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CONSUMER CONTROVERSIES RESOLUTION ACT

S. 957

STATUS:

S. 957 was introduced by Senator Ford on March 9, 1977, with Magnuson, Pearson, Kennedy, Metzenbaum, and Riegle co-sponsoring. It was referred to the Committee on Commerce, Science and Transportation. The Consumer subcommittee of that committee held one day of hearings on May 5, 1977. The committee reported the bill favorably with the report filed on May 10th and printing ordered on May 16th. At present, the bill awaits floor action.

BACKGROUND:

Basically, S. 957 is identical to two other bills introduced in previous Congresses. S. 2928 was introduced in the 93rd Congress, and S. 2069 was introduced in the 94th. The second bill, (S. 2069), actually passed the Senate and was referred to the House where it died in the House Commerce Committee. All three versions of the measure are based on a report issued by the Board of Directors of the Institute for Consumer Justice. The report was titled "Redress of Consumer Grievances" and dealt in part with the state small claims court system. The Chamber of Commerce has given a qualified endorsement of the measure.

NOTE: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

PROVISIONS:

The Consumer Controversies Resolution Act would set up an Office of Consumer Redress in the Federal Trade Commission. Its director would have the power to grant financial assistance to states which submit plans for the resolution of consumer controversies. Under the cooperative agreements with the Office of Consumer Redress, states would receive a 70% matching federal grant. There are also funds in the act for discretionary grants. These grants would basically be for purposes determined to be in keeping with the purposes of the act by the Director of the Office of Consumer Redress.

ARGUMENTS AGAINST:

Section 4 of the bill contains a number of particularly significant clauses. Some of the provisions are relatively innocuous and are not the subject of any real controversy. Other sections, however, are radical departures from previous federal policy and as such are of considerable interest. Section 4(b)(6), for example, deals with the establishment of "reasonable and fair rules and procedures...." In effect, this section calls for a federalization of the rules of procedure for state small claims courts. Since federal matching grants will be made available for the procurement of personnel, there is little doubt that the enactment of this legislation would entail some federal involvement in state small claims courts; however, the setting of rules of procedure could possibly conflict with existing state laws. This problem is exemplified by clause (e) of the same section and subparagraph. This clause deals with service. It is aimed at elimination of what has been termed "sewer service." That is to say, the practice of not delivering a summons to the intended recipient and later claiming that the individual has been served.

There can be little doubt that abuses of process do occur, and that in some instances people are not properly served. While the intent of this act wishes to correct the problem, in attempting to do so it raises certain constitutional questions as to state sovereignty. For example, as the act clearly calls for personal service, certain counties in Maryland would be in direct violation of the act. In Maryland, personal service is considered to have been accomplished if the summons is tacked on the door of the address of record. This would not constitute service under the measure's provisions. Further, S. 957 also requires notification of the status of litigation, something which is not required under some state laws. The final constitutionality of these provisions of Section 4 will ultimately have to be determined in court if the Bill is enacted.

Clause (c) of the same section also contains language which might be called into question on constitutional grounds. This is because it makes specific reference to "tenure", a term used in reference to judges. Since all state court judges are state officials, there is obviously an infringement on states' rights if the federal government attempts to set standards for them. While the federal government may have an interest in setting standards for employees of programs which receive federal funds, the bench occupies a special position in the annals of common law. There have always been special exceptions for sitting judges; and, traditionally, the state bench was the responsibility of the state government. Federal intervention in the state bench would set a dangerous precedent for other federal interventions into the state judicial system.

Section 5 of the bill is perhaps the most controversial as it contains, among other things, the requirement that the director of the Office of Consumer Redress be exempt from Title 5 of the United States Code. This means that the office would be run by a political appointee rather than a civil servant. There has been considerable concern that this would lead to the politicization of the office, with the director making decisions on the basis of current political pressure rather than on the merits of the issues involved.

A second problem with Section 5 is found in the wide discretion afforded the office's director. In addition to discretionary grants, the director is the final determiner of the allocation of funds to states under the measure's matching provisions. Section 5(b)(8) gives what amounts to a carte blanche to the director stipulating that he may "...take such actions as the Commission in its discretion deems appropriate and necessary to fulfill the purposes of this Act."

Section 6 deals with the cooperative agreements to improve consumer controversies resolution mechanisms which the act creates. Section 6(e) deals with the uses to which funds allocated under this provision may be put. Section 6(e)(1) appears to allow the allocation of funds for litigation, stating "...compensation of personnel engaged in the administration, adjudication, conciliation, or settlement of controversies involving consumers including those whose function it is to assist consumers in the preparation and resolution of their claims and collection judgments." Obviously, lawyers would be involved in the adjudication of consumer complaints at some point, and this may be interpreted as allowing the funding of "consumer advocate" lawsuits. This funding is especially possible when considered along with Section 6(e)(7) which states "...sponsoring programs of nonprofit organizations to accomplish any of the provisions of this subsection may be included in activities funded through cooperative programs."

A second section which may provide for funding of public interest law firms is found in Section 7(a) which states "...The Director, in accordance with the purposes of this Act shall promote the development of consumer controversies resolution mechanisms through research and demonstration projects or other activities that will encourage innovation in order to effectuate the purposes of this Act." Section 7(c) states "...The Director shall establish criteria, terms and conditions for awarding grants for research or demonstration projects which are consistent with the purposes of this Act. Such grants may be made to units of local government, combinations of such units, or nonprofit organizations." The key phrases here are obviously those referring to "nonprofit organizations" and "other activities." Here again, the director, a political appointee, will have the authority to grant funds to groups with a more or less free hand. It would seem natural that the director would at some point wind up funding law firms working on consumer problems.

Generally, the major problems in the bill fall into two categories The first includes those provisions which apparently contain constitutional problems. This would refer primarily to those under Section 4 which deal with the state small claims courts and the tenure of judges on those courts. Also included under those procedural initiatives of questionable constitutionality are the ones concerning service of litigants.

The second category is more general and basically concerns the broad areas of discretion contained in the measure. There are few precedents for the degree of discretion enjoyed by the Director of the Office of Consumer Redress. The only possibly comparable office might be the Administrator of the Environmental Protection Agency, and the experience with that office might lead one to question the wisdom of granting similar power to yet another bureaucrat, albeit a political one.

ARGUMENTS FOR:

With the recently heightened consciousness of consumers, there has been an additional heightening of consumer disputes. States have responded to these disputes in a number of ways. In some states consumer protection agencies have been established, and in others, legislation intended to protect purchasers has been enacted. As formal entities for the resolution of consumer controversies have proliferated, so have complaints that they are inadequate for the accomplishment of their intended purpose. The sponsors of S. 957 see their measure as an attempt to relieve this situation.

Generally, the rationale for S. 957 stems from two sources. The first is the 1972 Small Claims Study Group report, which indicated that individuals frequently incurred great expense in the resolution of relatively minor disputes. The cause of this expense was largely attributed to the inadequacy of small claims courts, and the group made a number of recommendations for improvement of the small claims court system. Among the problem areas they cited were location of courthouses and certain court procedures which they considered far too complex.

The second basis of S. 957 is the report of the National Institute For Consumer Justice on the adequacy of current controversies resolution mechanisms. To a large degree, the authors of S. 957 have incorporated their recommendations in the bill.

One area which is emphasized by the bill's proponents is the improvement of state small claim courts. They address most of the criticisms of state small claims systems mentioned by the 1972 Small Claims Study Group report. They feel that the changes recommended will go a long way towards improving access to these courts by private individuals. At present, they contend that state small claims courts primarily function as collection agencies for merchants. They indicate that the measure will prevent many practices which are currently common and which are considered to be patently unfair to defendants. Further, in encouraging the development of other means of resolving complaints, they contend that the overall cost for an individual who wishes to resolve a complaint will be significantly reduced.

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