UNITED STATES LEAGUE of SAVINGS INSTITUTIONS 111 EAST WACKER DR. / CHICAGO, ILLINOIS 60601 / TEL. (312) 644-31

WILLIAM B. O'CONNELL
President

March 16, 1988

The Honorable William Proxmire
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Proxmire:

On February 23, 1988, I sent you a letter outlining a variety of concerns the U.S. League has regarding the joint request of the federal depository institution regulators for a strengthening of their formal enforcement authority. I would like to take this opportunity to draw your attention to another aspect of the joint proposal that is extremely troubling to our membership.

Specifically, we urge you to reject the proposition that the regulatory agencies should be able to employ cease-and-desist proceedings as a device for the adjudication of money damages against officers and directors of savings institutions or banks for losses occasioned by regulatory violations or unsafe or unsound practices. That proposition is found in the section-by-section analyses of both S. 1974, the Enhanced Enforcement Powers Act of 1987, and the Committee Prints of S. 1886, the Financial Institutions Modernization Act of 1988 in the explanation of what is meant by proposed new language stating that a cease-and-desist order may be used to require restitution, reimbursement or other appropriate action in connection with the commission of unsafe or unsound practices or violations of law or regulation. The language is in large measure designed to override Larimore v. Comptroller of the Currency, 789 F.2d 1244 (7th Cir. 1986), which rebuffed an effort by the Office of the Comptroller of the Currency to assess administratively such damages under current law.

The U.S. League strongly believes that administrative actions such as cease-and-desist proceedings are improper vehicles for bringing the sort of civil damage suits under consideration. Elementary fairness -- at least as that concept is commonly understood within our system of jurisprudence -- would seem to require that persons should not be exposed to judgments for potentially ruinous money damages without having the opportunity for a trial before a judge and jury. In our view, vesting adjudicative power of the type at issue in the Federal Home Loan Bank Board and its sister agencies would be a unique and radical step; while many agencies may assess civil money penalties or impose other sanctions, we are unaware of any federal body, outside the courts, with the sweeping civil damage authority in question. We note, too, that the courts are far better equipped than the agencies from an experience

standpoint to deal with the factual and other considerations involved in damage suits -- the trying of such cases, after all, is a primary stock-in-trade of the judiciary.

We hope you will give our concerns your careful consideration. It is undeniable that permitting the regulators to pursue enforcement actions through administrative proceedings is helpful to the agencies in terms of expeditiousness, but the proposal at issue, in our opinion, is so gravely and fundamentally flawed from a fairness standpoint as to negate any advantages it might yield with regard to speed or otherwise.

Thank you.

Sincerely,

William B. O'Connell

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Procedural (McCollum Amendment) P. 88-92

Heinz saying House is pretty tough. (in favor?) (last line pg 87 - top 88)