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Address to the 1978 International Conference of the
Associated Credit Bureaus, Inc.
Las Vegas, Nevada
June 14, 1978

Outline

1. Introduction: Government in the Economy and Businesspeople in the Policy Process:

I want to discuss this morning my views on the role of the federal government in the economic life of our nation, specifically as it pertains to regulation of the credit reporting industry, and also share my thoughts on the nature of the public policy process, and how you, as members of a trade association, and as individuals can most effectively participate in that process.

2. Importance of the Credit Reporting Industry: Major role of credit in our economy -- need for reliable consumer credit information so that financial institutions and businesses can make sound credit decisions -- responsibility to provide that information with adequate regards for individual rights of privacy

3. Growth of Federal Regulation: Federal Govt. Playing Larger Role

(a) Generally: Since 1962, some 25 new federal agencies have been created to regulate some aspect of private business activity. Costs of that regulation -- Need for lawmakers to understand that costs ultimately come back to the consumer --

(b) Specifically: Scope of federal involvement has also grown in those areas traditionally regulated: Financial institutions an excellent example, and certainly the credit reporting industry --

Witness passage of a series of laws starting with the Fair Credit Reporting Act in 1971 -- Truth in Lending -- and Truth in Lending Simplification which passed the Senate recently -- Equal Credit Opportunity Act, and the Fair Debt Collection Practices Act which became effective in March of this year --

4. Costs of Regulation/the attitude of regulation:

We need to realize that we don't necessarily protect the consumer better by creating regulations --nor by adding the already overgrown federal bureaucracy --

The trend toward skirting the states: Prevailing attitude seems to be, 'if any problem can be found, then the federal gov't. should step in to remedy it.' I firmly disagree with that approach.

Role as North Carolina A-G: As Attorney General of North Carolina, I established a consumer advocacy and consumer protection division in our state -- recognized by the national conference of Attorneys General as one of the best -- I didn't think I heard a single complaint that I didn't think could be handled more effectively by the States than the Federal Government.

Trend toward Federal Pre-emption: And I continue to believe, that if conflicting state laws pose a problem for interstate industries, that the proper solution is to work toward the Commission on Uniform State Laws, rather than presume that federal law must be written to supercede all state approaches.

I continue to believe that from differing experiences, comes creative and innovative thinking -- and that subjecting increasing sections of our economy to one set of regulations from Washington tends to stifle and constrict the free enterprise system.

5. NO CHANGE IN SIGHT: Likely attempt next year if not sooner to amend the Fair Credit Reporting Act --

Yet, despite the growing indications that people throughout the country are indeed becoming fed up with big government, the growth of regulation seems to continue unabated.

Of specific importance to the credit reporting industry, of course, is the Fair Credit Reporting Act. The last attempt to amend this basic act governing your industry was in 1975, when I served on the Subcommittee on Consumer Affairs in the Senate Banking Committee.

While I no longer serve on that Subcommittte, I retain a keen interest in this entire area of legislation. And I think it is safe to assume that another major attempt to amend this law will be made in the coming year -- if indeed, a bill to that effect is not introduced even sooner. In terms of a major legislative effort, however, prospects for any new initiative this year seem unlikely.

6. Amendments will be based on the Report of the Privacy Commission:

Any attempt to amend the FCRA would be based on the report of the The Privacy Protection Study Commission issued late last year.

I have not yet studied the Commission's recommendations, so I will certainly not commit myself to any position. I believe deeply that the responsibility of any U.S. Senator is to listen to all sides of an issue before making up his or her mind.

(a) General Concerns: But let me tell you what generally concerns me when an attempt is made to change a major law -- particularly in the field of consumer protection.

Decisions often based on "potential" Problems rather than documented abuses:

I am concerned that all too often in the Congress we act on the basis of potential problems in the field of consumer affairs -- rather than reacting to the real needs of people and concerns that they have brought to the attention of public officials.

Congress must carefully weigh the projected benefits of any consumer protection against the real costs --

When a law has been working well, the burden of proof should weigh heavily on those who would seek to change it. All too often the case is not well made, but the changes pass the Congress anyway.

7. Look at the policy process: How do these laws get made?

"Government in the sunshine" has opened up the legislative process considerably -- We have even had public radio broadcasts of Senate debates -- and public TV coverage of committee hearings, but the general legislative process remains mystifying to all too many people -- people who should be intimately involved in it.

8. A Case Study: The 1975 attempt to amend the Fair Credit Reporting Act:

As indicated, I was then a member of the Subcommittee considering S.1840 -- which would have made significant changes in the FCRA -- and would have put significant new obligations on the individual businesses.

Two things stand out about those hearings in my mind:

(i) First, was one of the witnesses -- a self-proclaimed consumer privacy advocate & journalist.

He proceeded to paint a broad-brush horror story -- of horrible abuses under the FCRA -- But under questioning it became apparent that that he had in fact not really verified many of the claims he was making --

(ii) Secondly, was the claim by the Federal Trade Administration, that in excess of 20,000 complaints had been received under the FCRA in its then 4-years of existence.

It was on that basis of over 20,000 complaints that a good deal of the case was based for a revision of the FCRA.

ACB analysis of FTC claim: The ACB -- at considerable expense -- and utilizing hundreds of person-hours -- did an analysis of that claim.

In 1973, in response to a Committee question, the FTC had acknowledged only 2,360 complaints. Yet only 19 months later in the midst of the 1975 hearings, that number had soared to over 20,000. They found that masses of different kinds of data which have been lumped together considered as complaints. It became obvious that "any phone call, any letter, any inquiry or request for information that even mentioned the word 'credit' was logged as a complaint against the Fair Credit Reporting Act."

There is something wrong when private business must go to such expense and care to have to refute this kind of misrepresentation of the facts by an independent governmental regulatory body. And something even more wrong that a body such as the FTC would so mistate a situation before a Committee of the U.S. Congress.

9. Industry Participation Vital to getting at the Truth:

The basic lesson of this case study is that the participation of the ACB was vital to uncovering the real nature of the experience under the Fair Credit Reporting Act.

And if the industry -- and business generally -- is not ^{to} be adversely affected by what goes on in Washington -- that participation must continue.

10. ACB role a very positive one: Past, present & future

In 1975, ACB's activity was crucial in preventing what would have been an undesirable revision of the FCRA.

ACB has been effective long before that. In 1968, the credit reporting industry began to incorporate changes and put into place practices that helped to frame the FCRA, which became law in 1971.

And more recently, with the Fair Debt Collection Practices Act -- which took effect in March, '78 -- the industry once again took an active & vital role in shaping legislation which was inevitable.

One of the most remarkable achievements of that process of involvement was that the act became a self-enforcing one --

i.e., the Congress --- in a rather rare occasion --- did not abdicate its authority to the federal regulators -- but proceeded to get into a subject so thoroughly that a good bill could be written.

Contrast with EFT this year: In marked contrast this year has been consideration of the Electronic Funds Transfer legislation. We recognize that the situation is complex and the EFT technology is basically embryonic -- so we have foisted off on the Federal Reserve Board rule-making authority -- rather than sticking to the subject until we could write a bill simple enough to cover the basic needs without the need for elaborate regulations which will have the force of law.

11. Challenge for businesspeople: I hope these lessons can be learned well. ACB has been an effective participant in the public policy process. More business people must become involved in that same effective way.

Politics -- and the legislative process -- is the lifeblood of democracy -- there is an obligation to join in the 'free trade in ideas'

(a)

Keys to effective involvement: Early involvement -- nothing more ineffective -- and annoying -- than last minute panic --

(b) Local participation:

not just executives of national associations -- but folks from a members' state or district -- Members of Congress are interested in the national perspective -- and have an obligation to consider issues in an overall way -- but want to hear the impact on their own area -- from people they know -- if possible

(c) A willingness to compromise/not threats of 'this is it or else -- either you're with us or we'll get you' --

--that kind of attitude has been a part of some lobbying efforts -- including those in which businesspeople have been active

(d) Not just cliches/nor gloom & doom -- but positive alternatives -- If a problem exists, businesspeople have the kind of pragmatic and practical experience which can help to solve it.

Conclusion: ENCOURAGING PROSPECTS AHEAD

Nation's Business (magazine) June, 1978 -- contained on the most encouraging articles I have seen recently --- reporting on recent national Chamber of Commerce meeting --

The Theme of the Conference was "A New Agenda for Human Progress" -- emphasizing for a change something positive & upbeat --

Dr. Richard L. Leshner -- president of the National Chamber -- put it well in summing up the agenda:

----"Our role is not to ignore the problems, not to minimize them or simply to criticize. Our bigger role is to solve problems -- constructively, efficiently, and humanely."

To do that -- he said -- we need legislative & political influence -- and above all a vision of the future -- one which is attainable --- and grounded in individual freedom, initiative, opportunity, and responsibility --

For all our economic and political problems, this nation remains a land which offers more freedom of opportunity and individual achievement than anywhere on earth.

Working together, businesspeople and concerned people in government can help to keep it that way.