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 1986 Congressional Voting Record. Ratings were based on key votes in Congress 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 averaging 23 percent. For the first time in 1985, House Republicans were divided into three groups: "free-market" Republicans, Southern Democrats, and urban-suburban Republicans. Democrats from all regions were cited in CFA’s 1985 Congressional Voting Record. Ratings were based on key votes in Congress and 12 votes in the House.

In 1985, only one Senate vote of 15 involved these issues.

2. Partition 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 (N.Y.), 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. Once again, and to no surprise, Southern 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 29 percent of all House Democrats, they cast over 55 percent of all pro-consumer votes cast by all members in each House.

Region: Senate Heroes scoring 100 percent are:

- Howard Metzenbaum (D-OH)
- Edward M. Kennedy (D-MA)
- David P. Marcus (D-NY)
- John F. Kerry (D-MA)

Region: Heroes in the House who scored 100 percent are:

- Silvio Conte (D-MA)
- Edward J. Markey (D-MA)
- Claudine Schneider (D-NY)
- Henry A. Waxman (D-CA)
- Ted Weiss (D-NY)

Region: Heroes with 92 percent scores are:

- Anthony C. Beilenson (D-CA)
- Daniel P. Moynihan (D-NY)
- Gerald J. Conyers, Jr. (D-DI)
- Howard Wolpe (D-MI)
- Anthony C. Beilenson (D-CA)

The following Senate zeroes failed to vote for consumers even once:

- John E. Grotberg (R-IL)
- William Lehman (D-FL)
- Dennis M. Hertel (D-MI)
- Lane Evans (D-IL)
- Ronald V. Dellums (D-CA)

Four House members also recorded no pro-consumer votes:

- Silvio Conte (R-MA)
- Silvio Conte (R-MA)
- Howard Wolpe (D-MI)
- Anthony C. Beilenson (D-CA)

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

- John T. Myers (R-IN)
- Robert F. Smith (R-OR)
- Barney Frank (D-MA)
- Gerry E. Studds (D-MA)
- Peter W. Rodino, Jr. (D-NJ)

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 54 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 Democrats’ 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 effort 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 Hold

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. The bill, adopted 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 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.

Critics of the amendment argue that the 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 section.

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.), Allan O'Donnell (N.J.), Nade Gorton (Wash.), Mack Mattingly (Ga.), Chic Hecht (Nev.) and Phil Gramm (Tex.), and Democrats William Proxmire (Wis.), Alan Cranston (Calif.), Donald Bingle (Mich.), Paul Sarbanes (Md.), Christopher Dodd (Conn.), Alan Dixon (Ill.) and Jim Sasser (Tenn.).

CFA Elects Officers

J. Ann Fox from the Virginia Citizens Consumer Council was re-elected president of CFA at the federation's annual meeting. Fox, who is currently serving three-year terms.

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CFA Welcomes New Staff

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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 seek a no-fault 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 de novo 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 $25,000 to be mediated; treating toxic exposure cases separately; and penalizing for delay, for frivolous motions or defenses, and for destroying evidence.

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 an 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 and consumer groups. 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 high premium liability awards. They have been lobbying Congress in support of caps (which S. 1999 would not impose on court awards) and pressuring state legislators 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.
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 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 through a fair and sensible legislative guidance contained in the Consumer Rail Equity Act (H.R. 4096, S. 477), will we 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 Association, 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 legislation 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 decisions and preparing alternative fundraising strategies, such as direct mail, Tobin said.