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No decision made.

~~THE~~ PRESIDENT HAS SEEN....

THE WHITE HOUSE

WASHINGTON

March 17, 1976

MR7

MEMORANDUM FOR THE PRESIDENT

FROM: L. WILLIAM SEIDMAN *WS*

SUBJECT: Legislation Permitting State Attorneys General to File Consumer Class Action Suits (Parens Patriae)

At the request of Dick Cheney at this morning's senior staff meeting the Economic Policy Board Executive Committee reviewed the parens patriae issue at our meeting.


A memorandum, prepared by Ed Schmults, outlining the issue and presenting two options for communicating the nature and rationale for our opposition to H.R. 8532, is attached.

OMB, Justice, Commerce, the Counsel's Office, the Domestic Council/ and Rogers Morton agree that serious consideration should be given to Option 2 in the Schmults memorandum.

MAR 16 1976

THE WHITE HOUSE
WASHINGTON

March 16, 1976

MEMORANDUM FOR: JACK MARSH
FROM: ED SCHMULTS 
SUBJECT: Legislation Permitting State Attorneys
General to File Consumer Class Action
Suits (Parens Patriae)

ISSUE

The President decided at Tuesday's Senior Staff Meeting that the Administration would oppose H. R. 8532 (parens patriae legislation) which may be considered on the House Floor this week. This position was communicated to the House Minority Leadership. We need guidance on how to explain the Administration's opposition to this legislation.

BACKGROUND

H. R. 8532 (parens patriae legislation) would authorize a state attorney general to sue on behalf of the state's citizens to recover damages that result from violations of the federal antitrust laws.

The legislation is intended to correct a perceived inequity in antitrust enforcement, which presently is not as effective in deterring violations affecting many small consumers as violations affecting a few large purchasers of a product.

Assistant Attorney General Kauper expressed his support for parens patriae legislation in March 1974 and reiterated this support in House and Senate Judiciary testimony early last year. The Administration (Justice, Commerce, FTC, OMB, etc.) developed and communicated its earlier position on the legislation to the

House Judiciary Committee last summer. This position would have limited the scope of the legislation to violations of the Sherman Act, and eliminated many objectionable features which remain in the Senate version of this legislation. In the House, the Justice Department urged passage of a *parens patriae* bill, so that the House could then turn to consideration of the Administration's proposed amendments to the Civil Process Act.

Congressman Rhodes and most of the Republicans on the House Judiciary Committee have strongly objected to the *parens patriae* legislation. Their position is that the state attorneys general will use this authority for political purposes and that the bill goes much too far in dealing with the problem of inadequate consumer redress for antitrust violations. We understand that Congressman Wiggins and others may be introducing modifying amendments when the legislation reaches the House Floor.

DECISION

The Administration will have to communicate the nature and rationale for its opposition to H. R. 8532. Presumably the views would be discussed with Justice before being communicated. The main options are:

- Option 1: Signal that the Administration is opposed in principle to *parens patriae* legislation. (Tab A sets forth a position on Option 1.)
- Option 2: Express the Administration's opposition to the current *parens patriae* legislation, but would agree to consider substantial modifications that would narrow its reach. Congressman Wiggins has been prepared to offer such modifications on the House Floor (e. g. , limitations to price fixing or per se violations of the Sherman Act). (Tab B sets forth a position on Option 2.)

Option 1 _____ Option 2 _____

Attachments

Administration Opposed to the
Principle of Parens Patriae

The Administration is opposed to Federal parens patriae legislation.

The Administration does not believe a Federal legislative remedy, which would establish revolutionary procedural machinery for the calculation and imposition of treble damage fines for violation of the antitrust laws, is desirable at this time.

During the last two years, the Administration has sought to improve Federal enforcement efforts in the antitrust area. In December 1974, the President signed the Anti-trust Penalties and Procedures Act which increased maximum penalties from \$50,000 to \$1 million for corporations and \$100,000 for individuals.

Many years ago, when the maximum fine under the antitrust laws was only \$5,000, a good case could be made for more effective class action suits where mandatory treble damage awards to plaintiffs effectively supplemented the light Federal penalty. Since that time, Congress has increased the maximum fine tremendously--now over 200 times, in the case of corporations, the maximum fine which existed in 1956. The Administration believes that mandatory treble damage awards based on a new principle of statistical aggregation of damages are no longer justifiable on the grounds that Federal penalties are inadequate.

In addition to the deterrents under the present Federal antitrust laws, most states have their own antitrust laws. States could further amend these laws to authorize parens patriae suits in their own courts. If a state legislature, acting for its own citizens is not convinced the parens patriae concept is sound policy, the Administration questions whether the Congress should bypass the state legislatures and provide state attorneys general with access to the Federal courts to enforce it.

Suggested Q and A as to the Administration's Change in Position

Question:

The Administration has been on record as supporting the *parens patriae* concept. Would you please explain why this position was suddenly reversed.

Answer:

The Administration's earlier position was developed through the normal clearance processes used to reconcile differences between agencies on bills not proposed by the Administration. However, the *parens patriae* bill was not brought to the President's personal attention until the prospects for Congressional action became imminent. After personally reviewing the proposed bill, the President decided to oppose it.



Tab B

Administration Opposed to H.R. 8532 (Parens Patriae) in
its Present Form

The Administration opposes the present parens patriae legislation. However, if major modifications were made, it would have no objection to enactment.

An acceptable bill would narrow the scope of parens patriae legislation to price fixing violations or, at a minimum, to per se violations of the antitrust laws. In addition, the Administration is opposed to mandatory treble damage awards in parens patriae suits, preferring instead a provision which would limit awards only to the damages that actually result from the violation. The Administration opposes extension of the statistical aggregation of damages, beyond parens patriae legislation, to private class action suits. Finally, the Administration supports discretionary rather than mandatory award of attorney's fees.

With these changes, the Administration would have no objection to the enactment of H.R. 8532.

The Administration will continue to review its position on antitrust legislation. Any further suggested Administration amendments will be transmitted to the Senate, prior to action on S. 1284.