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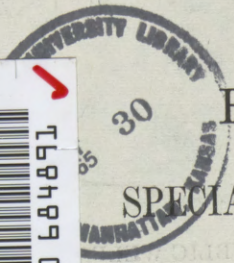
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AMEND SECTION 402(d) OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT

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HEARING BEFORE A SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

FIRST SESSION

ON

S. 1839 and H.R. 7042

TO AMEND SECTION 402(d) OF THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT

AUGUST 24, 1965

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Committee on Labor and Public Welfare



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AMEND SECTION 402(B) OF THE FEDERAL
FOOD, DRUG, AND COSMETIC ACT



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AMEND SECTION 402(d) OF THE FEDERAL FOOD,
DRUG, AND COSMETIC ACT

TUESDAY, AUGUST 24, 1965

U.S. SENATE,
SPECIAL SUBCOMMITTEE OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The special subcommittee met, pursuant to notice, in room 4221, New Senate Office Building, at 10 a.m., Senator Harrison A. Williams, Jr., chairman of the special subcommittee, presiding.

Present: Senators Williams (presiding), and Javits.

Committee staff members present: Robert W. Barclay, professional staff member; Frank Cummings, minority labor counsel; and Woodruff M. Price, executive assistant to Senator Williams.

Senator WILLIAMS. The special subcommittee will now come to order.

As you will see this morning, there is a lot of competition for the time of our members. I think many of the subcommittees of the Labor Committee are meeting, and members of this special subcommittee have to be many places. So, without waiting further for any of our other members to arrive here, we will begin.

This is a hearing by a special subcommittee appointed by Chairman Hill consisting of, in addition to myself, Senator Kennedy of Massachusetts, and Senators Pell, Javits, and Murphy.

The responsibility of this special subcommittee is to conduct a hearing and submit a report to the Labor and Public Welfare Committee on H.R. 7042 and S. 1839. They are identical bills.

(The bills referred to appear on following pages.)

Senator WILLIAMS. H.R. 7042 was introduced by Representative Torbert Macdonald of Massachusetts. It passed the House of Representatives on June 7 of this year. While no hearings were held this year in the House on H.R. 7042, hearings were held by the House Public Health and Safety Subcommittee of the House Interstate and Foreign Commerce Committee last year on H.R. 4731, which was an identical bill, and that passed the House in the last session. As the result, the House this year passed H.R. 7042 without the necessity, of course, of further hearings.

S. 1839 was introduced by 16 Senators, 8 of whom are members of the Labor and Public Welfare Committee and 4 of whom are members of this special subcommittee. Until the food additives amendment was enacted in 1958, the Food and Drug Administration lacked effective authority to assure the safety of the many additives used in foods. While until 1958 the Food and Drug Administration did lack this authority over foods in general, it has traditionally had a broad authority over additives used by the confectionery industry.

89TH CONGRESS
1ST SESSION**S. 1839**

IN THE SENATE OF THE UNITED STATES

APRIL 28, 1965

Mr. HARTKE (for himself, Mr. SCOTT, Mr. CLARK, Mr. BOGGS, Mr. KENNEDY of Massachusetts, Mr. DIRKSEN, Mr. FANNIN, Mr. MCCARTHY, Mr. MURPHY, Mr. WILLIAMS of New Jersey, Mr. MONDALE, Mr. HOLLAND, Mr. PROUTY, Mr. WILLIAMS of Delaware, Mr. RANDOLPH, and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To amend section 402 (d) of the Federal Food, Drug, and
Cosmetic Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 402 (d) of the Federal Food, Drug, and Cos-
4 metic Act, as amended, is hereby amended to read as follows:
5 “(d) If it is confectionery, and it bears or contains—
6 “any alcohol other than not to exceed one-half
7 of 1 per centum by volume derived solely from the
8 use of flavoring extracts.”

II

89TH CONGRESS
1ST SESSION

H. R. 7042

IN THE SENATE OF THE UNITED STATES

JUNE 8 (legislative day, JUNE 7), 1965

Read twice and referred to the Committee on Labor and Public Welfare

AN ACT

To amend section 402 (d) of the Federal Food, Drug, and
Cosmetic Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 402 (d) of the Federal Food, Drug, and Cos-
4 metic Act, as amended, is hereby amended to read as follows:

5 “(d) If it is confectionery, and it bears or contains—
6 “any alcohol other than not to exceed one-half of
7 1 per centum by volume derived solely from the use of
8 flavoring extracts.”

Passed the House of Representatives June 7, 1965.

Attest:

RALPH R. ROBERTS,

Clerk.

First, in the Food and Drugs Act of 1906 and then later in the Federal Food, Drug, and Cosmetic Act of 1938, Congress sought to assure the wholesomeness of all additives used in confectionery by requiring that all such additives, with special statutory exceptions, should be nutritive, or have food value. When Congress in 1958 enacted the food additives amendment, in effect it obtained Federal control over all additives used in all foods with a requirement that each such additive be pretested to determine its safety before being used.

Even though Congress in 1958 enacted this broad statute covering all additives used in all foods, it failed to amend section 402(d) which pertains only to confectionery. As a result, confectionery manufacturers not only have been subjected to the broad food additives statute assuring safety of all additives used in all foods, to which the confectionery industry is, of course, not opposed, but the confectionery industry continues to be covered by section 402(d) of the Federal Food, Drug, and Cosmetic Act.

In substance, section 402(d) pertains to three items. One is alcohol. Section 402(d) prevents the use of alcohol except not to exceed one-half of 1 percent by volume derived solely from the use of flavoring extracts. The confectionery industry is not seeking to change the provision of 402(d) as it pertains to alcohol.

The second provision of section 402(d) is that with certain exceptions it prohibits the use of any additive which is not nutritive. The confectionery industry contends that it should not be subjected, as I understand it, to a double standard to which no other industry is subjected. It maintains that if an additive is safe, it should have the right to use it just as the rest of the food industry does. It is also maintained that the FDA should be concerned solely with the safety of additives and not with their nutritive value. In other words, it is felt that the FDA is rightly concerned with protecting the public from harm, but should not attempt to write recipes. It should also be pointed out that if this bill is passed, the public will continue to be protected from excessive use of nonnutritive additives by the other adulteration provisions of section 402 of the Food and Drug Act. This is the principal issue involved. Because of the seemingly inequitable situation, many Members of Congress including myself, have introduced this corrective legislation.

The third aspect of section 402(d) pertains to nonnutritive articles or trinkets and their use involving confectionery, and I am sure we will have testimony on this.

I will say that I appreciate Chairman Hill's response to the sponsors of this bill in suggesting that a special committee be formed to consider it. We have not only many cosponsors but many Members who are not cosponsors but who have expressed interest in this legislation and have appreciated the fact that we are moving quite alertly to consider it.

I have a letter from Senator Jennings Randolph which, without objection, I would like to include in the record at this point, in support of this legislation.

And I would also like to include in the record the statement of Senator Hartke, the principal sponsor of this legislation.

(The documents referred to follow:)

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
August 24, 1965.

Hon. HARRISON A. WILLIAMS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR PETE: Thanks for your recent letter informing me of your plans to conduct Senate hearings on H.R. 7042, a bill which would amend the Federal Food, Drug, and Cosmetic Act to permit the use of safe nonnutritive additives in the manufacture of confectionery.

As you know, I am a cosponsor of the Senate version of this measure, S. 1839, introduced by Senator Hartke on April 28, 1965. We are also aware that a similar bill was overwhelmingly approved in the House of Representatives during the 88th Congress but did not come to a vote in the Senate.

Under the present provisions of the Federal Food, Drug, and Cosmetic Act, such foodstuffs as canned goods, baby foods, baked goods, and preserves may contain a variety of preservatives, emulsifiers, stabilizers, and other additives. These ingredients do much to improve the texture, flavor, and other desirable attributes of the product. Use of these safe, nonnutritive additives, however, is denied our confectionery industry.

It would appear that some congressional action is justified to eliminate this discrimination against reputable members of the confectionery industry, and to permit them to employ in the manufacture of candy products the same safe, nonnutritive additives that are used widely by other food producers.

I am hopeful that language can be worked out which will remedy this inequitable situation, which will be acceptable to the Food and Drug Administration, and which will offer effective safeguards for the consumer.

It would be appreciated if this letter could be made a part of the official record of your hearings.

With appreciation and warm personal regards, I am,

Very truly,

JENNINGS RANDOLPH.

STATEMENT OF HON. VANCE HARTKE, A U.S. SENATOR FROM THE STATE OF INDIANA

Senator HARTKE. Mr. Chairman, I am happy to present a statement in support of H.R. 7042, a companion bill to S. 1839, which I introduced in the Senate on April 28. I would like to note that the Senate bill was cosponsored by 15 other Senators from both sides of the aisle. They are Senators Scott, Clark, Boggs, Kennedy of Massachusetts, Dirksen, Fannin, McCarthy, Murphy, Williams of New Jersey, Mondale, Holland, Prouty, Williams of Delaware, Randolph, and Javits.

I am happy that the House has again passed this bill, as it did also last year on August 12. I sincerely hope that the Senate will give it favorable consideration in committee and on the floor so that this year will see its enactment.

This bill will allow the use of nonnutritive substances in the manufacture of candy, according them the same treatment now extended to their use in all other foods, provided their safety for human consumption has been established. There is no logical reason for permitting a variety of emulsifiers, stabilizers, preservatives, and additives which improve the desirability of the product in canned foods, baked foods, even baby foods, and denying the candy industry the right to employ them.

It is true that the prohibition had a historical justification. The Food and Drug Act of 1906 was in part brought about by the adulteration of candy which some unscrupulous makers had employed around

the turn of the century. Substances such as terra alba and talc were being added to increase bulk and weight, without regard to any reason other than, to be blunt, cheating the buyer and making a greater profit. The language of the 1906 act, specifying that all additives used in confectionery must be nutritional, was carried forward in succeeding laws.

But as scientific advancement has taken place in the food industry, there have been developed numerous nonnutritive additives which do not adulterate foods but enhance them in appearance, taste, and otherwise to the advantage of the product and the public's enjoyment of it. The Food Additives Amendment of 1958 requires pretesting of all such materials before they may be used in food. But the old language forbidding nonnutritive additives to candy is still there. This bill is one which will give, without any danger whatsoever, the same rights to candy makers as those enjoyed by other food processors for the use of safe additives, approved by the Food and Drug Administration.

The case is really very simple and entirely logical. Any need for the special prohibition of nonnutritive additives for candy has been removed since enactment of the 1958 law, if candy is brought under its provisions instead of being flatly excluded.

As author of the Senate bill to achieve the same purpose, I strongly support the enactment of this measure. It cannot harm the consuming public, since it extends the same protection now given to other foods. At the same time, it can assist the candy industry to employ the most modern and useful techniques for enhancing its product. I trust the subcommittee will see fit to recommend its passage, and that the needless restriction in existence may be removed.

Senator WILLIAMS. Senator Javits?

STATEMENT OF SENATOR JACOB K. JAVITS, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator JAVITS. Mr. Chairman, I just wish to state that, when first consulted about the matter by the industry, I made it a sine qua non of my support that I would have to be absolutely convinced that this measure would not only not be a disadvantage to consumers but would be of a positive and affirmative advantage to consumers. Mr. Chairman, consumers and their representatives should be reassured that, if we have any doubt about its effect upon consumers, we will protect against that doubt even to the extent of rejecting the legislation, notwithstanding the fact that I am a sponsor.

I wish to pledge myself to the consumers that, if in the best conscience I feel that this is something that should not be done in their interest, I will be the first to stand against it; whether or not it is personally embarrassing. The fact that I am a sponsor of the legislation will be meaningless. The purpose of these hearings is precisely to test out whether there is even any fair doubt—small, modest, insignificant as it may be—if there is any real doubt at all.

So far, I think that has been the standard that I have set for myself and, I believe in all fairness, that of my colleagues; and I am delighted to have heard what the Chair just said which, in spelling out the dynamics and details of the questions, comes precisely to that conclusion.

Senator WILLIAMS. I certainly appreciate that.

Senator JAVITS. Thank you, Mr. Chairman.

Senator WILLIAMS. We will proceed with our first witness, Mr. George P. Larrick, Commissioner of the Food and Drug Administration; accompanied by Mr. Van W. Smart, Office of Assistant Commissioner for Planning, Food and Drug Administration.

Mr. Larrick, you are a welcomed, regular visitor before the various Senate committees, and now before this special subcommittee, and we certainly appreciate your continuing assistance. I believe we will have you back shortly on another bill of mine dealing with premarket testing of therapeutic devices. We do not have a schedule of hearings on that, but you have been most helpful in dissolving that legislation in the interest of consumers who are, too often, being duped by false devices, and false claims for devices.

STATEMENT OF GEORGE P. LARRICK, COMMISSIONER OF FOOD AND DRUGS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY VAN W. SMART, OFFICE OF ASSISTANT COMMISSIONER FOR PLANNING, FOOD AND DRUG ADMINISTRATION

Mr. LARRICK. Right. I certainly hope that there will be time for Congress to consider your bill this session before it adjourns for the holiday.

Thank you again for this opportunity to discuss S. 1839 and H.R. 7042, which, as you have pointed out, are bills to amend section 402(d) of the Federal Food, Drug, and Cosmetic Act.

The provision of the present law now declares confectionery to be adulterated if it contains any alcohol or any nonnutritive substances other than coloring, harmless flavoring, harmless resinous glaze, natural gum, or pectin. Small amounts of alcohol are permitted as constituents of flavoring extracts, and chewing gum may contain harmless nonnutritive masticatory substances. The bills would change this to permit the use of nonnutritive substances.

The Department for whom I speak is opposed to the passage of this legislation in its present form, Mr. Chairman, because it would roll back certain public health and consumer protection features of the national pure food law. We have suggested, in our report, substitute language which would allow the confectionery industry to use non-nutritive substances which perform a functional purpose, such as mineral oil as a slab grease in candy making, upon compliance with the preclearance procedures of the food additives amendment, and the Department has proposed clarifying language which would plainly outlaw the commingling of unwrapped metallic and plastic trinkets with confectionery. The amendments we have suggested would, in our judgment, meet the stated objectives of the confectionery industry without weakening existing law.

Section 7 of the Federal Food and Drugs Act of 1906 was the predecessor of section 402(d) of the present law. That provision aimed primarily at preventing economic adulteration of confectionery, but it also embodied other features, such as the ban on adding alcohol to confectionery.

Between 1906 and 1938 some manufacturers began mixing metallic and plastic trinkets in candy and in candy containers. During the hearings and debates on the various bills which led to enactment of the Federal Food, Drug, and Cosmetic Act of 1938, Congress in our opinion clearly stated its concern about these trinkets in candy. The Senate report on one of these bills stated:

This provision will also ban such practices as embedding metallic trinkets in confectionery, which often result in the aspiration and lodgment of the trinket in the windpipes of children.

Thus, section 402(d) of the 1938 law, broadened the protection given by section 7 of the Wiley law of 1906 to prohibit the concealing of trinkets in candy. We thought that the language of the 1938 law forbade the indiscriminate mixing of trinkets with candy in packages and other containers. We were unable to sustain this position in the courts. In 1951 the U.S. Court of Appeals for the Fourth Circuit held that inedible plastic and metal trinkets admixed with candy and chewing gum in vending machines were not "contained" in the candy and chewing gum (as required by sec. 402(d)) but were merely sold along with it.

The district court had held that the trinkets were "contained" in the candy. An expert witness for the Government testified at the trial of that case about the dangers inherent in mixing trinkets with candy and gum. This witness' testimony proved all too accurate, for on August 21, 1953, an 8-year-old boy in Long Island, N.Y., choked to death on a plastic trinket he got with gum from a vending machine. When these facts came to our attention, we attempted to take regulatory action. However, the U.S. attorney declined to file a case on the basis of the court's decision in the earlier case. Thus, we have been unable to deal with trinkets mixed with confectionery, despite the known dangers.

We recently solicited the views of the members of the American Association for Thoracic Surgery about injuries to children resulting from the biting, swallowing, or aspirating of trinkets accompanying confectionery. Questionnaires were sent to the 600 surgeons in the association. Two hundred and fifty-three responded, and of this number, 22 reported 34 documented cases of injury. The responses also mentioned 78 additional cases, but these were inadequately documented. Ten surgeons reporting no injuries stated that, in principle, trinkets mixed with confectionery present a hazard to children.

Mr. Chairman, I have here a print of an X-ray taken of the chest of a 2-year-old child that obtained a toy Pegasus from a vending machine. The surgeon who reported this case to us stated that the child's chest had to be opened so the trinket could be removed and the esophagus repaired. Fortunately, this child recovered.

The only specific prohibition in these two bills, would be on the addition to confectionery of alcohol in excess of one-half of 1 percent. This would not reach the problem of trinkets admixed with candy and would thus perpetuate the loophole in present law. It would also permit the old practice of concealing trinkets to be revived. Our Department's suggested amendment would make clear that the present prohibition on concealed trinkets is continued and would also prohibit the indiscriminate mixing of trinkets with confectionery.

Senator JAVITS. Mr. Chairman, may I interrupt the witness for a minute?

Would the witness inform us, what is the pertinence to H.R. 7042 of the testimony which he is now giving about trinkets? What is the germaneness to this bill? We are not talking about trinkets.

Mr. LARRICK. Yes, you are, Senator.

Senator JAVITS. We are?

Mr. LARRICK. You are repealing a basic public health protection provided by the present law and you are failing to correct a definite loophole in the present law. I have just testified about a survey that we made of all members of the thoracic surgeons' association in the United States who reported complicated cases where children aspirated trinkets and where surgery or other drastic measures had to be taken.

Senator JAVITS. What do you wish us to do then? Not confine ourselves to this bill? You want us to plug up another loophole in another respect that you find in the law; is that right?

Mr. LARRICK. Yes.

Senator JAVITS. There is nothing against this bill. It is just that you want us to do something else?

Mr. LARRICK. Well, that is not true.

Senator JAVITS. Well, that is what we are trying to find out.

Mr. LARRICK. The Department of Health, Education, and Welfare finds two health problems in these bills.

Senator JAVITS. Yes.

Mr. LARRICK. One is a repealer of a part of the present statute which prohibits imbedding foreign objects, metallic objects, and toys in candy.

Now, that is clearly prohibited by the present statute. If you enact this bill, you repeal it.

Senator JAVITS. I see. So, you wish to save that section; is that right?

Mr. LARRICK. I am asking you to save that section.

Senator JAVITS. Right.

Mr. LARRICK. And I am asking you to overcome an adverse circuit court of appeals decision which we think is not—

Senator JAVITS. Now, are these two questions severable?

In other words, is it physically possible to write a law which will not repeal the trinket section while legislating into law what we wish to do about additives or preservatives, or call it what you will?

Mr. LARRICK. Yes.

Senator JAVITS. That is possible?

Mr. LARRICK. That is quite possible.

Senator JAVITS. Will you show us how to do it?

Mr. LARRICK. I am not personally a draftsman—

Senator JAVITS. You will show us how to do it?

Mr. LARRICK. We will be glad to show you.

Senator JAVITS. That is all I was trying to get at. Thank you very much.

Mr. LARRICK. Under the heading of economic adulteration, the bills will roll back present law designed to protect consumers against economic adulteration. Before the enactment of the Federal Food and Drugs Act of 1906, candy and other confectionery was often debased with cheap fillers such as white clay, talc, and barytes. These sub-

stances were used as a less expensive substitute for nutritive ingredients. It was this type of debasement that section 7 of the 1906 law sought to prohibit by deeming confectionery to be adulterated:

If it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt or spiritous liquor or compound or narcotic drug.

Thus, the use of the named substances in confectionery to increase bulk, at the expense of quality, was effectively banned.

When the Federal Food, Drug, and Cosmetic Act of 1938 was passed, the old section 7 was broadened to prohibit all nonnutritive substances and articles except harmless coloring, harmless flavoring, glaze, and natural gum and pectin. In 1960 the words "harmless coloring" were changed to read "authorized coloring." Other than this, the law has remained unchanged since 1938. Today it still prohibits adulteration of confectionery by nonnutritive substances and by embedding trinkets in the candy.

Senator WILLIAMS. And the confectionery section is a separate section, and the limitation on nonnutritive substances is a lot broader than the sections dealing with food, generally; is that right?

Mr. LARRICK. That is quite correct, Senator Williams.

In the past 22 years we have detained about 140 lots of imported confectionery containing nonnutritive substances. These cases involved the presence of such things as talc, clay, silver, and mineral oil.

The utilization of section 402(b)(4), the so-called economic adulteration provision, to prevent debasement of confectionery with cheap fillers would be extremely difficult to say the least. For example, a U.S. court of appeals, in a leading case, has said that in determining whether a product is adulterated because it has been made to appear better than it is, the standard to be applied is whether the adulterated product has been made to appear to be a defined superior product. The reaction of the ordinary consumer who exercises a normal measure of the layman's commonsense and knowledge is the test as to what the product appears to be.

I have given the citation to that case in the footnote, which is *United States v. 88 Cases* (187 F. 2d 967 (3d Cir. 1951); cert. den. 342 U.S. 861 (1951)).

Children, important purchasers of confectionery, could hardly be expected to measure up to this standard.

Confectionery comes in so many different forms that more often than not there is no defined superior article which the adulterated food simulates. Thus, it is no answer to say that we can proceed against the debased candy under the general adulteration provisions of the law. Nor does the standard making authority provide the answer because it is impractical to establish standards for all confectionery products. The food additives amendment will not take care of the debasement because many of the adulterants would be safe.

If either of these bills is passed in its present form, the pre-1906 practices of adding cheap filler substances in small amounts may again be possible; also the pre-1938 practice of concealing trinkets in candy can be claimed, perhaps successfully, to be allowable.

The Federal Food, Drug, and Cosmetic Act is designed to protect consumers generally, but section 402(d) is particularly concerned with the protection of children—the young and unsophisticated buyer. Thus, the argument for equality of treatment of candy with other foods

is not really relevant, in our judgment, since section 402(d) of the present law seeks to protect children particularly. Candy has a long history of being debased with economic adulterants. Aside from the problem of trinkets, this country's confectionery is largely pure and wholesome. We do, however, point to the parallel between the types of adulterants found in imported candy in recent years and the types of adulterants in domestic candy before 1906.

The President's Consumer Advisory Council, in May of last year, adopted a resolution unequivocally opposing the passage of H.R. 4731 in the last Congress.

We understand that the confectionery industry merely seeks the right to use safe nonnutritive substances in manufacturing processes when such substances serve a useful technological purpose. We would not object to an amendment to section 402(d) which would allow industry to use safe nonnutritive substances having a technological value in the production of confectionery. The Department's report of August 18, 1965, encloses suggested language to accomplish this. Thank you very much.

Senator WILLIAMS. Commissioner Larrick, up above you say it is impractical to establish standards for all confectionery products. And now down here, you suggest that it would be all right for non-nutritive substances having a technological value to be used in the production of confectionery.

Well, this would put you right in the position of having to establish standards for all confectionery products, would it not?

Mr. LARRICK. Not at all, Senator. It would simply put us in the position of having the manufacturer convince us that the additive did serve some useful purpose in the candy. It would parallel—

Senator WILLIAMS. Let us be absolutely clear as to what we are talking about here. We are only talking about a change in law that would permit the use of safe nonnutritive substances, are we not?

Mr. LARRICK. And our counsel believes that that would permit safe, economic adulterants.

Senator WILLIAMS. We are only talking about safe substances. We are not talking about anything harmful?

Mr. LARRICK. I would not agree with that, Senator. I would think in the case of trinkets, you are talking about something that is harmful.

Senator WILLIAMS. Well, now, that comes back to Senator Javits' observation on the trinket that is imbedded and the trinket that is commingled. And you have suggested that you can help us find a way to make the trinket issue divisible between imbedded and commingled.

Mr. LARRICK. Right. And that is the most important—

Senator WILLIAMS. We have been working on language that would clearly prohibit the imbedding of any article in confectionery.

Mr. LARRICK. You would still leave the health hazard of trinkets mixed with confectionery and the trinkets in the vending machine.

Senator WILLIAMS. Well, again, I agree with Senator Javits. We are opening an entirely new area of discussion here.

Mr. LARRICK. You are amending an important—

Senator WILLIAMS. Do you not find that there are a lot of non-confectionery foods that package with trinkets commingled?

Mr. LARRICK. There have been some breakfast foods that have been packaged with trinkets.

Senator WILLIAMS. There still are, and I think that maybe you have something to discuss here, but it is a lot broader than confectionery.

Mr. LARRICK. Our experience has been that the principal public health hazard here as confirmed by the 600 thoracic surgeons that we have consulted is most importantly in candy.

Senator JAVITS. Mr. Chairman, would the Chair yield for a moment?

Senator WILLIAMS. Yes.

Senator JAVITS. Commissioner Larrick, we are not in adversary proceedings here, are we?

Mr. LARRICK. Not at all. I deem it my duty, Senator, to speak very forthrightly, and when we get through anything you decide we will accept graciously and do our best to carry it into effect.

Senator JAVITS. That was not quite my point. I did not mean that you are adverse to us. I inquired whether you are adverse to the industry.

Mr. LARRICK. The industry has been very cooperative. We think very highly of this industry. We reserve the right to have differences with them. They are both officially and personally good friends of the Food and Drug Administration and some of us in it.

Senator JAVITS. Well, yes. Rather than to try and develop and settle this problem at arms' length, might it be conceivable, as this is an industry problem, that coupling a suitable amendment to the law with some ethical declaration on the part of industry to which perhaps even other Government agencies might be a party, this problem could be settled, and that it might be worthwhile under our auspices to get you and the industry together to see if there can be an agreed solution to these problems?

Mr. LARRICK. Senator, if that can be done, it would be a very happy day. We would welcome an opportunity to try. I should say that we have tried several times without success, but I think it is always worthwhile trying again.

Senator JAVITS. To try to do that, yes. Because, it seems to me, you are dealing with a mixed problem of law and business practice; and the trinket ramification, it seems to me, does raise that question very sharply. I would agree with my chairman that, on the face of it, the mere fact that you sell a jack and a ball of gum—and, of course, you know I have kids, too, and I know precisely what this is—does not necessarily make it a hazard, but it may be a hazard in practice because the thing is small enough to swallow, and these kids, you know, kind of take a handful of anything they see and swallow it.

Mr. LARRICK. They eat or chew the gum, and the rest of the material goes in their mouth.

Senator JAVITS. Yes. I just wonder, Mr. Chairman, based upon your testimony as well as the testimony of the industry, whether it might in this case be fruitful to bring the parties together under our auspices in an effort to see if some agreed businesslike solution could not be arrived at.

Mr. LARRICK. That, we would welcome.

Senator JAVITS. Thank you very much.

Senator WILLIAMS. I am not sure I follow this dialog. What is the fear that you have that would require some understanding with the industry?

Again, I come back to the fact that we are only talking about those substances that you have found to be safe in food. Confec-

tionery, while separately dealt with under the law, has nutritive value. It is like a food, is it not?

Mr. LARRICK. Well, maybe I have an extreme view, but I hate to see the pure food and drug law weakened, and there is no question but that this does weaken the pure food and drug law.

Senator WILLIAMS. I do not know. It seems to me that if we can solve the imbedded question, and I am sure we can solve it, that what this bill does is extend the same kind of opportunity, and I would put this in terms of inequity to the confectionery people, that your law that you are so proud of extends to food. I hate to disappoint my confectionery friends, and I am sure some of them are here in the audience today, but I have a few kids, too. And I will tell you, they are doing a lot of buying of cookies and cakes, and they are buying their own cereals these days. They are a little off candy and on food.

Mr. LARRICK. Four- and five-year-old children are?

Senator WILLIAMS. Yes.

Mr. LARRICK. Well, my experience has been that the children buy candy a lot more than they buy other things that children need.

Senator WILLIAMS. I was rudely awakened up in the country yesterday morning by my 10-year-old boy saying, "Hey, pop, where is the money? I want to get some flakes."

Mr. LARRICK. Some what?

Senator WILLIAMS. Flakes.

Mr. LARRICK. Oh, I see. How old was the child?

Senator WILLIAMS. This was the 10-year-old.

Mr. LARRICK. We are also concerned about 10 year olds. These children that have these things are mostly very young children.

Senator WILLIAMS. Well, now, again, we are coming back to the commingling and that is really not the issue before this subcommittee.

Mr. LARRICK. Well, you are amending the basic section of the pure food and drug law that was originally construed to deal with both problems.

Senator WILLIAMS. Is that what the circuit court of appeals said?

Mr. LARRICK. The circuit court of appeals decided that it did not cover it, but it certainly was intended to cover it. At least, I testified personally at these hearings when it was put in the law.

Senator WILLIAMS. You know that the best evidence of what Congress really intended is what the court says it intended. We cannot argue with that.

Mr. LARRICK. That is the law of the land.

Senator WILLIAMS. That is. Our intention is defined in the circuit courts and ultimately the Supreme Court.

Mr. LARRICK. This did not go the Supreme Court. It stopped at the fourth circuit, as I recall.

Senator WILLIAMS. Did you ask for a writ of certiorari from the Supreme Court?

Mr. LARRICK. I do not recall.

Mr. SMART. No, I do not see certiorari denied.

Mr. LARRICK. We could supply that for the record. Maybe John Mackey knows. He has studied these cases. Maybe he knows.

Senator WILLIAMS. Well, I would say the industry folks would not have asked certiorari, because they won.

Mr. LARRICK. No, that is right.

Senator WILLIAMS. It would be your Department.

Mr. LARRICK. That is right, and I just did not happen to have looked it up to see whether the certiorari was sought. We accepted the decision, and the U. S. attorney subsequently declined to file another case even after the child had died. That was a trinket that came out of a vending machine. I take a very serious view—

Senator WILLIAMS. Well, I do not want this record to be confused.

Mr. LARRICK. Of this being a hazard to children.

Senator WILLIAMS. The Members of the Senate will be carefully reading this record, and I think that it should be crystal clear that this legislation we are dealing with has not a thing to do with changing the law with respect to the commingling of trinkets in candy.

Mr. LARRICK. Well, do not forget—

Senator WILLIAMS. This repealer might present, as it is, some question on a rollback which would allow the possibility of imbedding, and believe me, we will take care of that, and with your help, as you have already indicated.

Mr. LARRICK. We will give it to you, but I think I should make it very clear that we are dealing with a real problem, not a theoretical problem, when we are dealing with trinkets in vending machines. I cited in my testimony that a child of 8 years of age who, on August 21, 1953, choked to death on a plastic trinket he got with gum from a vending machine. And under those circumstances, I think it is the duty of the Department of Health to emphatically urge—

Senator WILLIAMS. Well, have you presented—has your Department drawn legislation that would deal with commingling both in foods and in candy and brought it up here—

Mr. LARRICK. Yes, sir, and sent it to the committee.

Senator WILLIAMS. Oh, you have?

Mr. LARRICK. We have; yes, sir.

Senator WILLIAMS. No, no, before this came on. This is a simple little thing that we are dealing with here.

Mr. LARRICK. Yes, we have had this bill before the Congress for a long time.

Senator WILLIAMS. The commingling in food and candy?

Mr. LARRICK. My recollection is—I did not personally handle the bill—but my recollection is that we sent up alternative language several times.

Senator WILLIAMS. Has it ever been heard by this committee?

Mr. LARRICK. Not by this committee, but in the House. I do not recall hearings in the Senate previously.

Senator WILLIAMS. Well, Senator Hill is the chairman of this committee, and there are not many things that are presented in substance that he does not feel the responsibility to consider carefully in legislative forum.

Mr. LARRICK. I have talked to Senator Hill numerous times.

Senator WILLIAMS. And you have drafted legislation that would deal with commingling in food and in confectionery?

Mr. LARRICK. That is my impression. I would have to check that. I do not think it was presented to the Senate until this year. But the previous years—

Senator WILLIAMS. Well, I have not seen any bill. What is the number of the bill?

Mr. LARRICK. It is not a bill—this is a committee of the Congress I understand that is dealing with an amendment to the basic section of the statute.

Senator WILLIAMS. We are not even talking about that part of the bill. You feel this is very important, this commingling. Have you proposed specific legislation dealing with this problem?

Mr. LARRICK. I have proposed legislation to the Department, but I think the Department's view was that since there were bills pending before the Congress where the Department's point of view could be dealt with and could be expressed completely in response to the committee's request for comments on their bill, that they felt that that was sufficient, and that they did endorse the recommendations that we made and that legislation be had to protect children in this area.

Senator WILLIAMS. Well, I will report what you say to Senator Hill and get his understanding of what has been—

Mr. LARRICK. Well, I think it is my duty, Senator, to point out what our view is.

Senator WILLIAMS. Well, the only point is that I have never seen one of those bills come up here.

Mr. LARRICK. We have never sent up a bill.

Senator WILLIAMS. Oh, than my recollection is right.

Mr. LARRICK. We sent letters to the chairman of the Interstate and Foreign Commerce Committee in response to their request, and it covered the subject matter that would have been the Department bill presumably if we had been asked to—

Senator WILLIAMS. Normally, if the downtown departments want something, they know how to get a bill drafted and how to find someone to introduce it, and then we are in a legislative situation.

Mr. LARRICK. That is right.

Senator WILLIAMS. Mr. Price?

Mr. PRICE. Commissioner, if this bill were passed, would you outline—and I know you touched on this in your statement—what ways you would have to protect the consumer from adulterated or dangerous candy.

Mr. LARRICK. We would not abandon an attempt to prevent the sale of any article broadly within our jurisdiction that is dangerous or that is economically adulterated. There would be sections of our statute that we would bring to bear. Our lawyers, upon whom I must rely, tell me that if this bill passes we have substantially lessened the chance that we can win those cases against either economic adulteration or against the imbedded trinkets.

Senator WILLIAMS. Well, now, we are going to work that one out, that imbedded issue.

Mr. LARRICK. I understand that, but I want the record—

Senator WILLIAMS. Let's forget about imbedded, because we categorically promised that those imbedded possibilities will be absolutely prohibited and no absolutely unsafe substance will be permitted.

Mr. LARRICK. Well, I thank you very much, Senator.

Senator WILLIAMS. That is a categorical promise.

Mr. PRICE. Commissioner, in earlier discussions on this bill at a staff level, we covered a lot of hypotheticals. We raised the point then that if our bill passed and the candy industry went beserk and started making candy that was 50 percent talc, or whatever, and 50 percent candy, then you would be able to proceed then, would you not?

Mr. LARRICK. I just would not suppose that the whole candy industry would go beserk.

Senator WILLIAMS. Well, they would then certainly go beserk if they did that with talc. Talc costs more than corn sirup. They are not in business to lose money. Corn sirup is 6 cents a pound. Talc is 8 cents a pound.

Mr. PRICE. But you would be able to proceed, if there were?

Mr. LARRICK. With 50 percent adulterant, I would think we would prevail. As you get down the line, I think you lessen our chances of winning with this bill.

Mr. PRICE. Where do you draw the line? If it was 25 percent adulterated, you would still be able to proceed.

Mr. LARRICK. I gave you citations to the leading court decision in the area.

Senator WILLIAMS. Now, when we talk of adulteration, what does that mean? We are not even talking about anything that is unsafe, because anything unsafe is absolutely prohibited; right?

Mr. LARRICK. Yes.

Senator WILLIAMS. So adulteration does not mean unsafe substances. It means something else. It is what you call economic.

Mr. LARRICK. Well, it means both in the statute. It has a statutory definition.

Senator WILLIAMS. Well, anything that is unsafe absolutely is prohibited, and you can move in and send people to jail. And then you have the economic adulteration which has not anything to do with health. It is like the fellow that is overpuffing his goods; right?

Mr. LARRICK. Well, it hurts your pocketbook when you do not have very much in your pocket.

Senator WILLIAMS. That is what I am saying, overpuffing. That is what it amounts to.

Mr. PRICE. I think what is difficult for people to understand is why candy has to be superprotected, as it were. The laws you have now to deal with any other food would apply then to candy if this repealer goes through.

Mr. LARRICK. That was the view of the Congress in 1906 when they wrote the law originally, that candy was a special substance bought and consumed very largely by children. This whole question was gone into very thoroughly during the 5 years of our legislative efforts to amend the law which was passed in 1938. This same question was gone over in great length. The same differences of opinion arose, but Congress in its wisdom decided that candy should be treated separately.

Senator WILLIAMS. I think you are protecting mothers and grandmothers more than children. You know, the biggest candy dealer is Mother's Day.

Mr. LARRICK. Well, you are interested in old people, too.

Senator WILLIAMS. Yes. I just cannot see why food and candy are so inequitably considered, so differently considered.

Mr. LARRICK. Well, I have tried to explain—

Senator WILLIAMS. And we are just trying to say for candy that they can use the same substance that all those food folks are using.

Mr. LARRICK. I said in my concluding remarks that we thought the stated objectives of the industry could be met without weakening the pure food and drug law.

Senator WILLIAMS. Well, I am not sure I understood all of the import of Senator Javits' suggestions and observations. I will say that nobody has mastered better than he the business of consensus and legislation. Nobody surpasses Senator Javits on that. I will have to discuss this further with him. I think it would be wise to go on with the rest of the hearing, and then we will see where we stand.

Mr. LARRICK. We will be at your disposal, on call.

Senator WILLIAMS. All right. Fine. Thank you very much.

Mr. LARRICK. Thank you very much, and it is always a pleasure to try to help in any way we can.

Senator WILLIAMS. If I seemed a little strident at times, it is only because I have lived with this provision, and, of course, I have been given the responsibility of the committee. I have talked to many Members of the Senate who are sponsors—I have to convince them and convince myself.

Mr. LARRICK. Thank you very much. The hearing has been a very pleasant one.

Senator WILLIAMS. Our next witness, Mr. John W. Vassos, comes to us from Philadelphia, from the Whitman Division of the Pet Milk Co., and Dr. John H. Nair, consultant, with a very distinguished background here.

Would you come up here, Mr. Nair, too?

First, we will hear from Mr. Vassos, and then from Mr. Nair.

STATEMENT OF JOHN W. VASSOS, DIRECTOR OF RESEARCH AND DEVELOPMENT OF WHITMAN DIVISION, PET MILK CO., PHILADELPHIA, PA.; ACCOMPANIED BY JOHN H. NAIR, CONSULTANT TO THE FOOD INDUSTRY, RALEIGH, N.C.

Mr. VASSOS. Mr. Chairman, my name is John W. Vassos. I am director of research and development of Whitman Division, Pet Milk Co., confectionery manufacturers located in Philadelphia, Pa., and I appear as a member of the Research Committee of the National Confectioners Association.

This association is a national trade association of confectionery manufacturers located throughout the United States and suppliers of goods and services to the industry. We estimate our manufacturer members produce approximately 85 percent of the confectionery manufactured in the United States.

This appearance is entered in support of H.R. 7042, which passed the House of Representatives on June 7 of this year following a unanimous report of the House Interstate and Foreign Commerce Committee, and a companion Senate bill, S. 1839, introduced by 16 Senators, 8 of whom are members of the Labor and Public Welfare Committee. The purpose of these bills is to let the confectionery industry use the same safe, nonnutritive substances as may be used by every other segment of the food industry.

Congress in 1958 enacted the food additive amendment which requires the pretesting of all food additives used in all foods to assure the safety of all additives to the satisfaction of the Federal Food and Drug Administration before their use may be authorized in food either on an unrestricted basis or for use within prescribed limits. The Food Additives Amendment of 1958, which the confectionery industry was pleased to support, established a new standard of pro-

tection for the American consumer to assure that every additive used in every food had been approved by the Federal Food and Drug Administration.

Section 402(d) of the Federal Food, Drug, and Cosmetic Act, with certain exceptions, requires that all additives used in confectionery be nutritive. As a result, in the case of foods other than confectionery, usage is authorized when safety has been established. In the case of the confectionery industry, after safety has been established, the additive also must be nutritive.

At the turn of the century when the Food and Drugs Act of 1906 was enacted, which provided the base for the current law, there were harmful substances being used by some manufacturers in confectionery. This was a time when there was not adequate control over the use of additives in foods in general and seemingly a requirement that additives in the case of confectionery be nutritive served as a useful purpose to keep harmful substances out of confectionery. Fifty to sixty years ago this worked well for the industry, for the Government, and for the consumer. When the 1938 Federal Food, Drug, and Cosmetic Act was enacted the nonnutritive provision was carried forward which is known as section 402(d) today.

Before I go on any further, Mr. Chairman, regarding the terminology, quoting from Food and Drug, "nonnutritive" refers to a substance which when ingested by man is not utilized in normal metabolism. To others, it means noncaloric. Regardless of which definition is employed our stand is the same. I am quite sure Dr. Nair will discuss this further.

With the Food Additives Amendment of 1958 having been enacted without section 402(d) having been amended, the confectionery industry has found itself in an anomalous position whereby it is treated on a basis different from every other segment of the food industry.

We are very much in favor of Senate passage of H.R. 7042 for the following reasons:

(1) The industry is very desirous of having eliminated the discrimination without a purpose which places the confectionery industry in a different position than the rest of the food industry. We are asking only for the same treatment as is already accorded everyone else, specifically the right to use safe additives—additives which the Food and Drug Administration agrees to be either absolutely safe or safe for use within prescribed limits. Particularly we have reference to preservatives, emulsifiers, stabilizers, antioxidants, and release agents. The additive may keep the candy fresher longer, it may inhibit oil or other ingredient separation, it may texturize, it may prevent the candy from sticking to the slab, or it may perform one or more many other useful functions.

(2) The food business today is a highly competitive business. The human stomach holds approximately 40 ounces. There is extreme competition for space in the human stomach. If an additive imparts desirable qualities and it may be used by the bakers, the canners, the frozen food packers, the preservers, and any other food industry, we are at a competitive disadvantage if we may not also use such additives.

(3) While we are at a competitive disadvantage today, scientific development and progress, we all know, is proceeding at an accelerated rate. We do not know what the future will hold. We do not

know what the scientists of tomorrow may develop which will improve the quality and palatability of food products which by mere coincidence may not be nutritive. In the case of additives which the Food and Drug Administration may approve for use in the future, we want to be able to use such additives just the same as all other segments of the food industry.

Mr. Chairman, we think we have been patient and tolerant regarding this matter. When the problem first began to confront our industry, we held initial discussions with the Food and Drug Administration in 1954 to determine if we could obtain cooperation from the Food and Drug Administration in amending the law. Although the law presented a hardship to our industry, we felt that they had a sound basis at that time—1954—in not wanting to change the law, and we accepted that position. This is in answer to Senator Javits' comments. We did try, and we did approach Food and Drug in 1954. At that time the Food and Drug Administration did not have the food additive amendment and, therefore, could not assure the safety of all additives in all foods. They do have that authority now and, therefore, the prohibition against the use of nonnutritive substances in confectionery has no sound basis.

When Food and Drug first announced that it would not support our industry position after the food additive amendment had become law, we felt badly. We felt that they had taken a position without good reason even though equity was completely on our side. We fully recognize that there is a normal and natural reaction on the part of any individual to question the wisdom of any measure involving food additives if opposed by the Food and Drug Administration. Nevertheless, under the circumstances we had no alternative.

The House Interstate and Foreign Commerce Committee considered the matter carefully. Last year it passed H.R. 4731 on August 12, and it reached this committee too late in the session for action. Happily the House Interstate and Foreign Commerce Committee again reported a bill with the same language, H.R. 7042, this year which has now passed the House of Representatives. We want to invite your attention to the fact that House Report 376 was a unanimous report of the Interstate and Foreign Commerce Committee and want to respectfully suggest that the committee would not have taken such action had they felt that the position of the Food and Drug Administration was not without substance. Let us make it completely clear that we are not talking about any additives about which there is any question of safety on the part of the Food and Drug Administration. We are concerned only with additives which the Food and Drug Administration itself has agreed are safe for food use.

OBJECTIONS OF THE FOOD AND DRUG ADMINISTRATION

(1) The Food and Drug Administration has commented that it does not favor use of nonnutritive substances in confectionery because a significant portion of confectionery is consumed by children. This observation is so ridiculous that it is difficult to believe that the Food and Drug Administration would advance it. We are not talking about any additives which would be harmful to children or to anyone else. We have reference to safe additives and only to safe additives. We are concerned only with additives which the Food and Drug

Administration itself has certified to be safe for unrestricted use, for use within prescribed limits, or which may be certified for use at some future time. We all know children eat many other foods, including but not limited to, baked goods, ice cream, cookies, cereals, and frozen and canned fruits and vegetables in which safe, nonnutritive additives may be used. In fact, housewives today are buying more candy than children. Regardless of conjecture as to what percentage of any food is consumed by children, we all know that baby food is an item which is consumed entirely by infants and the prohibition against the use of nonnutritive additives does not apply to baby foods.

(2) The Food and Drug Administration has indicated that it would be willing to permit the confectionery industry to use the same safe, nonnutritive substances as it approves for general use in foods if and when it should approve the individual additive for confectionery use by special regulation in each instance. This proposal is as inequitable and unfair as it is absurd. If an additive is safe and approved for use in foods generally, why should the confectionery industry be required to go through a useless administrative, time-consuming and expensive procedure? It would not serve a public purpose to require special permission for the confectionery industry to use safe additives. The Food and Drug Administration by this proposal is seeking to get Congress to approve in the case of confectionery that which the Food and Drug Administration proposed and Congress wisely rejected in the Food Additives Amendment of 1958. Reference is made to the Food and Drug Administration proposal that it should be convinced of the technological value of an additive before it might be used even after its safety has been established. We respectfully suggest that the Food and Drug Administration has lost sight of its proper governmental function. Its function as we understand it is to determine the safety of food additives, assure proper labeling, and to insure plant sanitation. Recipes should be written by the manufacturer so long as safe additives are used with the public being the judge under our private enterprise system. Obviously we would not have the variety and quality of the thousands of food products we have today if the Food and Drug Administration had to agree to the recipe in every case.

(3) The Food and Drug Administration seeks an amendment to the bill which would prohibit the commingling of trinkets in confectionery. Regarding this issue they contend possible tooth damage or the swallowing of trinkets. We believe history shows that this is a theoretical fear rather than a practical argument. However, we do not profess to be authoritative in this area. If by chance commingling is an evil then we think it should be dealt with across the board and apply to all industries and not just to the confectionery industry. As we have attempted to emphasize in this statement, one of the three important reasons for the confectionery industry seeking this legislation is to eliminate the discrimination against the confectionery industry. Inasmuch as section 402(d) applies only to confectionery, if this section were amended to prohibit the commingling of trinkets with confectionery it would represent a discrimination against the confectionery industry. Furthermore, it would be striking at a symptom and not at the base of the problem, if indeed a problem exists at all. Although admittedly conjecture, probably there has been more commingling of trinkets with cereal than with any other food product, yet

this proposal would not reach such commingling, nor would it involve the commingling in the case of popcorn, nuts, or other food commodities. If this subject is to be dealt with, it should not be an amendment to section 402(d) but should be considered by Congress as a separate bill after the Food and Drug Administration has presented a report based on a comprehensive study of possible problems which may be involved with the commingling of trinkets in all food items—not just candy.

You spend many hours of your life listening to testimony at committee hearings and invariably the witness feels that the cause which he espouses has special merit, but we respectfully ask you to think over our request and inquire of yourself if you have ever heard a more equitable or reasonable request than that which would be accomplished by this bill. This is a request that one segment of the food industry, specifically the confectionery industry, be allowed to use the same safe nonnutritive substances as the Food and Drug Administration itself approves as being safe for use in all other foods.

We urge you to report H.R. 7042 to the full Labor and Public Welfare Committee with the recommendation that it report the bill favorably to the Senate.

Mr. Chairman, I would like to submit to your committee a medical report from Australia on the materials such as coins, buttons, et cetera, being swallowed by children for your evaluation.

Senator WILLIAMS. Yes. Well, I appreciate very much your statement. Of course, I think you do indicate what Senator Javits and I were trying to develop, that no legislation is before us dealing with this trinket business. We would certainly be alert to consider it if it were brought to us. It has not anything to do with the bills before us, either the House-passed bill or the Senate bill. That was not germane. It was brought into the discussion of Commissioner Larrick, so we will receive that, too.

This has not anything to do with the bill, but about how long has Whitman been a division of Pet Milk?

Mr. VASSOS. Approximately 3 years. We were started in 1834, Whitman, and that is how long we have been in business.

Senator WILLIAMS. Well, I do not follow the cases as closely as I used to when I was practicing law. I do not see you in court very much for having gotten anybody sick with bad candy.

Mr. VASSOS. We have never been there.

Senator WILLIAMS. Never been there?

Mr. VASSOS. No, sir.

Senator WILLIAMS. We all appreciate, of course, that the Food and Drug Administration is the governmental arm of protection for consumers of food and drugs. And, thank goodness, we had the wisdom long ago to create this agency of Government, and I do not believe anybody would suggest that in this area it should be done exclusively State by State. There does not seem to be any inclination here to abolish the protection granted the consumers by the Food and Drug Administration.

Now, I wonder if the Food and Drug Administration isn't inhibiting its opportunity to improve its protection of the consumer by being opposed to this legislation?

Now, in the dynamics of life and the advances of technology, I would think candy should be able to keep pace with other foods. Candy in a sense is a perishable product, is it not?

Mr. VASSOS. Yes, it is.
 Senator WILLIAMS. And it being perishable it reaches a point where it could spoil.

Mr. VASSOS. That is true.

Senator WILLIAMS. I do not know anything about chemistry, but I would think that chemistry could protect to a certain degree against early spoiling and longer preservation. Is that possible?

Mr. VASSOS. Yes, it is.

Senator WILLIAMS. Since the 1958 amendments that changed the law, do you know of any scientific advances that could make candy for the consumer that are not permitted because of the law as it is?

Mr. VASSOS. Yes, I do.

Senator WILLIAMS. And I would hope Dr. Nair would consider this when you are talking about it and deal with this question, too, because you come to us with a magnificent background in science and chemistry.

How about you, Mr. Vassos, are you a chemist?

Mr. VASSOS. Yes, I am.

Senator WILLIAMS. Well, then, you are both qualified.

Mr. VASSOS. Antioxidants are used, have been used in the fats and oil industry since 1948, in edible fats and oils, and essential oils, such as corn oil, lemon oil, et cetera. And this, as the name implies, applies to oxidation, not oxidant change, oxidation. And this is one form of rancidity.

Now, if we were to make butter creams and send them out all over the country, as we do, with about 8 percent butter, the shelf life without any antioxidants may be 7 to 10 days, depending on the storage conditions. With the the use of antioxidants, we are able to expand the shelf life 12 weeks, and, naturally, the consumer does not like to buy candy that tastes rancid.

Now, antioxidant salt is also used on nuts to prevent them from going rancid. And there are a number of applications. In fact, the percentage that they add is two one-hundredths of 1 percent. In fact, many believe that all these food additives that we add are usually much cheaper, and, therefore, the candy industry will make a bigger profit. But this is not so. Actually, this material runs over \$2 a pound, maybe \$3, \$4, and in order to check this rancidity—in fact, we are increasing our production, but we are trying to assure the consumer gets a good product.

Senator WILLIAMS. Well, it would seem to me that you people who have national eminence in the confectionery industry would be looking to this as an opportunity to improve and not to debase your product in any way; am I right?

Mr. VASSOS. That is right.

Senator WILLIAMS. There seems to be sort of an underlay of suspicion that if this repeal passed, the candy would not be as good. What I am suggesting is, with modern technology, wouldn't you make your product better for the consumer?

Mr. VASSOS. Definitely so.

Another nonnutritive material we cannot use is mineral oil. Mineral oil has about three advantages to the candy manufacturer. Mineral oil has a concentration about one-tenth to two-tenths percent to holding starch, and this aids in making impressions in the molding

starch because the liquid candy is deposited into the mold and also aids in cutting down the dusting factor which is the cause of explosions.

Mineral oil is also used for a slab coat, or a coating on the slab, a marble or steel slab, to prevent the candy from sticking. Another use for mineral oil is the polishing of soft gums. And you probably wonder how we have been able to replace mineral oil, and we have not. There have been additives put into starch. There have been additives put onto slabs and additives also on polishing, and we end up with a deterioration of flavor of the fats that we are adding into the candy.

Senator WILLIAMS. Thank you very much.

Dr. Nair, I think it would be useful for the record, if you would identify yourself, together with your positions and achievements over the years.

I have read your biography, and you come to us with the highest qualifications, and I want the record to reflect that.

STATEMENT OF JOHN H. NAIR, CONSULTANT, FOOD AND CHEMICAL INDUSTRIES, RALEIGH, N.C.

Mr. NAIR. Mr. Chairman, my name is John H. Nair. I am an independent consultant to the food and chemical industries and reside in Raleigh, N.C. Educated as a physical chemist, I have been engaged in the food industry for over 50 years, during which time I acquired experience in research and product development, food processing and engineering, retail food sales, technical sales service, consumer surveys, packaging development, research administration, and as a business executive. I retired some years ago from Thomas J. Lipton, Inc., where I was a research executive. Since then I have been at various times a consultant to firms such as Du Pont, Allied Chemical, Dow, American Viscose, International Milling, American Machine & Foundry, Nestles, Kurth Malting, Votator, and to the Sugar Research Foundation and the U.S. Department of Agriculture.

I have served as president of the American Institute of Chemists and of the Association of Research Directors, am currently a director of the American Chemical Society and president-elect of the Institute of Food Technologists. I appear here as a qualified expert on food matters at the request of the National Confectioners Association.

This appearance is entered in support of H.R. 7042, which passed the House of Representatives on June 7 of this year following a unanimous favorable report of the House Interstate and Foreign Commerce Committee, and a companion Senate bill, S. 1839, introduced by 16 Senators, 8 of whom are members of the Labor and Public Welfare Committee. The purpose of these bills is to allow the confectionery industry to employ in the manufacture of its products the same safe nonnutritive substances as may be used by all other segments of the food industry.

Under the food additives amendment enacted by the Congress in 1958 as an addition to the Food, Drug, and Cosmetic Act of 1938, it is required that all substances added during the processing of all foods shall be pretested to assure the safety of their use to the complete satisfaction of the Federal Food and Drug Administration. Only then may their use be authorized in foods either on an unrestricted basis or within certain prescribed limits. Thus, a new standard of

protection for the American consumer with respect to food was established in 1958, assuring that any additive employed, whether nutritive or nonnutritive, was harmless.

However, earlier enactment of section 402(d) of the Food, Drug, and Cosmetic Act of 1938 had required that all additives used in confectionery must, with certain exceptions, be nutritive. In other words, while all additives now used in processed foods must be safe, only in confectionery is it required that they also be nutritive.

Now, if one traces the history of food processing during the past 60 years one finds that revolutionary advances in methodology, equipment, and packaging have occurred. Science has steadily unearthed new facts which contribute to the safety of processed foods. Industry has been quick to take advantage of such knowledge, discarding older rule-of-thumb methods and practices and instituting new automatic high-speed technology. Today the American consumer is offered the widest choice of the most nutritious, palatable, appetizing, and attractive processed foods to be found in the world, with absolute assurance of their safety, barring unforeseen accidents.

Now, this developing food technology has led to the employment of a wide range of food additives to produce foods of better keeping quality, improved flavor, more attractive appearance, better texture, and more valuable nutritionally. Some of these substances serve a technological purpose to make processing easier or quicker, others help retain nutritive values, while certain ones give longer shelf life. All are safely used because the Federal Food and Drug Administration must so certify prior to their acceptance.

But confectionery manufacturers can only employ them if they have nutritive value per se. It is difficult for a scientist to perceive any logical grounds for such discrimination against confectionery. If it is in the public interest to permit the food industry generally to utilize the newer technology built around incorporation of additives, whether nutritive or not, it would appear against the public interest to prohibit the use of certain additives in confectionery, when their addition would be advantageous.

There is an almost endless list of additives approved for use in processed foods and the list grows longer daily. Many of these are nonnutritive. Some are acceptable because they are generally recognized as safe, or GRAS for short. Many others have been tested exhaustively on different species of experimental animals and the resultant data critically reviewed by the Food and Drug Administration. Only when satisfied as to their safety for humans does the Department certify them for use.

Now, in my prepared brief, I have listed a number of examples of compounds added to foods, which includes such things as emulsifiers, antioxidants, stabilizers, wetting agents, thickeners, clarifiers, foaming agents, and leavening agents. But unless the Chair wishes, I will not go into the details of these, leaving these for the record.

I would like to point out that it is a bit difficult to determine what is meant by the use of the term "nonnutritive." To some it means it has no caloric value. To others, it means it is not metabolized in the body. Still others say that a thing is not nutritive if it will not sustain life.

Now, some of the examples of chemical additives which I have cited in my brief might be called nutritive by one definition and non-

nutritive by another. And this serves to show the rather ridiculous results of applying a term which has no single definition on which scientists would agree.

What I am concerned with is not that any additive be determined nutritive or nonnutritive, but that the consumer be protected because the additive is safe. Now, this is guaranteed by the Food Additives Amendment of 1958, and I am very happy to say that I think the Food and Drug Administration are doing an excellent job of interpreting and supplying this law. But I want to emphasize that these additives are all quite harmless to humans at the levels at which they are used. But their addition serves a useful end, whether it be improvement of the product, longer shelf life, or just more appetite appeal.

Now, the Food and Drug Administration has cleared all of them for use in all foods, but section 402(d) prevents the confectionery segment of the industry from employing them.

Now, as a scientist and technologist very familiar with practices in the food industries, I can see no basis for such discrimination. The consuming public is amply protected, in any case. It appears to me not only reasonable and logical, but in the public interest as well, to enact H.R. 7042 which permits the same treatment for confectionery in the matter of nonnutritive additives as is now accorded all other processed foods.

Mr. Chairman, I would urge your subcommittee to report H.R. 7042 to the full Labor and Public Welfare Committee with the recommendation that it, in turn, report the bill favorably to the Senate.

Senator WILLIAMS. Well, I am grateful, indeed, for that statement, Dr. Nair.

Let me see if I understand the operation of 402(d). It seems to be saying to the confectionery industry, but not to most of the food industry, that in terms of technological advance in the improvement of your product through nonnutritive substances, you have got to stand still at 1958.

Mr. NAIR. That is exactly the situation; yes, sir.

Senator WILLIAMS. You know, if you applied this a la Immanuel Kant to all industry, this categorical imperative would freeze us back in relatively the horse and buggy days.

Well, you folks are in competition with a lot of people. The stomach, I think you said, Mr. Vassos, contains 40 ounces. Is that the average stomach?

Mr. VASSOS. Average stomach.

Senator WILLIAMS. Average adult stomach, 40 ounces. Good gracious, you are not only in competition with food, you are in competition with liquids, just to mention one relatively inoffensive liquid, beer. That takes up some part of that stomach space, does it not?

Mr. VASSOS. Yes.

Senator WILLIAMS. Can the beer folks add nonnutritive substances to their product?

Mr. NAIR. Yes, indeed. For example, they clarify the beer by the use of a polymer which is called—it is a long chemical name, polypropylpyrrolidone. This is a clarifying agent, perfectly safe, harmless, which is used in beer. And all fermented malt beverages are allowed to use it as a stabilizing agent for the foam, which serves useful pur-

poses, but such technological advantages which make beer more attractive to the consumer are denied to the confectionery people.

Senator WILLIAMS. The Commissioner is most concerned with protecting children. Of course, the infants these days are fed products prepared by an industry, not by their mother—baby food.

Mr. NAIR. That is right.

Senator WILLIAMS. Are the baby food people permitted to include nonnutritive substances in their products?

Mr. NAIR. Yes, indeed, they are.

Senator WILLIAMS. Well, how about spoilage of the baby food?

Mr. NAIR. They use such things as ascorbic acid or its derivatives are used to prevent spoilage, which is identified as nonnutritive per se. It could be metabolized and if one used this definition it might be classed as a nutritive, but others would not use it as a nutritive. It serves a good purpose and is not harmful. But we normally do not think of it as a nutritious substance, you see. And this is one of the widest uses of materials in food, generally, these which prevent spoilage.

For example, every loaf of bread you buy today will have an anti-mold inhibitor in the bread. It is universally used today. And it serves a useful purpose because it makes the bread stand up in the home much longer before it gets moldy.

Senator WILLIAMS. That clarifies the situation for me.

Mr. NAIR. You take ice cream, for example. Ice cream today is stabilized with a derivative of cellulose, which is completely indigestible, and it does a very good job. Gelatin was used originally quite widely, but carboxymethyl cellulose is the additive in ice cream today which is mostly preferred. It does a very fine job. It is completely harmless. It gives the kind of texture and the eating quality that we want in ice cream, but it is nonnutritive.

Senator WILLIAMS. We preserve in this amendment the prohibition against the use of alcohol beyond that small fraction that is used in coloring. We are not disturbing that at all.

Mr. NAIR. Not at all.

Senator WILLIAMS. Does the nonalcohol provision prevail in the rest of the food industry, too?

Mr. NAIR. No.

Senator WILLIAMS. There used to be an ice cream called Disk that was completely loaded with some kind—

Mr. NAIR. You will get a rum-flavored ice cream today, and this has alcohol in it.

Senator WILLIAMS. Yes; but we are making it very clear that we are not going to change the prohibition against alcohol.

Mr. NAIR. In confectionery, this is right.

Senator WILLIAMS. Now, there is one other thing. I have made a categorical promise to Commissioner Larrick—well, first back up a bit. The House-passed bill might create some question that we are rolling back to the old days when an article could be imbedded in candy.

Now, if there is any question on that, and question has been raised, so there is question, I made the categorical promise that this legislation that we finally consider in the committee will prevent the non-functional foreign article being imbedded in candy.

Now, you speak for the industry, do you not, Mr. Vassos, pretty generally?

Mr. VASSOS. Yes.

Senator WILLIAMS. What I am saying is a nonfunctional article—there are certain things that are necessary to the product. Just as popsickles are on a stick.

Mr. VASSOS. As many of you know, millions and millions of lollipops are made each year and we in the candy industry would like to operate legally, but under the present law we cannot operate legally because the stick that is in the lollipop is nonnutritive.

Senator WILLIAMS. If the Congress of the United States takes lollipops away from the youngsters, that generation that is deprived will change the makeup of Congress when they get their chance.

Mr. VASSOS. Mr. Chairman, I glanced over Mrs. Desmond's report before it was my turn and I do not agree—

Senator WILLIAMS. Well, I think maybe this is putting Mrs. Desmond in the rebuttal position before the negative statement that she is going to present, as I understand it.

Mr. VASSOS. I understand.

Senator WILLIAMS. We might give you a rebuttal and then Mrs. Desmond a surrebuttal, but then we will stop.

Mr. VASSOS. All right. Thank you very much.

Senator WILLIAMS. All right, thank you. We are very grateful to you.

Our next witness is Mrs. Ruth Desmond, president of the Federation of Homemakers, and a resident of Arlington, Va.

We know of your interest in this legislation, Mrs. Desmond.

STATEMENT OF RUTH G. DESMOND, PRESIDENT, FEDERATION OF HOMEMAKERS

Mrs. DESMOND. Yes.

Senator WILLIAMS. Welcome.

Mrs. DESMOND. Thank you.

Senator WILLIAMS. You can proceed anyway you care to.

Mrs. DESMOND. Thank you, Mr. Chairman.

I am Ruth Desmond, president of the Federation of Homemakers, a nationwide organization of public-spirited women. This federation is incorporated under the laws of the District of Columbia as a nonprofit organization. Its officers and directors volunteer their time to advancing federation programs and goals.

The federation's primary objective is to inform its members of the potential harm their families may incur from ingesting chemically treated foods—especially their young infants, children, and adolescents. Only responsible and recognized authorities are quoted in its statements. Another objective is to acquaint its members with the work, responsibilities, and special problems of the FDA—this being the agency empowered by Congress to protect consumers from unwholesome, filthy, adulterated, poisonous, and mislabeled foods, substandard and improperly labeled drugs, and harmful cosmetics, among its important duties.

This federation endeavors to inform its members of pending and recently passed food, drug, and cosmetic laws. Its board presents statements on behalf of its members before appropriate congressional

committees and at FDA hearings relative to regulations and establishing standards of identity. Members supported Secretary Fleming (HEW) in his valiant and successful fight for inclusion of the protective Delaney anticancer amendment in our recently passed additive and coloring laws.

For the subcommittee's attention, the statement of Mrs. A. I. Malstrom, board chairman, is submitted to illustrate the position of this organization with regard to the calculated risks the public endures as a result of rapidly changing technology—particularly with respect to methods of food processing. This submitted statement was given when the Senate Commerce Committee conducted its public hearing on "truth-in-packaging legislation."

This federation appreciates the privilege and opportunity of appearing before this Special Senate Subcommittee on H.R. 7042 and S. 1839 to oppose this legislation shorn of the administration's strengthening recommendations and for additional reasons which will be given.

The candy industry has enjoyed a remarkable growth and prosperity in this country since the mid-19th century when England was the leader in manufacturing confectionery known as boiled sweets. The inventiveness and ingenuity of the candymakers here has led to the United States surpassing all others in this great industry. Candy is a favorite with most of us but especially rates high with children.

As young children most of us received candy as rewards for good behavior, for "cleaning our plates" as prizes. The Easter bunny fills baskets with rainbow eggs and goodies as well as the chocolate-covered delight. Halloween brings gay and spicy "tricks or treats." Valentine's Day provides "sweet" tokens of affection—many in lovely heart-shaped containers. So does Mother's Day. On special occasions candy is frequently presented. Candy is enjoyed by people—young, mature, pregnant, and aging. It especially appeals to children. Also young athletes count on it for quick energy "pickups." There is even candy for the overweight and the diabetic—using nonnutritive artificial sweeteners but with required listing of the nonnutritive sweetener and warning that such agent "should only be used by those who desire to restrict their intake of ordinary sweets." Candies may be brightened with certified colors and flavored by artificial flavoring. Vegetable gums may be used as stabilizers.

Senator WILLIAMS. Now, this is a public record and this will go into the permanent records of this committee in Congress. I think the candy people probably will use that as a direct quote in their advertising. It is a very fine statement.

Mrs. DESMOND. Yes.

Because candy has such universal appeal—it seems most important to restrict the chemicals allowed in its manufacture. Otherwise it is probable the immature bodies of very young children and the rapidly growing bodies of adolescents may be required to metabolize larger amounts of certain chemicals than actually regarded as "safe." Small children selecting and purchasing their confectionery on their own, possibly accompanied by an older brother or sister, could in ignorance obtain a product composed mainly of nonnutritive ingredients if this bill is passed—appealing in flavor and color—even texture. These tots might begin the day with cereal coated with a nonnutritive sweetener. On a hot, humid day they might consume generous quantities of beverages containing also a nonnutritive

sweetener. Later they might consume a low calorie frozen dessert with the same artificial sweetener. Certain of these artificial sweeteners are regarded, so we understand, as laxative when consumed in large amounts, especially by youngsters. It is plain to see why FDA should have the decision on what types of additives may be approved for confectionery.

Of course, there are already preservatives in the candy—I was checking the candy labels yesterday. Some children might get a preponderance of a certain type of an artificial sweetener in their daily intake.

Senator WILLIAMS. You, in good logic, then, would extend this authority to food, too?

Mrs. DESMOND. Oh, yes. But there is a different situation. Children sometimes do purchase their candy. Adults usually purchase food. I do think that there should be special supervision and special selection of these additives for candy by FDA, because, you see, there is this possibility that children will get too much artificial sweetener if this trend continues on.

Senator WILLIAMS. Take marshmallows covered with chocolate, that is candy; is it not?

Mrs. DESMOND. I presume so—

Senator WILLIAMS. Then you take a marshmallow covered with chocolate and put it on the cracker—

Mrs. DESMOND. Like the Girl Scouts have done.

Senator WILLIAMS (continuing). Then it is food.

Mrs. DESMOND. Yes.

Senator WILLIAMS. The lines are indistinct. You can add a little bit of "food" to basically what is candy and permission is fully granted for nonnutritive substances and yet, if it is not treated to be food, permission is not granted. Do you not see the inaccuracy?

Mrs. DESMOND. I can see that. However, this group has petitioned the Joint Committee on the Organization of Congress and we are trying to get some public-spirited Members of the House to set up a full Committee on Health and Safety in the House instead of the present subcommittee, where more time and attention can be given to food additives and food legislation.

We would hope, then, with a new full-time committee, if it ever is set up, to have the Food Additives Act of 1958 thoroughly gone over and reevaluated. We are not too happy with the result of approximately 3,000 chemicals, about 1,000 migrating from packages, in our processed foods under the 1958 Additives Act.

Senator WILLIAMS. I can understand what you are saying, but, you know, the children these days are growing taller than we grew tall. I have a boy that is bigger than anyone in the family. I have some nephews, also. I have a feeling that the youngsters of today are getting a diet that far exceeds the diet of 20 years ago.

Mrs. DESMOND. Well, perhaps some are, sir, but I do see a lot of them that are living it up on pizzas and artificial drinks and barbiturates, and we wonder if this cannot be helping them to get off the deep end when they get into these riots at beaches. The draft rejections, they are appalling, and there is an alarming increase in mental illness.

Senator WILLIAMS. I will agree with you, there is a great exuberance in our young people. It is founded on, first, generally a healthy body. There is nothing worse than seeing a youngster who is suffering

from malnutrition. I have traveled in Central American countries. Those youngsters are not exuberant at all. They just sit and bloat, they are not getting the nutrition that our youngsters are getting. I would say that I am not supporting youngsters who put their healthy exuberance into antisocial activities. It is our job as adults to help them find the productive way to express their exuberance, and that is, of course, why we are passing a lot of legislation around here, the education and poverty program that deals with more children.

Mrs. DESMOND. I understood that many Central American children were bordering on starvation; and I would say a lot of our young people are just overexuberant from chemicals, that they are not normally active. I cannot agree in that regard. I believe if their arteries are examined, as there have been examinations at least of some of the Korean soldiers, that you find them pretty well clogged with cholesterol and fatty particles from a wrong diet.

Senator WILLIAMS. Who is that?

Mrs. DESMOND. This was—Mrs. Robinson, what is the name of the doctor who did the research?

Mrs. ROBINSON. I cannot give you the name, but he was in the Army. It was shown that 77 percent of the Korean war veterans killed in action averaging age 22 showed arteriosclerosis, while only 11 percent of the Koreans killed in action showed signs of arteriosclerosis, and this was done by a medical doctor with the Army, Dr. William F. Enos, office: 601 South Carlin Springs Road, Arlington, Va.

Mrs. DESMOND. We can furnish his name later. We have his name.

Senator WILLIAMS. Well, I served in the Armed Forces for 4 years and I will grant you the diet was not the best then. I understand that they have substantially improved the diet for our forces here and abroad.

Mrs. DESMOND. Yes. This damage was presumed caused by a diet in childhood—youth.

Senator WILLIAMS. For our Armed Forces.

Mrs. DESMOND. Well, then there are the dubious, even suspect, nonnutritive emulsifiers made from cotton fibers or wood pulp. This we don't like. These seem popular with industries because they are less expensive than gelatin and vegetable thickeners and blend well with the food and beverages. One producer of a "breakfast" beverage stated carboxymethyl cellulose blended with their product as the pulp of the citrus blended with orange juice. That is quite remarkable. An example, sodium carboxymethyl cellulose has replaced gelatin in the production of commercial ice cream. It is a component of several widely advertised "breakfast" beverages. It is sometimes used in cake mixes and packaged icings—also in the "fake" whipping creams. Salad dressings may contain it. Even a child's frozen treat, to be made at home, contains this suspect thickener. You will note in Mrs. Malstrom's, May 18, statement quotations from several researchers and physicians who do not believe this emulsifier should be permitted in food. One is Dr. Kraybill and one is Dr. Hueper. Dr. Bicknell was very suspicious of it—the late Dr. Franklin Bicknell.

Think of the increase in consumption of this suspect emulsifier if it is permitted in candies too.

Before permitting these nonnutritive items in confectionery it seems prudent to await reports from the new Institute of Environmental Health. Instead of granting permission for additions of chemicals to candies it seems sensible to restudy and reevaluate the 1958 Food Additives Act with the desire to eliminate many of the several thousands of chemicals now appearing in processed foods.

Senator WILLIAMS. I wonder if we could go back to the statement of this suspect emulsifier. Whose suspicion is this?

Mrs. DESMOND. Well, I quoted three. The late Dr. Franklin Bicknell, of England, he produced a very fine standard volume on vitamins. He enjoyed high regard as a scientist. And our Dr. Hueper of the National Cancer Institute. He is now just recently retired. He received a World Health Organization award for his cancer research. And then Dr. Kraybill of the U.S. Public Health Service has mentioned it. And there have been several researchers at Food and Drug who have done some research re skin injections.

Senator WILLIAMS. I was coming to that. Do you feel the Food and Drug Administration has the ability, the knowledge, the staff to define what is safe and unsafe in the nonnutritive area as it is applied to foods?

Mrs. DESMOND. Perhaps it has by now. It has always had some very fine scientists, but until about 5 years ago it was a Cinderella agency. It used to have about \$6 million to operate on. I understand this year it has a budget of \$56 million. I suppose the thalidomide tragedy, and so forth, has helped increase its budget. But as I understand it, it has never been able to do all the research it should. It was 25 years behind in the study of the safety of color additives. It was so understaffed for so many years that the first Citizens Advisory Committee which went through there in 1955 said a national catastrophe could occur if it were not given adequate appropriations and additional personnel.

Senator WILLIAMS. You know that any new material that comes into use has to be pretested for safety by Food and Drug?

Mrs. DESMOND. Well, don't they go over the reports—review reports submitted by manufacturers?

There is a possibility certain reports are faked; laboratory-faked reports. We have read of these. McCall's magazine covered this situation. So I would say now these scientists at Food and Drug will have to go through a lot of industry's reports assuming that they are valid. But if they see something they do not think is scientifically sound, then won't they carry out that research on their own? I do not think FDA scientists can possibly carry out the research on 3,000 additives, can they?

Senator WILLIAMS. As I understand the law, they have to make a determination that this substance is safe.

Mrs. DESMOND. Well, theoretically, don't they look at the research that has been done, and if it looks generally valid agree? There is a very fine researcher, one of the top scientists with all the proper qualifications, not just a food fabricator, in his opinion we have never gone in depth into this. We have never studied the lifetime exposures. And for a long time scientists have been studying effects of these additives on rats and mice. I have a book at home of the Food Law Officials of the U.S. on the toxicity of various drugs and dyes. Rats and mice are 10 times less sensitive than humans to

drugs and to coloring, to many things. They seem to have cast iron digestive systems. These animals possess sensitive skins and very sturdy stomachs. So now researchers are substituting other more appropriate animals, dogs and cats, for example. FDA now uses a wide variety of animals in performing safety evaluations.

Senator WILLIAMS. There will always be differences of opinion, I suppose, on what is efficacious, what is safe.

Mrs. DESMOND. Yes.

Senator WILLIAMS. Now, we have people that periodically solicit us and tell us that Krebiozen has been very useful in the control and treatment of cancer. The Food and Drug Administration disagrees. There will be these differences, but we are not talking about, in the area of food, this kind of dramatic difference. We are talking about the truly bland and easily defined safe nonnutritive substance that can improve the product and make the product better.

Mrs. DESMOND. Well, I still have doubts about sodium carboxymethyl cellulose, and I don't like to see it in infant food.

Senator WILLIAMS. I take it you are a chemist?

Mrs. DESMOND. No, I am speaking, you know, as a housewife, but you can see that I have read a lot about it, and I am quoting authorities. Our officers have attended hearings from the food additive hearings on. We went to the Kefauver hearings, the Ribicoff hearings. We have been to water pollution, air pollution—all these hearings. And then the Humphrey hearings on drugs.

Senator WILLIAMS. How about the cigarette hearings?

Mrs. DESMOND. We did not bother with that because that is a matter of choice. People do not have to smoke, but people have to eat.

Senator WILLIAMS. You make me feel very embarrassed as I was just about to light up.

You have a good sense of humor, Mrs. Desmond.

Mrs. DESMOND. I did not mean to be disrespectful.

Senator WILLIAMS. No, not at all. We like laughter, too. There are times for tears and there are times for laughter. In a Senate hearing a little laughter doesn't hurt.

Mrs. DESMOND. May I digress to say why I am really in this? My darling husband is an Army officer discharged on a hundred percent medical disability for cancer. He had the prognosis of a maximum life of 4 years. And he had reoccurrences of this cancer for 7 years, but he has not had any reoccurrences for 3 years.

Walter Reed is amazed because this man should be dead. Now, he can't help but get pesticides in his diet, but I make all of his food, prepare it from scratch especially after going to hearings, after reading—I felt this was necessary. Some people ask, when there are honest differences of scientific opinion, what can you do? I say well, I'm going to take the opinions of scientists who say let's be cautious. Our bodies are old fashioned. Let's give a full test. So in doing this I have shielded my husband from all these substances I consider suspect. I have been making my own mayonnaise, bread, ice cream, everything like that, and now my husband cannot even stand to eat out. It tastes so good at home. I have just spoiled him. It has been a little hard on me once in a while.

Senator WILLIAMS. I bet you never have seen a TV dinner.

Mrs. DESMOND. Not in our house; no, sir.

Senator WILLIAMS. This is the way it used to be on the farm.

Mrs. DESMOND. Yes.

Senator WILLIAMS. We used to grow everything, raise everything. Churn the butter.

Mrs. DESMOND. I have not gotten to that yet.

Senator WILLIAMS. It used to be a full-time occupation. Eating and getting ready was a full-time occupation for my mother and grandmother.

Mrs. DESMOND. I remember the day.

Senator WILLIAMS. There was no time to be members of the Federation of Homemakers.

Mrs. DESMOND. I do all the cooking and it smells so good when we are sitting in there looking at TV while the bread is baking in the evening. There is time for cooking and for this volunteer effort.

Senator WILLIAMS. Well, I think I am just going to surprise you with a visit one day.

Mrs. DESMOND. Don't surprise me. Let me know because I do not bake it—you know, with just two you only bake it once a week. But I will be glad to cook a good meal, bake a cake.

The argument of the candy industry that it should be permitted to employ the same additives permitted in baby foods brought to the attention of federation officers a serious oversight in the Food Additives Act of 1958. For several years our membership has been concerned to see a definite trend of adding a widening variety of additives to infant foods. We have on several occasions called this trend to the attention of the chairmen of the Appropriations Subcommittees studying the budget needs of FDA. Here we quote from the World Health Organization Technical Report Series No. 228, page 6, "Baby Food."

While the use of food additives is not a point of primary consideration in this report, there is one class of foods to which special reference must be made. Foods that are specifically prepared for babies require separate consideration from all other foods as regards the use of food additives and toxicological risks. The reason for this is that the detoxicating mechanisms that are effective in the more mature individual may be ineffective in the baby. The committee strongly urges that baby foods should be prepared without food additives, if possible. If the use of a food additive is necessary in a baby food, great caution should be exercised both in the choice of additive and in the level of use.

If I may digress, I have an aged dog, over 13 years, whom I took to the very finest veterinarian in Arlington. Her kidneys completely stopped functioning. The veterinarian prescribed unprocessed food. We gave the dog mineral water such as President Eisenhower drinks. We get it, too, now.

Senator WILLIAMS. I am with you in that department four square.

Mrs. DESMOND. The dog has flourished, but the funny thing was this: I asked the veterinarian if I could give her some strained baby meat for lunch and he said, "Oh, my gracious, no. Not only is the protein of poor quality, but she can't stand all those poisons." So apparently my grandson can eat this baby food, but not my aged dog. It is extraordinary.

Senator WILLIAMS. How does your grandson feel these days?

Mrs. DESMOND. He ate his baby food in 1960 before a lot of these things that I am going to mention were permitted and he was breast fed. You can imagine that I stood over my daughter and saw that she ate properly when nursing him.

When Dr. John O. Nestor testified (Mar. 20, 1963) before Senator Humphrey's special subcommittee reviewing cooperation on drug policies among FDA, NIH, Veterans' Administration, and other agencies (pt. 3) "Interagency Coordination in Drug Research and Regulation" it was recognized in his testimony that infants and even small children cannot handle certain medications even in greatly reduced dosages that adults metabolize. Illustrations of this inability of immature bodies to detoxicate certain medications considered "safe" for adults were given (pp. 777-1028). Yet additives assumed "safe" for adults are presently permitted in baby fare under the 1958 Additives Act. Perhaps when the Food Additives Act was being written, studied, and acted on this situation of a variety of additives permitted to process baby foods did not exist and therefore was not foreseen as a future problem. Let us hope that an alerted Congress will move with due speed to correct this unfortunate oversight by an amendment to said Food Additives Act of 1958 in which additives to be permitted in infant foods will be approved under a special classification of the 1958 act.

We have already set that in motion. We have written to Senator Hill, to Commissioner Larrick and to Representatives Fogarty and Delaney, about this need for a corrective amendment.

It was alarming to discover sodium nitrite in infant strained ham, junior franks and even in meat sticks—previously free of this toxic preservation and coloring agent. One manufacturer has initiated the practice of utilizing sodium carboxymethyl cellulose in its strained infant chicken as an emulsifier. Therefore it seems wise to permit FDA to approve the additives to be used in baby meats rather than the USDA. Officers noted that "artificial" vanillin is being placed in one manufacturer's custard for infants. A "new" baby dessert is using calcium sulfate cleared by FDA for preventing "bleeding" in cottage cheese. That is a very refined dehydrated form of plaster of paris.

In pleading for caution in the use of additives attention is directed to the disgraceful place of our country with regard to deaths of infants 1 week to 1 year of age. The U.S. Public Health Service reports we place 10th—the wealthiest country in the world—spending annually hundreds of millions for research to learn the causes of our ills and their treatment. To bolster this plea for caution, we quote briefly from the Sanderson Well lecture by the late Sir Edward Mellanby on "Food Manipulation" appearing in the British Medical Journal, October 13, 1951:

Even when such chemical substances have passed through a battery of tests from the point of view of toxicology, unexpected harmful results have often ultimately been demonstrated.

It was Sir Mellanby whose test on dogs proved agene, a bleach for flour, could cause running fits and death if these animals were fed exclusively on bread. This warning reminds us that coumarin was banned in 1954 after 75 years of use as a flavoring component. Safforole, a beverage flavoring primarily, is now banned after years of use. So are many dyes previously regarded as safe under old-fashioned tests.

Reflect on the horror of the tragically deformed Thalidomide babies and the present reports that several antinausea drugs under certain conditions may be responsible too for birth deformities.

Boric acid not too long ago was considered safe to bathe the eyes of babies and its ointment used to soften their skin. Now it is considered too toxic.

Here is warning from the so-called Gross committee's report to the Surgeon General (Nov. 1, 1961), "Environmental Health Problems," pages 149-150:

Undigestible materials, such as alginate, pectin, or modified cellulose, are often substituted for normal food ingredients in an effort to improve texture and keeping quantities or to lower calorie value and cost. If carried to excess, such modifications may have serious nutritional consequences to certain segments of the population. There are, in fact, hundreds of other artificial substances being used in the manufacture of foods to improve texture, flavor, color, and stability. Apart from their intended uses, these substances have physiological potentials which are, in many instances, incompletely explored at the present time.

It does not seem wise to include plastic or metal trinkets inside candy packets for the records prove that small children mistakenly bite on them and are hurt. Last session Representative Fogarty warned of this particular hazard to children's mouths and teeth when a similar bill was under discussion. These trinkets are not safe mixed with candies in vending machines. This federation does not approve of talc, banned by Congress in 1906, now being permitted in candies. It does not seem "safe" to permit mineral oil instead of butter or vegetable oils for lubricating candy "slabs."

I don't know anything about the molds. I have only read of the candy slabs.

The candy manufacturers of the United States enjoy a splendid reputation both here and abroad for the quality of their products—their integrity—their modern methods, efficient machinery. It would be a pity to destroy this public confidence and approval by relaxing the high standards governing candy production today, merely to add shelf life to its products, but perhaps ultimately jeopardizing the health of small children, its principal customers. The candymakers enjoy economic health. There seems no justification for lowering regulations which have enhanced this good reputation.

Mr. Chairman, we are confident your subcommittee after thoughtful study of all the factors will not permit candy ingredients to be so lowered that conditions prevalent before 1906 will again prevail. Thank you for this opportunity to express the views and concern of our members.

Senator WILLIAMS. Well, there is no fear on that last score, Mrs. Desmond. What we are trying to do is not go back to 1906, but permit the candy industry to come up to 1965 and stay with the advances that have come in foods. You know, your statement is a strong indictment, stronger of course on the food processors than anybody else. Food is what keeps us going. I am afraid I must disagree on the general indictments. I think you will find that both infant mortality rates are decreasing and life expectancy for everybody is increasing.

Mrs. DESMOND. It had until the last decade, and I understand that in the last decade, 1954-64, the life expectancy in the United States, despite all of our strides in surgery and scientific advances, has not increased; but it increased in comparable countries, of comparable culture.

Senator WILLIAMS. Well, of course, I think there is a divine ceiling on the ultimate life expectancy. While there are those whom we

particularly like and hope will live as long as Moses, to be 120, there is a ceiling. But I think we will have the staff look at these—I know the life insurance folks, their tables of expectancy are going up.

There is a man in the back shaking his head violently no.

VOICE FROM FLOOR. My agent tells me no, sir.

Senator WILLIAMS. Well, is he here?

VOICE FROM FLOOR. No, sir, but I have a paper here that I could give you that will support this.

Senator WILLIAMS. Well, this is a matter that can be examined, and I think it would be a short bit of research.

(The latest available information is as follows:)

TABLE 1.—Tables of expectancy of life insurance companies

Year	Life expectancy at birth	Infant deaths per 1,000 population
1940.....	62.9	54.9
1950.....	68.2	33.0
1955.....	69.5	28.5
1960.....	69.7	27.0
1963.....	69.9	25.4

Source: U.S. Public Health Service, Department of Health, Education, and Welfare.

Senator WILLIAMS. Just fill us in about your organization of homemakers, Mrs. Desmond. You are the president?

Mrs. DESMOND. Yes.

Senator WILLIAMS. It is a national organization?

Mrs. DESMOND. No, it is not national, but it is nationwide, because the board members are all here, except honorary members; they are all in this area, and we decide the policies and what our goals will be, and our members throughout the country receive a newsletter. They will receive a copy of this statement. Any statement that is given by Mrs. Malstrom or myself, or any other officers, the members will receive. And if, of course, a member is dissatisfied, she does not have to remain with us.

Senator WILLIAMS. How many members do you consider you have?

Mrs. DESMOND. We are only 6 years old.

Senator WILLIAMS. I beg your pardon?

Mrs. DESMOND. We have never mentioned it because we are only 6 years old. We started out at a time when it was unpopular to speak about pesticide residues or excessive processing of foods. Before Thalidomide and the White House report and all these hearings on pollution. So at that time we had to make our friends and relatives captive members. But now people write in, people we do not know, asking us to send application forms. They want to belong with us. Of course, they are all women.

Senator WILLIAMS. You have supported us in our efforts here to pass effective, meaningful legislation dealing with air and water pollution, I believe.

Mrs. DESMOND. Well, we have attended these hearings. You know, we are a small group and we volunteer our time, and we are certainly in favor of pollution control. We have attended the hearings on these problems. We have not always presented statements because of limited time but we have statements on the illicit drug act—am-

phetamines and barbituates. This type of legislation: color additives, legislation for laboratory animals. We supported Secretary Flemming in the anti-cancer-clause battle and now we are really getting our stride. We want this full-time House Committee on Health and Safety to consider exclusively the protection of people. Then we also want to have an amendment to the Food Additives Act of 1958.

Senator WILLIAMS. Did you support Secretary Flemming in his judicial determinations when aminotriazole was in the cranberry picture?

Mrs. DESMOND. We supported Commissioner Larrick and Secretary Flemming, and reminded the cranberry people that the FDA inspectors had been taken away from other tasks to inspect cranberries for contamination with aminotriazole.

Senator WILLIAMS. The Government indemnified the cranberry producers for that mistake.

Mrs. DESMOND. I understand to restore their public image through advertising.

Senator WILLIAMS. Well, a lot of them to save themselves from bankruptcy.

Mrs. DESMOND. I always eat cranberries now, you know. I hope they are very thoroughly inspected. You know, we read all the press releases from Secretary Flemming's office and we never thought the newspapers in this area carried the full story because the cranberry growers broke faith with Food and Drug and took contaminated cranberries right out of storage and sent them to market. The Food and Drug had no reliable method of detecting this poison. Suddenly Food and Drug developed a detection method and learned of this breach of faith, and that is why Department of Health, Education, and Welfare had to make this public exposé of the cranberry situation.

Senator WILLIAMS. Thank you very much.

Mrs. DESMOND. You are welcome.

Senator WILLIAMS. I hope you will come back frequently when we are about to do the business of improving our society.

Mrs. DESMOND. Thank you.

Senator WILLIAMS. Finally, Mr. Roger Folz, of Chicago, director and past president of the National Vendors Association, and Mr. Donald Mitchell, of Chicago, general counsel. Gentlemen.

You knew you were going to be mentioned here and that is why you are here, although I know you heard the discussion we had when Senator Javits was here that we are dealing, this legislation does not deal with your area of business activity. It just deals with the manufacturer of candy free of imbedded articles, but permitting nonnutritive safe substances to be used. So what you are really talking to is something that might be considered here by this committee at another time if legislation is developed. But we are glad to give you the floor because you were mentioned.

**STATEMENT OF ROGER FOLZ, DIRECTOR AND PAST PRESIDENT,
NATIONAL VENDORS ASSOCIATION; ACCOMPANIED BY DONALD
A. MITCHELL, GENERAL COUNSEL**

Mr. MITCHELL. Senator, I think our statement will fully disclose that we do not oppose the act as it has been interpreted by the court today, and any amendment that would favor the use of nonnutritives

by the candy industry, as pointed out today, we would not oppose, nor would we oppose the existing standards insofar as the imbedding of trinkets as interpreted by the courts.

Mr. Folz. My name is Roger Folz. I am from Oceanside, N.Y. Mr. Mitchell is from Chicago. I am president of the New York Bulk Vendors Association, and I am a director and past president of the National Vendors Association.

The National Vendors Association is a national association, comprised of operators, manufacturers, and distributors of bulk vending machines and equipment, throughout the United States of America.

Bulk vending machines primarily offer for sale colored gumballs, nuts, hard candy, jellybeans, and trinkets, in penny portions. These machines may be found in almost every supermarket, neighborhood grocery store, drug store, toy store, or similar locations in this country. Many such machines are operated in conjunction with and for the benefit of local charities and many more as an additional source of income, on a part-time basis by postmen, firemen and others seeking additional funds with which to raise a family and ultimate retirement income.

The industry is geared primarily to furnish products to children.

We are the group that vends ball gum, nuts, and miniature toys and charms in the 1-cent vending machines. Because of these machines many a child's face has been changed from tears to smiles—and we sincerely believe we have developed healthy and happy appetites and diversions for children from 3 to 60.

Some years ago, the very foundation of this industry was threatened in a landmark case, *U.S. v. Cavalier Vending*, filed by the Food and Drug Administration, under section 402, wherein the Department sought to condemn as adulterated, per se, a bulk vending machine in which plastic trinkets were mixed with gumballs.

The Department conceded that the gum was not adulterated and did not of itself fall within the condemnation of the act, but took the position that the mingling resulted in an "indistinguishable mass of food" which contained trinkets within the meaning of the act and that the giving of trinkets along with the sale of candy or gum does not add anything to the articles of food for consumption, nor do they affect such articles in any way.

The *Cavalier* decision was rendered some 14 years ago, and we know of no public need which should cause Congress to overrule its effect.

We estimate that there are well over 1 million bulk vending machines in operation in the United States and yet, as an association, we know of no serious cases of injury to health as a result of such commingling. As a matter of fact, our industry has one of the lowest product liability insurance rates in the food industry. We know of no one ever substantiating a claim of illness as a result of chewing gum or eating candy from a bulk vending machine.

It is true that children are prone to swallow inedible objects such as stones, marbles, pins, rattles, nipples, and other similar objects. We can only presume that a child old enough to master the operation of the vending machine, is old enough to distinguish between a trinket and a piece of candy or gum.

History would certainly indicate this to be the fact. We do not argue with the danger of nonfunctional inedible objects being imbedded

in confections. We have no objection to the provisions of section 402 as they are interpreted by the *Cavalier* decision.

However, we have little doubt that if doctors were polled concerning injuries to children, they would list a number of instances in which children were cut by a table knife, speared by a fork, caught by a fishhook, hit by a baseball, became ill through overeating, coughed on chicken or fishbones, chipped teeth on cherry pits, and on and on and on, illustration after illustration. Yet, in all these instances, obviously the risks of living and the occasional injuries occasioned thereby, are a part of maturation.

Our entire industry would be irreparably damaged financially and possibly be put out of business if such an amendment were passed, and we strongly concur with the report of the House of Representatives subcommittee which reported there is no threat to the public health sufficient to warrant the adoption of any amendment which would have disastrous consequences for a segment of our domestic industry.

Thank you for your consideration, Mr. Chairman.

Senator WILLIAMS. Thank you very much. How did you determine that your insurance rate compares so favorably with insurance rates in other industries that are dealing with food?

Mr. MITCHELL. We checked it with our insurance broker. The National Vendors Association has its own insurance program and has had for 10 years. And all of our members are insured with the same company. And we, therefore, have statistics, at least our broker has and we know what our rates have been and our statistics and our brokerage rates have shown only a reduction in rates rather than an increased rate for liability and product liability.

Senator WILLIAMS. Interesting and demonstrative of the minimal problem here is the hazard to youngsters. You cannot be a tot and operate a lot of these machines.

Mr. MITCHELL. Senator, it takes a certain degree of maturity in order to operate what psychologists would call a complicated device, which a vending machine is to a child. Basically, infant children are prone to swallow inedible objects. Children that crawl naturally pick up stones. They swallow them. However, a child that is old enough to operate a vending machine is old enough to know what he wants out of it and to distinguish between the trinket and the piece of gum or the piece of candy which he gets from the machine. He does not get an indistinguishable mass of objects that he cannot distinguish.

Senator WILLIAMS. Well, if it were otherwise, I would think you fellows would spend most of your day in court defending lawsuits.

Mr. FOLZ. Correct.

Senator WILLIAMS. Because anybody that has any problem with food—we had an outbreak of food poisoning in one of our resort cities some years ago. Better than 50 percent of the people got a lawyer before they got a doctor. You hear from the folks that are suffering. I have tried some cases dealing with a carbonated beverage bottle that exploded. They sue.

Thank you very much.

Mr. FOLZ. Thank you, Senator.

Senator WILLIAMS. We have no further scheduled witnesses this morning. If there are any other statements other members would want to submit we will keep the record open until early next week.

At this point I will insert in the record a statement from Senator Scott and various letters received.

(The statement and letters follow:)

STATEMENT BY HON. HUGH SCOTT, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SCOTT. As you know, I am one of the two initial sponsors of S. 1839, which ultimately acquired a total of 16 sponsors. This is a companion bill to H.R. 7042 concerning which your special subcommittee is currently holding hearings.

It is readily admitted that, near the turn of the century, there may have been good reason for the discriminatory prohibition of the use of nonnutritive additives in the production of candy. Unscrupulous makers, in a quest for greater profits, added unsafe substances merely to increase bulk and weight. But as the years have gone forward, so has scientific development. Emulsifiers, stabilizers, preservatives, and other additives have been developed which, while nonnutritive, nevertheless aid in the production process and impart desirable qualities to food products. Although these are commonly used and added by all the other food industries, they cannot now be used in candy.

Such needless discrimination cannot be justified because of an inability to determine which of these additives are safe for human consumption. I want to emphasize that the bill covers only those additives which, according to the Food Additive Amendment of 1958, have already been certified as safe by the Food and Drug Administration. No special favor to the confectionery industry is involved.

A further objection, that rescinding the prohibition of nonnutritive additives to candy would allow the "commingling" of trinkets and other toy objects—which would be dangerous if swallowed—ignores the more basic fact that the prohibition of "commingling" would have to be industrywide to be either effective or fair. Such prohibition should not be considered in connection with the "nonnutritives" bill, since this applies only to section 402(d) of the Federal Food and Drug Act, the confections section.

What is at issue here is an unfair and archaic regulation which has been carried over from previously necessary legislation. This carryover has had the detrimental effect of withholding from the market many beneficial product qualities which could be given to candy by newly developed, safe, nonnutritive additives.

The Food and Drug Administration has told the industry that it would support an amendment permitting confectionery makers to use the same substances already available to the rest of the food industry, provided that the FDA approve such use by the issuance of an individual regulation in each case. Rather than taking such an individualistic and cumbersome approach, S. 1839 would remove the present discrimination and place the confectionery industry on the same basis as the other segments of the food industry. I support the proposed bill in the firm belief that it is just and proper that this be done.

NATIONAL CONSUMERS LEAGUE,
Washington, D.C., August 31, 1965.

HON. HARRISON A. WILLIAMS, JR.,
Chairman, Special Subcommittee on H.R. 7042, Committee on Labor and Public
Welfare, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: The National Consumers League wishes to go on record in opposition to H.R. 7042.

Since its organization in 1899, the league has supported legislation which will provide the consumer with pure, safe products, and has closely associated itself with major reforms such as the pure food and drug law. We oppose H.R. 7042 because we feel that its passage would substantially weaken this important consumer safeguard.

In effect, H.R. 7042 would (with minor exceptions concerning alcohol) nullify section 402(d) of the Federal Food, Drug, and Cosmetic Act. This section now provides that a confectionery may not contain any nonnutritive article or substance except authorized coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of 1 percent, natural gum, and pectin. If enacted, H.R. 7042 would allow manufacturers to add cheap fillers such as white clay, talc, and barytes into candy merely in order to substitute less expensive substances for the nutritive ingredients now permitted.

The industry has argued that many of these materials now banned in the manufacture of candy are already allowed in food products, including baby foods. This, it seems to us, is more reason to forbid their inclusion in candy. The full cumulative effects of increased ingestion of such ingredients is not yet known. Indeed, the increase in infantile hypercalcemia has already caused the Food and Drug Administration to issue regulations reducing the amount of vitamin D in food products, in the hope that this would result in less calcium being absorbed by the blood of infants. To permit the inclusion of more calcium products in candy would hardly seem to be indicated in the face of this present threat to the heart and mental normality of infants.

Furthermore, the confectionery industry argues that it merely seeks the right to use safe nonnutritive substances in the manufacturing process when such substances serve a useful technological purpose. This is probably the intent of the majority of the candy manufacturers. But passage of this bill would leave us open to the practices of the few unscrupulous manufacturers, and to the irreparable damage they might cause to the health and welfare of the Nation, especially of our children.

The league would not oppose an amendment to section 402(d) as suggested by Commissioner Larrick of the FDA in his testimony, and submitted previously in the Department's report of August 18, 1965, which would allow the industry to use safe nonnutritive substances deemed by the FDA to have a technological value in the production of confectionery. We believe that candy, because of its special appeal to children, should continue to be considered a separate food under the law. Not only are children unsophisticated consumers, they are also less able to safely assimilate certain chemicals into their systems. Chemicals that show no effect on adults may be toxic to children. Therefore, stricter precautions must be used when dealing with a food such as candy. We believe it is extremely important that the FDA approve each additive included in candy manufacture. Possibly the old adage "An ounce of prevention is worth a pound of cure" should be our guideline.

The league is also opposed to the embedding of trinkets of plastic, metal, and other materials in candy, as prohibited by the present law, as well as to the commingling of such items in candy machines, which the present law apparently does not forbid.

Candy manufacturers in the United States enjoy a reputation for products of high quality. The public has confidence in the purity and wholesomeness of candy. The economic position of the industry is sound, and, if the popularity of their product is any criterion, their economic position is secure. The league believes that it is in the best interest of the industry as well as of every U.S. citizen that nothing be done to impair the purity and wholesomeness of this product by weakening the Federal Food, Drug, and Cosmetic Act. We therefore strongly urge that your committee vote against H.R. 7042.

We respectfully request that this letter be made a part of the record of your hearings.

Sincerely yours,

SARAH H. NEWMAN, *General Secretary.*

AUGUST 23, 1965.

Hon. HARRISON WILLIAMS,
*Chairman, Special Subcommittee,
 Labor and Public Welfare Committee,
 U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: It is understood that your special subcommittee is now conducting hearings on H.R. 7042, by Representative Macdonald, and S. 1839, by Senator Hartke add 15 other Senators, to amend section 402(d) of the Federal Food, Drug, and Cosmetic Act which applies only to confectionery so that the confectionery industry will be placed on the same basis as all other food industries in the use of food additives which the Food and Drug Administration determines to be safe for food use.

When the Food Additives Amendment of 1958 was enacted to insure the safety of all additives used in all foods, it was the first time the Food and Drug Administration acquired fully effective control over additives used by all food industries. In the case of the confectionery industry, however, with the cooperation of the industry, the Food and Drug Administration's control began in 1906 with the Food and Drug Act of that year. At that time the yardstick used was nutritiveness. It was again applied in the Federal Food, Drug, and Cosmetic Act of 1938. That is an outdated and illogical gage today for determining food wholesomeness and I believe Congress was right in 1958 in limiting the function of the Food and Drug Administration to determining the safety of an additive for food use rather than its technological value which is a function of the manufacturer.

After the Food Additives Amendment of 1958 was enacted I think the Food and Drug Administration should have proposed promptly an amendment to section 402(d), as is now proposed in H.R. 7042 and S. 1839. Instead the department has taken a position of wanting to apply a double standard to confectionery while applying only a single standard to every other food industry and thereby penalizing the confectionery industry for its past cooperation.

Representing a member firm of the confection industry, I strongly urge the favorable consideration of H.R. 7042 and S. 1839. Placing our industry on the same basis as others in the food industries is only right and fair.

Cordially yours,

J. W. FEIGNER,
President, Tom Huston Peanut Co.

THE PILLSBURY CO.,
Minneapolis, Minn., August 5, 1965.

Re: Nonnutritive substances in candy.

Hon. HARRISON A. WILLIAMS, JR.,
Senate Office Building, Washington, D.C.

DEAR SENATOR WILLIAMS: We understand that you are the chairman of a special subcommittee to consider H.R. 7042 which would permit the use of nonnutritive substances in confectionery.

We wish to advise you of our strong support for the bill without any crippling amendments. We particularly oppose any special additive control over candy ingredients.

Our interest in this matter comes from our position as a manufacturer of cyclamates (artificial sweeteners) which could be used in candy if the bill were passed. These artificial sweeteners are generally recognized as safe by FDA and are, therefore, not food additives although they are nonnutritive.

Sincerely yours,

T. R. MULCAHY,
Director of Public Affairs.

Senator WILLIAMS. Thank you, all of you who participated. It was a very illuminating and enjoyable morning.

(Whereupon, at 12:20 p.m., the hearing was adjourned.)





