McEldowney of San Francisco Consumer Action, Sarah Newman of the National Consumers League, Dermot Shea of the Association of Massachusetts Consumers, Joe Tuchinsky of Michigan Citizens Lobby, and Bill Welsh of the American Federation of State, County and Municipal Employees. In addition, Robert Krughoff of the Center for the Study of Services was elected for a one-year term.

Twenty-one other board members are currently serving three-year terms.

CFAnews

CONSUMER FEDERATION OF AMERICA
1424 16th Street, N.W., Washington, D.C. 20036
(202) 387-6121

President: Jean Ann Fox
Executive Director: Stephen Brobeck
Legislative Director: Gene Kimmelman
Administrative Director: Erika Landberg
Legislative Representative: Alan Fox
Energy Director: Mark Cooper
Public Affairs Director: Jack Gillis
Product Safety Director: Mary Ellen Fise
Product Safety Coordinator: Edith Furst
Conference Manager: Sheila Meade
Secretary: Lydia Rivera Grogan
Secretary/Researcher: Lisa Goldstein
Legislative Assistant: Dina Zarin
Administrative Assistant: Miguel Carpio

CFAnews Editor: David R. Jones

CFAnews is published 8 times a year. Annual subscription rate is \$25 per year.

© Copyright 1986 by Consumer Federation of America. CFA should be credited for all material. All Rights Reserved.

Design & Typeset by: Design Consultants, Inc.

CFA Welcomes New Staff



Two new staff members at CFA are Legislative Assistant Dina Zarin and CFAnews Editor David R. Jones. Zarin is a former legislative intern to Congressman Les Aspin (D-Wis.). Her responsibilities at CFA will include research on product safety and telephone rates. Jones is a freelance writer and editor specializing in public policy. He formerly edited the newsletter *Ways & Means* at the National Center for Policy Alternatives.

New Product Liability Bill Criticized

In testimony before the Senate Commerce Committee, CFA and three other national consumer groups agreed with some of the underlying goals of a new product liability bill, but criticized specific provisions as ineffective and dangerous to consumers. Committee Chairman John Danforth (R-Mo.) has introduced S. 1999 in an effort to meet consumer objections to product liability legislation that was defeated last year in committee.

The Danforth bill would establish an expedited claims system with limited awards for plaintiffs who meet a strict liability-type test, as well as setting a negligence standard for product liability lawsuits. Persons injured by defective products could submit claims for actual economic losses, such as medical expenses and lost wages, to an alternative claims system funded by manufacturers. This system would require claimants to prove that their loss was caused by an unreasonably dangerous product, but not require them to demonstrate negligence or fault on the part of the manufacturer.

Plaintiffs also could bypass this no-fault system and sue for pain and suffering and for punitive damages and economic loss. In court, however, plaintiffs would be required to establish negligence.

Bill Faulted

In joint written testimony, CFA, Consumers Union, U.S. Public Interest Research

Group, and Public Citizen's Congress Watch noted that S. 1999 "would neither preserve tort law goals of adequate compensation and product safety, nor insure swift dispute resolution." The groups warned that when manufacturers were faced with large economic claims and believed it difficult for plaintiffs to prove negligence, they would simply refuse to pay claims system awards for economic loss.

In addition, victims suffering substantial pain and impairment would have little incentive to file limited claims under the proposed system. The new system also would "undermine current incentives to manufacture safe products," the groups cautioned.

At the hearings, CFA Legislative Director Gene Kimmelman proposed an alternative approach featuring a streamlined tort system, with penalties for protracted, unnecessary litigation. These could include penalties if the final court award was either greater or less than the defendant's pre-trial settlement offer. For example, plaintiffs refusing offers greater than or equal to final awards could be denied statutory court costs, pre-judgment interest or both.

Kimmelman suggested that other ways to streamline tort litigation might include requiring claims under \$50,000 to be mediated; treating toxic exposure cases separately; and penalizing for delay, for frivolous motions or defenses, and for destroying evidence.



S. 1999 "would neither preserve tort law goals of adequate compensation, nor insure swift dispute resolution," CFA Legislative Director Gene Kimmelman testifies.

Exposing the "Insurance Crisis"

As insurance premiums rise and an increasing number of businesses and professionals are denied coverage, pressure on Congress to pass product liability legislation builds. Insurers claim they have been forced to hike premiums and limit coverage because of the escalation of product liability awards.

Consumer groups respond that insurers have no data to support their claims. Instead, they believe insurers are laying a smokescreen to try to hide past mismanagement. When interest rates were high, consumer groups point out, property/casualty companies wrote many high-risk policies to increase high-yielding investments using premium dollars. Now that interest rates have declined, insurers are seeking to compensate by terminating or hiking premiums on their riskiest policies.

The long-term prospects for S. 1999 are unclear and will depend, in part, on business reaction. At the hearings, the National Association of Manufacturers announced its support for the legislation. Yet other businesses have expressed concern that a no-fault compensation system would dramatically increase the number of claims. The principal objective of business groups is placing limits on product liability awards. They have been lobbying Congress in support of caps (which S. 1999 would not impose on court awards) and pressuring state legislatures to impose similar limits.

In response, 35 organizations, including CFA, recently formed a coalition to oppose these industry efforts. The new Coalition for Consumer Justice will not only oppose arbitrary caps on damages paid to victims; it will also seek to expose property/casualty insurers for manufacturing a "phony crisis" to reduce victim compensation and divert attention from their past mismanagement.

CPSC Addresses CFA Petition on Methylene Chloride

In March the Consumer Product Safety Commission (CPSC) voted 4-1 to institute a mandatory rule-making proceeding to determine whether the chemical methylene chloride is a hazardous substance. CFA had petitioned the agency to immediately declare the substance hazardous and to initiate proceedings to either ban or limit its use in consumer products.

"It's unfortunate that the commission is dragging its feet on this extremely harmful chemical," said Mary Ellen R. Fise, CFA product safety director. The rule-making proceeding is estimated to take from two to four years. This proceeding will examine only whether the substance is hazardous; it will do nothing to limit high concentrations.

Methylene chloride is a multipurpose solvent found in paint strippers, aerosol spray paints and artificial spray snow. It has also been used in cosmetic hair sprays and in decaffeinated coffee.

FDA Proposes Limited Ban

In a related action, the Food and Drug Administration (FDA) recently announced a proposed ban of methylene chloride in hair spray. The agency is accepting comments on its use in decaffeinated coffee.

The FDA has previously stated that it considers the risk the chemical poses in decaffeinated coffee to be minimal and, therefore, it is unnecessary to ban this use. This position has sparked debate between the FDA and public-interest groups over whether the agency is meeting the provisions of the Delaney Amendment, which requires substances causing cancer in man or animal to be banned.

Several studies have revealed the dangers the chemical poses. The federal National Toxicology Program has found methylene chloride to be an animal carcinogen. Other studies have showed it has neurotoxic effects. A CPSC staff analysis found the risk posed by using paint strippers containing methylene chloride to be the highest ever calculated for a chemical in a consumer product.

The CPSC also has directed its staff to work with industry and citizen groups to voluntarily address reducing consumer exposure to methylene chloride. A committee comprising CPSC staff and representatives of CFA, the National Paint and Coatings Association, and the Halogenated Solvents Industry Alliance will begin to address labeling, product reformulation and consumer education.

"While we are disappointed by the limited CPSC action, CFA believes that it is imperative that steps be taken to protect consumers from this harmful substance," said Fise. "Hopefully, a combined effort by CPSC, consumer groups and industry can make progress toward reducing consumer ignorance about this hazard and increasing the products' safety," she added.

Currently no products containing methylene chloride warn of the cancer risk; many products do not even state on the label that the product contains methylene chloride. "Additionally," Fise explained, "labels that merely state 'Use Adequate Ventilation' fail to communicate the precautions that should be taken—and the attendant harm resulting from ignoring this direction."

Storebrands Can Save \$30 Billion Annually



In a new pamphlet on storebrands, CFA asserts that shoppers can save \$30 billion annually—an average of \$300 per family—by switching from nationally advertised brands to storebrands.

Storebrands (or housebrands) are products sold under a store's private label. "Top of the line" storebrands are usually somewhat lower in price than, but comparable in quality to, national brands. Neo-generic storebrands are nearly always much lower in price, but are more often lower in quality, though any differences are frequently cosmetic.

According to government surveys, prices of individual storebrands range from 2 percent to 77 percent lower than prices of national brands. The potential savings for each family varies because of differences in their storebrand purchases, willingness to use neo-generics, and other factors. But on average, households could save \$300 a year switching to storebrands.

According to the pamphlet's author, CFA Executive Director Stephen Brobeck, "Storebrands typically offer superior value to national brands because of lower costs. Storebrands usually cost less to develop, package, advertise, and distribute. Most of these savings are passed on to consumers in lower prices."

Brobeck also noted that "consumers often view national brands as superior in quality because they are heavily advertised. But storebrands frequently offer satisfactory quality at much lower prices." CFA's bottom-line recommendation is: "Try a variety of brands in order to find the least expensive one with satisfactory quality."

The pamphlet is available by sending \$.25 and a self-addressed stamped envelope to CFA. It is free to CFA members.

ICC Admits Flaws in Railroad Rate-Making

Two years of concentrated efforts to convince Congress to amend the Staggers Rail Act of 1980 gained dramatic momentum in hearings before the House and Senate in February and March. After battling with the consumer movement over its rate-making practices and accounting procedures, the Interstate Commerce Commission finally admitted that one of the cornerstones of its regulatory treatment of railroads is fatally flawed.

Appearing before the House Energy and Commerce Committee on February 6, the newly appointed chairwomen of the Interstate Commerce Commission, Heather Gradison, repeated the ICC's defense of its regulatory methods and procedures. Just two weeks later, however, she did an about-face, stating before the Senate Commerce Committee that "We agree that our existing standards and procedures for determining revenue adequacy are not producing a realistic picture of the financial condition of the rail industry."

CFA, which has focused its attention on the revenue adequacy test in two years of research and lobbying, recently released a report entitled, "The Consumer Movement versus The Interstate Commerce Commission's Revenue Adequacy Test: The ICC's Admission of Failure and the Need for Congressional Action." The report documented the long struggle to force the ICC to admit its error.

In testimony before the House Energy and Commerce Committee on March 13, CFA Energy Director Dr. Mark Cooper warned Congress that "the admission of



CFA Energy Director Dr. Mark Cooper calls for passage of the Consumer Rail Equity Act.

failure by the ICC is not the same as the correction of abuses. Consumers, who pay billions of dollars for the mistakes of the ICC, do not need to wait for the ICC to reinvent the wheel (and probably get it wrong again). Only the clear and sensible legislative guidance contained in the Consumer Rail Equity Act [H.R. 4096, S. 477], will give captive shippers and monopolized

consumers relief from the regulatory tyranny of the ICC and the abuse of market power by the railroads."

Fueled by the ICC's startling flip-flop, the pending legislation gained almost two dozen new co-sponsors in Congress and vigorous support from several major national groups, such as the National Governors' Association, the National Grain and Feed Associa-

tion and the Procompetitive Rail Steering Committee.

In addition to calling for changes in the revenue adequacy test, the pending legislation would modify the automatic rate adjustment practices of the ICC.

Calling the ICC's Rail Cost Adjustment Factor a nightmare, the CFA energy director pointed out in his testimony that "This month the operating expenses of virtually every regulated service in this country are going to decline noticeably because of the dramatic decline in the cost of oil. The benefits of that decline in prices will be passed through to consumers virtually on a dollar-for-dollar basis because almost every regulatory body in the nation recognizes that these are cost factors that should not enter into the operating profits or losses of the providers of service.

"That will not happen to the tariffed rates at the ICC. The ICC has decreed that rates will rise as cost do, but never fall if costs happen to fall. Not only won't the ICC let rates fall, it has jacked up increases by refusing to adjust its cost index for productivity. Worse still, it refuses to recognize the right of consumers of rail service to complain when the cost factors are misestimated by the railroads," Cooper said.

Cooper concluded his testimony by pointing out that "CFA member groups regularly participate in regulatory proceedings at the state and federal level. All we are asking the Congress to do is to ensure an equitable set of rules applied by a reasonably impartial body and we will take our chances on the process."

Supreme Court Disallows Utility Bill Enclosures

On February 25, 1986 the Supreme Court dealt a serious, though not necessarily fatal, blow to state consumer activists working to establish citizen utility boards (CUBs) to represent consumers in rate hike hearings.

In a 5-3 decision (with Justice Harry Blackmun abstaining), the court ruled that the California Public Utilities Commission could not compel utilities to include with their billing notices messages from the nonprofit consumer group Toward Utility Rate Normalization (TURN). In recent years utility bill enclosures have been used by state government-established CUBs to solicit memberships from ratepayers.

Justices Lewis Powell, William Brennan, Sandra Day O'Connor, Thurgood Marshall (in a concurring opinion) and Chief Justice Warren Burger ruled that such enclosures violate the First Amendment rights of corporations by forcing them to disseminate messages with which they may disagree. TURN had argued that a utility's "extra space" in an envelope after bills and notices are included belongs to the ratepayers and should be made available to consumer activists.

Interestingly, two of the most conservative justices (Byron White and William Rehnquist) joined Justice John Paul Stevens in dissenting from the decision.

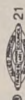
"It's difficult to tell what the ramifications of the decision are," said Tom Tobin of the U.S. Public Interest Research Group. "It's not clear whether CUBs can use utility enclosures in the future. We may have some room to maneuver to meet the objections the court raised." Tobin noted that CUBs, unlike TURN and other private groups, are established by state governments through legislative or administrative action. States therefore may define a "compelling state interest" in their creation.

In any case, Tobin said, CUBs currently operating in Illinois, New York, Oregon, Wisconsin and San Diego, California will undoubtedly survive. Though the New York and Oregon CUBs have never gained access to billing envelopes, other CUBs have grown and prospered; the Illinois and Wisconsin CUBs each have more than 100,000 members. CUBs currently are analyzing the decision and preparing alternative fundraising strategies, such as direct mail, Tobin said.

CFAnews

Consumer Federation of America

1424 16th Street, N.W. • Washington, D.C. 20036 • (202) 387-6121



BULK RATE
U.S. POSTAGE
PAID
WASHINGTON, D.C.
PERMIT NO. 8772