Comments and Notes
AN HISTORICAL SURVEY OF FEDERAL INCORPORATION

In this age of shareholder democracy and open capitalism, reforms continually crop up in order to alleviate the unfettered effects of managerial power. Panaceas for particular abuses are often suggested and some appear to lend piecemeal remedial relief to problem areas. But no reforms strike at the very heart and fundamental foundations of contemporary corporations as do federal chartering proposals. Proponents of such plans contend that major corporations are having a field day at the expense of a helpless citizenry and that liberal state incorporation statutes are responsible for the amalgamation of capital into a few hands as well as the perpetuation of corporate improprieties. Calls for federal incorporation are by no means being heard for the first time. In the past year, two bills on the subject have been introduced in Congress and Ralph Nader has just completed an extensive study of the area. Additionally, hearings on the proposals for federal chartering are to commence in the Spring of 1976 before the Senate Commerce and the House Government Operations Committee. For the first time in thirty (30) years, federal chartering is an issue before Congress and the implications of the idea are causing

5. See Note, Federal Chartering of Corporations: A Proposal, 61 Geo. L.J. 89 (1972), at 90 and 92, citing examples: General Motors Board Chairman and Chief Executive Richard Gerstenberg and the 23 other directors of the company control assets of $14,174,360,000 and annual net profits of $609,087,000 and employ 695,796 persons. Under the corporate law of Delaware, G.M.'s state of incorporation, these 24 men may lend corporate funds to any employee, officer or director, determine their own salaries, bonuses and pensions, engage in de facto mergers without shareholders approval, and manage the daily business decisions of the company. Daily business decisions of General Motors have included the closing of the Detroit Die Plant, laying off 1,000 workers, and deciding whether or not to install safety glass in cars.
6. See infra notes 89 and 107.
7. See infra notes 121 and 123.
9. See infra note 124.

(370)
considerable controversy. Therefore, an updated historical survey of the concept is in order.

**IN THE BEGINNING . . .**

The modern business corporation, as an entity, had its origin in seventeenth century England. In the antedated medieval period when only eleemosynary and ecclesiastical "corporations" existed, rules for creating the "incorporate person" were already developing. In *Case of Sutton's Hospital,* Lord Coke gathered these medieval principles together and established the modern rule that the first essential for a viable corporation was a "lawful authority of incorporation." The earliest corporations, known as trading companies, were vested with governmental authority and rights to engage in commerce under the sovereign's name. Blackstone commented, "The Founder of all corporations . . . is the king alone . . . . [his] consent is absolutely necessary to the creation of any corporation." The Crown had the power to define the purposes for which a corporation was created, and if any corporation acted outside the limits of its charter, its acts would be *ultra vires* and void. Although the nature of the corporate personality precluded corporations from certain activities, there was a tendency to deny the Crown authority to limit those powers naturally incident to corporate existence. Because the law of corporations was in an evolving state, activities naturally incident to corporate life were largely undefined. As a result, monarchs were cautious and took a limited view of their authority. Thus, in many instances without restraint or control, early corporations grew into monopolies and endless corporate abuses regularly occurred in England's trade industry. R. W. Boyden described these trading companies as "massive, corrupt and inefficient. They grabbed power as an excuse for the failure to do business . . . . They identified themselves with ruling groups to become politically beyond challenge . . . ."

Monarchs soon realized that their ability to grant corporate charters was a priceless political tool and used it to reinforce royal power. A charter from the King was an enormous economic and legal insurance for merchant

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12. Case of Sutton's Hospital (1613, K.B.) 10 Co. Rep. 1a, 29b as cited Id.

13. Supra note 11.


15. Supra note 11, at 386.

16. Id. at 385–86.

adventures and their commercial schemes. A corporate form assured individual liability would be limited. With this power the King could then place the malcontent baronage in check with a "new nobility [which] depended solely on royal favor for its position."18

The consolidation of royal power over corporations was not complete.19 By 1720, joint-stock companies were being developed without any sanction or regulation by the Crown. They were created either without a charter, with an obsolete charter acquired from a defunct company, or by mere contract among its members.20 After the rampant speculative fever provoked by the grandiose machinations of the ill-fated South Sea Company,21 Parliament responded with the Bubble Act of 1720.22 As England's first corporate statute, its primary function was to harness the rapid growth of unincorporated joint-stock companies.23

Early America

The development of the corporate idea in America is directly related to the salient features of the 18th century English corporation. These were, first, that a corporation could be created only by the will of Parliament or the Crown, and second, that their creation was symbolized by the granting of a charter of powers.24

Two of the American colonies, Virginia and Massachusetts, were chartered companies incorporated in England and existed essentially as public corporations.25 The other colonies existed either as a proprietorship or under a colonial governor appointed by the King. Whether or not the colonies had the power to incorporate is an unsettled question. One authority maintains that colonies "probably could [not] have created or authorized the formation of private business corporations [since] such powers remain[ed] . . . in the English Government."26 Professor Paul Harbrecht, a noted legal historian, asserts that the pre-revolutionary "American corporations had normally existed by grants from colonial proprietors, governors, or assemblies and 'not by letters of patent issued from the English crown or by acts of Parliament.'"27

Throughout the American colonial period English trading companies and a handful of indigenous business corporations conducted business on the American continent. Only six purely native born business corpora-

19. Id. at 15.
22. 6 Geo. 1, c. 18 (1719), 6 Geo. 4, c. 91 (1720).
24. 1 W. FLETCHER, CYC. CORP., DEVELOPMENT OF CORP., § 2, n.5.
25. Id. § 2, p. 5. Virginia was incorporated in 1606, Massachusetts was incorporated in 1629.
26. Id.
27. Supra note 18, at 25.
tions arose prior to the American Revolution. Since the provisions of the Bubble Act were not extended to the American colonies until 1741, only three of these corporations were affected by its provisions. Since there were so few corporations in America, the Bubble Act never had any appreciable effect on the colonies. Furthermore, English Corporation Law was in a suspended state under the Act. Parliament exhibited great reluctance to grant corporate charters and, paradoxically, England witnessed a rebirth of the unincorporated associations which the Bubble Act had intended to destroy. Serious interest in the corporate form did not evolve until after the American Revolution.

The notion that the Federal government should charter corporations first arose under the Articles of Confederation. The federal government had only expressly-delegated powers under the Articles and no express power to grant charters. Nevertheless, the Continental Congress in 1781 granted a national charter to the Bank of North America, and thereafter, acquired a majority of the bank's stock for a brief period.

During the Constitutional Convention of 1787, specific proposals for federal chartering were introduced, but only briefly debated. James Madison was the foremost proponent. Midway through the convention, he submitted a proposal to the "Committee of detail (sic)" that under a separate clause the general legislature should have the power "to grant charters of incorporation in cases where the public good may require them, and the authority of a single state may be incompetent." Charles Pinkney of South Carolina made a more ambitious proposal which would have provided Congress with an unqualified right "to grant charters of incorporation." No formal vote was taken on either proposal. Madison was "convinced that regulation of commerce was in its nature indivisible and ought to be wholly under one authority. . . . The best guard against an

30. Supra note 21, at 1371.
32. Id. See Arsh, supra note 29, at 8; see 2 J. Davis, Essays in the Earlier History of American Corporations (2d ed. 1917), wherein the author stated: Congress, under the Articles of Confederation in 1781, purported to grant a charter to the Bank of North America. However, the bank was also chartered in Pennsylvania, its home state and in several other states. When Pennsylvania repealed its charter in 1785, the bank secured a new charter in Delaware and again in Pennsylvania in 1787.
34. Id.
35. Id. at 570.
abuse of the power of the States, [is] the right in the General Government to regulate trade between State and State." During the final week of the Convention, Madison again proposed, in a slightly different resolution, Congressional power to grant corporate charters. He sought to include this provision in Art. I, Sec. 8, Cl. 7, which empowers Congress to establish post offices and post roads. During debate this proposal was amended to limit Congressional power to the single case of granting federal charters for the construction of canals. Rufus King, a Massachusetts delegate, protested, contending that such a provision would jeopardize the Constitution’s ratification since the states would be prejudiced and divided over the question. Little debate followed and the proposition was defeated by a vote of eight states to three. Other delegates believed federal incorporation was unnecessary, while some repudiated it as leading to mercantile monopolies.

The First Era

The federal government, under the Constitution, was established with no express incorporation powers, but the implied power to incorporate has been extended under Article 1, § 8 when "necessary and proper" to carry forth those powers expressly granted to Congress under the fiscal, war, and interstate commerce clauses. This implied power to incorporate was first exercised by Congress with the establishment of the first Bank of the United States in 1791. The issue of whether to enact a federally chartered national bank resulted in a bitter struggle between the Jeffersonians and the Federalists led by Alexander Hamilton. Jefferson opposed the bank's incorporation asserting that the Constitution nowhere specifically authorized the federal government to charter a corporation. He felt that a federally chartered bank would draw large aggregations of capital that could ultimately overwhelm the states and dominate the country's economy. The charter of the first Bank of the United States

36. Id. at 557.
37. Id. at 564. The new resolution read "to grant charters of incorporation where the interest of the U.S. might require and legislative provisions of the individual States may be incompetent" (emphasis added to indicate differences between first and second proposals).
38. Id. at 563–64.
39. Id. at 564.
40. Id. King's suspicions were well founded. "In ratifying the Constitution, four states (Mass., N.H., N.C., and R.I.) recommended that it be amended by provision that Congress should erect no company (or no company of merchants) with exclusive advantages of commerce, and New York asked for a further prohibition of all grants of monopolies. Attempts to carry such measures were made in the First Congress, and renewed in 1793, but without success." Supra note 28, at 464.
41. Id. Virginia, Pennsylvania and Georgia voted aye.
43. Supra note 31, at 92–95.
44. R. Nader & M. Green, Corporate Power in America 74 (1973).
expired in 1811, but Congress soon incorporated the Second Bank of the United States under a federal charter in 1816. The Supreme Court of the United States, in *McCulloch v. Maryland,* upheld the constitutionality of the Act, chartering the Bank of the United States, as within the power of Congress.

Chief Justice Marshall, in his celebrated opinion, declared,

Although, among the enumerated powers of the government, we do not find the word 'bank' or 'corporation' we do find great powers to lay and collect taxes; to borrow money; to regulate commerce . . . The creation of a corporation, it is said, appertains to sovereignty. ** The powers of sovereignty are divided between the government of the Union and those of the states. ** The power of creating a corporation, though appertaining to sovereignty, is not like [the enumerated powers] great substantive and independent power which cannot be implied. The power of creating a corporation is never used for its own sake, but for the purpose of effecting something else. No sufficient reason is therefore perceived, why [incorporation] may not pass as incidental to those powers which are expressly given, if it be a direct mode of executing them.

In 1864 Congress enacted The National Bank Act which still continues to provide for the establishment of national banks, or the conversion of state banks into national banks.

Congressional power to incorporate privately owned corporations to carry on functions of the government had been extended to other areas besides banking. Special legislative enactments have empowered private corporations to build bridges, construct and operate railroads, transport resources and generally to undertake commerce.

By 1800, special acts of state legislatures had created about 200 more business corporations in the United States. As a natural outgrowth of colonial conditions, the commercial policy of the new states was narrow and selfish, and left the states fearful of the Crown and monopolies; thus the power to incorporate became a closely guarded legislative prerogative. As industry expanded in the states, businesses sought the benefits and protections of incorporation. The privilege of granting corporate status led state legislators to become politically corrupt as they accepted favors

47. 17 U.S. (4 Wheat) 316.
48. Id. at 407-11.
55. *Supra* note 20, at 18.
for granting corporate charters. As abuses multiplied, states recognized
the need to enact general incorporation statutes without special legislative
favor.

The first changes came as states enacted statutes which allowed legis-
lative approval of corporations "for any lawful purpose." By 1837, North
Carolina, Massachusetts, New York and Connecticut had enacted such
general incorporation statutes. Initially, states required that certain
minima be satisfied.

As commerce developed and trade among the states surged, interstate
businesses began to shop around for a favorable state in which to incor-
porate. A new enabling, or liberal incorporation theory soon developed.
"Enabling statutes were premised on the view that free enterprise acting
in their own interest would serve the general social interest as well, or in
the words of John Locke 'private vice makes public virtue.' Although
it was " 'fear[ed] . . . that a corporation was only an artificial personality
and therefore did not have a soul or a conscience . . . and primae facie
dangerous.' states felt they could maintain the control necessary for
the public interest to be served if corporations remained local and were
contained within the restrictions of their charter.

By the end of the Civil War, the network of interstate railroads had
substantially increased the commerce among states. As interstate com-
merce increased, the question developed as to whether a state could exclude
a foreign corporation from doing intrastate business. The Supreme Court
in Paul v. Virginia unanimously upheld a Virginia statute which required
that foreign insurance corporations must obtain a state license before they
could transact business in that state. The decision recognized that a state
could fix legitimate conditions upon foreign corporations doing business
within a state, but could not exclude them from interstate commerce.
Mr. Justice Field carefully noted that, "Issuing a policy of insurance is
not a transaction of commerce." Partly as a result of the Paul decision

56. Nader & Green, supra note 44, at 69; see also 31 Yale L.J., at 385, wherein
the author states: "In the evolution of [corporate] law, the disturbing influence of
semi-political considerations may be suspected."

57. Id. at 68.

58. Id.

59. See Liggett v. Lee, 288 U.S. 517, 85 A.L.R. 699, 713-23 (1913), for a list of
early statutory history. Some minima were limitations upon amount of authorized
capital, limitation upon the scope of business corporation powers, filing fees, franchise
taxes, etc.

60. Nader & Green, supra note 44, at 69; see also Latty, Why Are Business

61. Id.

62. Id. Charters had limitations governing size and scope. In New York, entities
seeking incorporation had to have capitalization of $100,000 and could incorporate for
only one activity; furthermore, corporations had a limited existence specified in years.

63. 75 U.S. (8 Wall.) 168, 19 L. Ed. 357 (1868).

64. Id. at 19 L. Ed. 361. In "Paul," a New York insurance company claimed that
the Virginia statute requiring a license violated the privileges and immunities clause
interstate enterprises migrated to those states with the fewest restrictions. Because of its liberal incorporation laws, New Jersey became the leader in “corporate mongering.” New Jersey offered a corporate policy which interstate business could not refuse. In 1866 it permitted the holding of property and the doing of business outside the state. It eliminated the obligation to file an intention to incorporate and dispensed with capitalization ceilings. By the 1880's, it legalized holding companies and removed limitations on the duration of corporate charters. By relaxing state restrictions, New Jersey became known as the “mother of corporations,” and nursed corporate giants like the Standard Oil Trust.

New Jersey maintained her position until the vigorous trust-busting campaigns of the early 1900's. Woodrow Wilson, then New Jersey's Governor, was ridiculed by the Roosevelt Administration for allowing the massive trusts to go unchecked within the state. In his 1911 inaugural address, Wilson urged the state legislature for a change of policy. “We are much too free with grants of charters. I urge... changes in state law [that will] prevent the abuses which have discredited our state in recent years.” The New Jersey legislature responded by enacting the so called “Seven Sisters” Act in 1913 which forbade, among other things, intercorporate stockholding. As New Jersey proceeded to revise its statutes, corporations quickly crossed the river into Delaware.

Delaware was more than a likely home for these new corporate orphans. In 1899, the state adopted a new act of liberal incorporation laws based on the New Jersey statute and added some further corporate protections on its own.

Delaware gained a reputation for giving the most away and became the favored state for incorporation. An article in the American Law Review in 1899 described the situation as follows:

in that the New York corporation was a citizen within the meaning of Art. IV, § 2, of the U.S. Constitution. The court held that “The term 'citizen' as there used applies only to natural persons, members of the body politic owing allegiance to the state, not to artificial persons created by the legislature and possessing only the attributes which the legislature has prescribed. . . . Special privileges enjoyed by citizens in their own states are not secured in other states by this provision,” at 361.

65. NADER & GREEN, supra note 44, at 69.
66. Id.
67. Id.
69. Id. N.J. Laws 1913, Chap. 18. The act was repealed four years later. N.J. Laws 1917, Chap. 195.
70. Act of March 9, 1899, Ch. 273, 21 Del. Laws 445; see Chicago Corporation v. Munds, 20 Del. Ch. 143, 172 A.2d 453 (1932); see also Arsh, supra note 29, at 5-7.
71. Any class of stock could be issued with or without voting powers; shareholders lost pre-emption rights; transfer taxes were eliminated; annual meetings could be held outside the state; directors did not have to own company stock to qualify for a directorship; tax rates were lower than they were in New Jersey; directors had the power to issue new stock without shareholder's approval as well as retire preferred stock, change bylaws and change the terms of authorized stock prior to sale. As cited in NADER & GREEN, supra note 44, at 70.
Meanwhile, the little community of truck-farmers and clam-diggers have had their cupidities excited by the spectacle of their northern neighbor, New Jersey, becoming rich and bloated through the granting of franchises to trusts which are to do business everywhere except in New Jersey, and which are to go forth panopied by the sovereign state of New Jersey to afflict and curse other American communities . . . . It is as though a Klondike goldmine had been discovered in New Jersey, and all Delaware were on the rush to get there. In other words, little Delaware, gangreened with envy at the spectacle of truck-patchers, sand duners, clam-diggers and mosquito wafters of New Jersey getting all the money in the country into her coffers, — is determined to get her tiny, sweet, round baby hand into the grab-bag of sweet things before it is too late.\textsuperscript{72}

The New Jersey and Delaware theories of relaxing state restrictions on corporations in order to attract revenue from corporate taxations served as a model for other eager states.\textsuperscript{73} Legislative reductions of the rights of shareholders to challenge management activities, eliminated preemptive rights, made shareholders' derivative suits more difficult, shifted the balance of control to management and even removed charter limitations on the scope of corporate business.\textsuperscript{74}

\textbf{Federal Chartering}

By the late 19th Century the huge corporate trusts had expanded to such an extent that calls for national regulation and federal licensing became common. Corporations had increasingly amassed the power to become autonomous self-perpetuating oligarchies. Monopolistic concerns gained control of railroads and interstate commerce by the familiar practice of railroad rebates.\textsuperscript{75} Anti-industrialists such as Emile Zola, Ida Tarbell and later, Upton Sinclair amassed a following as the leading muckrakers, exposing the abuses of the unchecked corporate giants. Congress responded in 1890 with the enactment of the Sherman Anti-Trust Act as an alternative to federal chartering, and the Interstate Commerce Commission (I.C.C.) as the first federal regulatory agency.\textsuperscript{76} Federal chartering and licensing developed into a national, political and economic issue. In 1899, William Jennings Bryan, a three-time Democratic presidential candidate, endorsed federal licensing by Congress.\textsuperscript{77}

\begin{itemize}
\item \textsuperscript{72} \textit{Little Delaware Makes a Bid for the Organization of Trusts}, 33 \textit{Amer. L. Rev.} 418, 419 (1899). \textit{See also Nader \& Green, supra note 44, at 70.}
\item \textsuperscript{73} \textit{Note, Michigan \textemdash To Out Delaware}, 18 \textit{Wayne L. Rev.} 913, 914 (1972).
\item \textsuperscript{74} \textit{Mintz \& Cohen, supra note 45, at 358.}
\item \textsuperscript{75} \textit{See Swift \& Co. v. United States}, 196 U.S. 375 (1905), where the U.S. Justice Department obtained a regulatory injunction against Swift and the meat packers for getting less than lawful rates from railroads to the exclusion of competitors.
\item \textsuperscript{76} \textit{Watkins, supra note 31, at 92.}
\item \textsuperscript{77} \textit{F.T.C. Report, supra note 42, at 58.}
\end{itemize}
Speaking before Congress in 1905, President Theodore Roosevelt said:

The fortunes amassed through corporate organizations are now so large and vest such power in those who wield them that it makes it a matter of necessity to give...the government...some effective power of supervision...78

In 1903 a federal incorporation bill was introduced in the House,79 but Congress again chose an alternative and created the Bureau of Corporations.80 The Bureau's purpose was to diligently investigate the conduct and management of any business corporation, joint-stock corporation or combination which engaged in interstate commerce, and to report their findings to the President. Although the Bureau had the right to subpoena, to compel the attendance and testimony of witnesses, to compel the production of documentary evidence, and to administer oaths, its power was severely limited since the Commissioner of the Bureau of Corporations was directly under the Secretary of Commerce and Labor.81 The Bureau of Corporations lasted only a decade, and politics can be cited for its demise.82

In 1902, the United States Industrial Commission issued a report endorsing federal incorporation.83 The Commission recommended inter alia that states should amend their incorporation laws to require greater publicity and responsibility on the part of promoters and officers. The Commission urged that:

If experience shall prove that these remedies are not sufficient to properly control the great corporations and combinations, it may be wise for the Congress to enact a Federal incorporation law. Should such a law be enacted, it would then be possible to increase the franchise tax upon State corporations engaged in interstate commerce so as to compel them to reorganize under the Federal law. When organized under a Federal law, it would be possible, as has been pointed out, to apply to corporations any degree of publicity or restriction that might be authorized.84

James R. Garfield, the Commissioner of Corporations, made the first official government pronouncement for federal incorporation two years later. Garfield's plans specifically called for a federal franchise or license system for interstate commerce.85

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78. Id. at 18.
80. 32 Stat. 827 (1903).
81. Id.
82. New York Times, Feb. 13 (1903), at 8, cols. 1-2. "It will appease the public clamor against the trusts and it will do the trusts and combinations no harm. It will fool the people and that is the purpose of the Republican Congress." See also NADER, supra note 8, at 79.
83. F.T.C. Report, supra note 42, at 22.
84. Id. at 24.
85. Id. at 4. See also BRABNER & SMITH, FEDERAL INCORPORATION OF BUSINESS, 24 VA. L. REV. 159, 169 (1937).
President William Howard Taft, in his message to Congress on January 7, 1910, said:

I therefore recommend the enactment by Congress of a general law providing for the formation of corporations to engage in trade and commerce among the states and with foreign nations, protecting them from undue influence by the states and regulating their activities so as to prevent . . . those abuses which have arisen under state control.\(^8^6\)

Attorney General Wickersham drafted the Taft-Wickersham Bill which was introduced in 1910 to both houses of Congress.\(^8^7\) The bill provided for optional, not compulsory, incorporation. President Taft preferred this feature, believing that large corporations would choose federal charters defining their powers and duties rather than risk the chance of the offending, less definite provisions of the anti-trust law, and having to reorganize their affairs.\(^8^8\)

Between 1903 and 1914, twenty major legislative proposals relating to federal incorporation or federal licensing were introduced in Congress.\(^8^9\)

\(^8^6\) Id. at 8. It should be noted that in the presidential campaign of 1912, President Taft changed his attitude and opposed federal chartering after the Progressive Party Platform had declared for regulation through federal incorporation. F.T.C. Report, supra note 42, at 9. See also BRABNER & SMITH, supra note 85, at 152.


The significant features of the bill were the following:
1. Incorporation was to be voluntary.
2. The Commissioner of Corporations was to be vested with authority to examine the articles and to ascertain that they comply in all respects with the terms of the law.
3. Holding companies were disallowed.
4. No corporation was to engage in the banking business.
5. A corporation could purchase any property that it needed for regular business, but would be required to file in the office of the Commissioner of Corporations information re: any stock issued in payment of such property including number of shares issued, the terms and other material information.
6. A statement of the value of property was to be made by independent appraisers and filed with the Commissioner.
7. An annual report was to be filed with the Commissioner.
8. There was a penalty for failure to supply the report.
9. The Commissioner had to approve an increase in capital stock.
10. No dividends could be paid except from surplus or net profit, and capital stock could not be released.


\(^8^8\) WATKINS, supra note 31, at 93.

\(^8^9\) Chronological List of Congressional Bills Proposing Federal Incorporation or License:
1. November 9, 1903; H.R. 66, 58th, 1st by Congressman Henry W. Palmer. (Introduced again at H.R. 362, 59th, 1st Dec. 4, 1905.)
2. January 5, 1904; H.R. 8883, 58th, 2d by Congressman N.D. Sperry.
3. January 4, 1905; S. 6238, 58th, 3d by Senator Heyburn. (This bill was reintroduced Dec. 21, 1905, as S. 2398, 59th, 1st.)
5. December 4, 1905; H.R. 473, 59th, 1st by Congressman Martin. (This bill was reintroduced in enlarged form on Jan. 25, 1906, as H.R. 13095;
Nearly all of the proposed legislation required the filing of annual statements with some governmental agency, usually the Departments of Commerce or Labor. Several required publicity as a deterrent to overcapitalization; some exacted severe penalties for violation of the Act, including revocation of the license or franchise; some restricted the provisions of the Act to corporations with a gross business of $1,000,000; some made $10,000,000 the point at which the corporation should be obligated to incorporate nationally; and some bills were permissive.\(^{50}\)

Discussion of the need for federal incorporation and regulation was widespread during the early 1900's. The question was a popular issue forcing most business and political leaders to take a position.

President Woodrow Wilson tried to carry his New Jersey reforms into the federal government. In 1914, during an address before Congress, he firmly demonstrated his advocacy of federal incorporation by stating:

The failure of the States to enact uniform and harmonious regulations for the guidance of these corporations creates a necessity for a proper Federal incorporation law . . . The doctrine of 'State rights' with reference to trading corporations, is, in this day and generation, a jack o'lantern. That theory, when applied to the control of business and commerce, no longer dominates any of the existing political parties, whether led by a McKinley, a Roosevelt, a Taft, or a Wilson. The policy of complete central direction and control of common carriers, the telegraph, the telephone, and interstate corporations in general, has driven on with such rapidity that it has permanently eclipsed the

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<td>7.</td>
<td>December 4, 1907; S. 383, 60th, 1st by Senator McCumber. (This bill was reintroduced as S. 133, 61st, 1st, and as S. 825, 64th, 1st.)</td>
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<td>8.</td>
<td>February 3, 1908; S. 4874, 60th, 1st by Senator Knute Nelson. (Reintroduced as S. 1259, 61st, 1st; and again as S. 4387, 63d, 2d; and as S. 1310, 64th, 1st.)</td>
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<td>9.</td>
<td>February 7, 1910; S. 6186, 61st, 2d by Senator C.D. Clark; and February 7, 1910, H.R. 20142, 61st, 2d by Congressman Parker, identical (being bills known as &quot;Taft-Wickersham bills&quot;).</td>
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<td>10.</td>
<td>April 20, 1911: S. 1377, 62d, 1st by Senator John Sharp Williams. (Reintroduced Jan. 23, 1913, S. 1138, 63d, 1st.)</td>
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<td>11.</td>
<td>July 26, 1911; H.R. 12909, 62d, 1st by Congressman Adamson. (Reintroduced Dec. 3, 1913, H.R. 9763, 63d, 2d.)</td>
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<td>April 14, 1913; H.R. 2488, 63d, 1st by Congressman Smith of Texas.</td>
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<td>August 24, 1913; H.R. 26414 and 26415, 62d, 2d by Congressman A.P. Gardner of Massachusetts.</td>
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<td>April 7, 1913; H.R. 1890, 63d, 1st by Congressman Morgan of Oklahoma.</td>
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<td>April 28, 1913; S. 1617, 63d, 1st by Senator Cummins.</td>
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<td>18.</td>
<td>December 20, 1913; H.R. 11167 and 11168, 63d, 2d by Congressman Stanley and by Congressman McGillicuddy, respectively.</td>
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<td>19.</td>
<td>January 22, 1914; H.R. 12123, 63d, 2d by Congressman Stanley.</td>
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<td>20.</td>
<td>February 27, 1914; S. 4647, 63d, 2d by Senator Knute Nelson.</td>
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As cited in F.T.C. Report, \textsuperscript{ supra} note 42, at 32.

\(^{50}\) F.T.C. Report, \textsuperscript{ supra} note 42, at 42.
'State rights' doctrine of the old political schools. Artificial State lines obstruct, handicap, and needlessly burden and tax business and trade.91

Both major political parties endorsed modifications of federal incorporation. The Democratic Party platform of 1904 declared that trusts monopolizing any branch of business or production should not be allowed to transact business outside the state of its origin, and that such prohibition should be enforced through comprehensive law.92 The Republican platform of 1908 provided that the federal government should be given greater supervision and control over, and secure greater publicity in, the management of that class of corporations engaged in interstate commerce.93 By the next national election in 1912, the Democratic Party platform specifically endorsed a declaration by law of the conditions upon which corporations should be permitted to engage in interstate trade. This included the prevention of holding companies, of interlocking directors, and the control by any one corporation of a proportion of any industry causing a menace to competition.94

Federal incorporation was also endorsed by leading members of the bar. Francis L. Stetson, a noted lawyer and author from New York, favored the concept of voluntary federal incorporation.95 In the President's annual address to the Kansas Bar Association, the Honorable Charles W. Smith said reform "can be accomplished through Federal control by bringing all corporations under federal incorporation laws."96

Judge Gary, an industrialist, and Richard Whitney, President of the New York Stock Exchange, took the stand favoring both federal incorporation and uniform laws for the several states.97

Despite this range of support, the Clayton Act and Federal Trade Commission Act of 1914 became law instead of federal chartering. After exhaustive hearings on the topic in 1913, the Senate Interstate Commerce Committee concluded that federal incorporation was "neither necessary nor desirable at this time."98

World War I and After

During the First World War, calls for federal incorporation subsided significantly. Between 1914 and 1919, no legislation proposing federal chartering was introduced. Even the major political party platforms failed to make any reference to federal chartering or licensing. The period was

91. Id. at 17.
95. 18 Case and Comment, at 512-15 (1911-1912).
97. Id. at 22, 92. But see id. at 108, for contras by the American Bar Ass'n.
98. Id. at 10.
marked, however, by the "rapid extension of the use of the government-owned corporation."99

World War I seemed to be the catalyst. Within days after war was declared on Germany in April, 1917, the United States Shipping Board Emergency Fleet Corporation was incorporated in the District of Columbia. The corporation was established under an act of Congress passed in 1916 which created the United States Shipping Board.100

The first government-owned enterprise incorporated, by executive order of the President, under the laws of a state, was the United States Grain Corporation previously organized in Delaware. The power to issue its order rested on the Food Control Act which authorized the President "to create and use any agency or agencies which would promote the purposes of the Act."101

By the end of the war, Congress had created several new government-owned corporations under the War Finance Corporation.102 In the post-war period, Congress created twelve Intermediate Credit Banks under the Federal Farm Loan Board, and assigned capital to each bank in the amount of five million dollars subscribed by the United States.103 By 1930 the number of government-owned corporations had grown substantially, as Congress tried to rescue an economy gripped in depression. The Cotton Stabilization Corporation was formed to take the holdings of cotton cooperatives when cotton prices plunged.104 In order to halt the flood of home mortgage foreclosures, Congress created the Home Owner's Loan Corporation.105 Congress also enacted the Reconstruction Finance Corporation106 to enhance recovery, which held stocks and securities issued to it by railroads, banks, and other business institutions for loans and capital investments.

99. WATKINS, supra note 31, at 96.
100. Id.
101. Id.
102. Id. The Act created the United States Spruce Production Corporation, incorporated under the laws of the State of Washington; the United States Housing Corporation, incorporated in New York; the United States Sugar Equalization Board, incorporated in Delaware.
103. Id. at 97.
104. Id. See SUMNER H. SLICHTER, MODERN ECONOMIC SOCIETY 440-47 (Holt ed. 1931).
105. 12 U.S.C. §§ 1461-63a as cited id. at 97. For an important case decided on Tenth Amendment grounds and carrying important implications for federal corporations, see Hopkins Federal Savings and Loan Ass'n v. Cleary, 296 U.S. 315, 335, 100 A.L.R. 1403 (1935), where the Supreme Court held that the provisions of the Home Loan Act of 1933 that provided for the conversion of state building and loan associations into federal savings and loans upon a majority vote of the stockholders present at a meeting legally convened and not conditioned upon the consent of the state or in compliance with state laws was unconstitutional. Justice Cardozo, speaking for the Court, held that:
The Home Owners' Loan Act, to the extent that it permits the conversion of state associations into federal ones in contravention of the laws of their place of creation, is an unconstitutional encroachment upon the reserved powers of the states.
By the end of the 1930's the familiar pattern of proposed federal incorporation-alternative remedy had once again turned full circle. Although the New Deal brought major regulatory legislation like the National Recovery Act; the Securities Act of 1933 and 1934; the Federal Communications Commission, 1934; the Public Utility Holding Company Act of 1935; and the Civil Aeronautics Board of 1938, calls for federal incorporation were again revived. Senators Joseph O'Mahoney and William Borah proposed legislation\textsuperscript{107} making it unlawful for any corporation with gross assets in excess of $100,000 to engage directly or indirectly in commerce without having obtained a license from the Federal Trade Commission. Senator O'Mahoney maintained that "a corporation has no rights; it only has privileges,"\textsuperscript{108} and "sought to return to the pre-enabling act days when charters policed as well as permitted."\textsuperscript{109} The novel features of the O'Mahoney proposal included: disclosure of the financial affairs of the corporation; outlawing of holding companies; full disclosure of proposals altering existing rights of shareholders; and prohibition against directors having a financial interest in, or being employed by a competitor. The Bill further provided that corporations violating anti-trust laws, discriminating on the basis of sex, employing child labor or failing to bargain collectively were subject to penalties including the revocation of their federal license following Federal Trade Commission (F.T.C.) hearings and an action instituted by the Attorney General of the United States in any district court.\textsuperscript{110}

The O'Mahoney Bill was revised in form\textsuperscript{111} and reintroduced in Congress in 1939, but, like its predecessors, it failed to muster sufficient support to become law. In his recent study, Mr. Nader makes reference\textsuperscript{112}

\textsuperscript{107} S. 3072, 75th Cong., 3d Sess. (1938). Before the O'Mahoney Bill, between 1914 and 1932, the following bills proposing legislation relating to federal incorporation or licensing were introduced:
1. August 11, 1919: S. 2754, 66th, 1st by Senator Kellogg.
2. June 6, 1929: Amendment to S. 6, 71st, 1st by Senator Couzens.
6. May 20, 1919: H.R. 1186, 66th, 1st by Congressman Steele. This is same as S. 2754, introduced by Senator Kellogg on August 11, 1919 (licensing interstate corporations).

As cited in F.T.C. Report, supra note 42, at 42.

\textsuperscript{108} J. O'Mahoney, Federal Charters and Licenses for Corporations, 22 J. Nat'l Educ. Ass'n 27 (1938), as cited in NADER, supra note 8, at 82.

\textsuperscript{109} Id. NADER, supra note 8, at 82.

\textsuperscript{110} Id. at 82, 83. Another similar bill was introduced by O'Mahoney in 1937 but it achieved no notoriety. See S. 10, 75th Cong., 1st Sess. (1937).

\textsuperscript{111} S. 330, 76th Cong., 1st Sess. (1939).

\textsuperscript{112} NADER, supra note 8, at 83.
to Mr. O'Mahoney's final statement before the Temporary National Economic Committee in 1941 as an indication of O'Mahoney's undying faith in the cause.

[T]o do this it will be necessary, in my judgment, to have a national charter system for all national corporations . . . . One thing is certain: We cannot hope to stop the processes of concentration if we are willing to continue to allow the States to create the agencies through and by which the concentration has been brought about.\textsuperscript{113}

Harold Reuschlein perceived the statements of Senator O'Mahoney differently.\textsuperscript{114} He claimed that Senator O'Mahoney lost faith in the concept of federal chartering, but, the authors do not believe his reference supports that theory.

There are indications that Senator O'Mahoney himself has lost faith in S. 330, for in his final statement to the Temporary National Economic Committee, he said: 'This, however, is not the place to discuss the details of a federal charter system. I am concerned now only with urging the acceptance of the principle. For the details, I think it would be wise to have Congress formally authorize a national conference on corporation law to suggest the form the statute should take.'\textsuperscript{115}

Three factors led to the demise of the O'Mahoney-Borah bills. First, World War II seemed to focus attention elsewhere, and Congress re-asserted its support for laissez-faire economics and free enterprise in order to faithfully adjust to the war effort. Federal incorporation was viewed as a possible restriction upon free flowing commerce. Secondly, it was felt that federal common law already presided over areas suggested by O'Mahoney. In short, it was felt that the National Labor Relations Board (NLRB), the Wage and Hour Division, the Securities and Exchange Commission (SEC), the Anti-trust Division of the Department of Justice, the Federal Loan Agency, among others, not only overlapped Mr. O'Mahoney's bills, but also pre-empted the need for them.\textsuperscript{116} Thirdly, it was suggested that the $100,000 eligibility requirement for incorporation under the O'Mahoney bill would not prevent smaller corporations and subsidiaries of large corporations from engaging in the abuses outlawed by the O'Mahoney proposal.\textsuperscript{117}

**The Modern Era**

Subsequent to the O'Mahoney-Borah legislation, the area of federal incorporation lay dormant for 30 years until, in 1971, Ralph Nader began

\textsuperscript{113} Id.


\textsuperscript{115} Id. at 115.

\textsuperscript{116} Id. at 116.

to reconsider the concept.\textsuperscript{118} Others soon became interested in the idea, and the first proposal in the modern era for federal chartering appeared in a student note in a 1972 issue of the Georgetown Law Journal.\textsuperscript{119} The proposal produced little or no reaction in Washington, and Nader, still concerned over the ill effects of liberal state incorporation statutes, focused continued attention on the subject.\textsuperscript{120} On May 22, 1975, Representative Shanahan, \textit{Reformer: Urging Business Change}, N.Y. Times, Jan. 24, 1971, 63 at 9, col. 1–2. See also Addresses by Senator Fred Harris and Ralph Nader, \textit{The Case for Federal Incorporation} (A Presentation to the Conference on Corporate Accountability) Oct., 1971.

\textsuperscript{119} Note, \textit{supra} note 5, at 98–121. Specific provisions of the proposal include:

1. That a possible standard for mandatory federal chartering might follow that of the New York Stock Exchange. Under that standard, corporations with over $14 million of assets and more than 3,000 shareholders would be subject to the federal corporation law and required to obtain a charter from a Federal Corporation Commission. Corporations required to register under section 12(g) of the SEC Act of 1934 would be given the option of remaining state chartered or incorporating under federal law.

2. That a federal corporation code would limit a corporation to one line of business.

3. Conglomerates would be discouraged from holding shares in other companies and parent companies would not be permitted to control shares of a subsidiary.

4. The corporation would not have an indefinite life and would be required to renew its charter every 30 years after a determination by the Corporation Commission that such renewal would not contravene the public interest.

5. An annual report would have to be filed with the Commission including a list of shareholders with stock interests above five percent.

6. Actual voting and beneficial interests in shares would be disclosed in the report.

7. Results of affirmative action and equal opportunity plans would have to be disclosed as well as data on air, water and waste pollution. Also, data on incidents of job accidents would be included in the report.

8. Copies of the report would be made available to the public at cost and mailed to shareholders without charge.

9. Under the proposal, corporations subject to the provisions of the Act would have to clearly define the duties of its officers and agents and would be held strictly liable for breaches of duty.

10. Individual liability would not be precluded by corporate liability and negligent management which creates or allows corporate liability, would be accountable to the corporation and its shareholders for the fines, penalties and judgments assessed against the company.

11. Criminal liability would attach for breaches of supervisory duties and where a corporation has been convicted of a criminal charge, the Attorney General or any other attorney could be authorized by the trial court or the Commission to initiate proceedings to determine, collect, and distribute damages to all injured parties in the class which the statute was designed to protect.

12. Directors would be paid and not chosen from inside the corporation.


14. Indemnification would be permitted where it was found that a director acted in good faith and under the reasonable belief that his actions were in the best interests of the corporation.

15. Cumulative and class voting, appraisal rights, rights of inspection and access to proxy machinery would be provided for as well as a method of encouraging meritorious derivative suits.

\textsuperscript{120} Nader & Green, \textit{supra} note 44.
James V. Stanton of Ohio responded to Nader's concerns by introducing legislation,121 entitled The Corporate Citizenship And Competition Act.122

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122. Id., text of the proposed Act at H4664–H4667. Specific provisions of the bill include:

1. The bill proposes the establishment of a Federal Chartering Commission to grant charters to corporations with an annual sales volume of two billion dollars and with at least half of these sales derived from manufacturing or mining. (It is estimated that 100 corporations will initially have to comply with the Act and that most of these will be oligopolies in the auto, petroleum and steel industries.)

2. The Federal Corporate Chartering Commission members are to be appointed by the President with confirmation by the Senate. Two members are to be from industry, two from labor, one representing consumers, one from the academic community and one member is to be at large, but not representing industry or labor. Commission members are to be compensated and no more than four may belong to the same political party. The Commission shall have a Director appointed by itself as well as a General Counsel to act as the chief legal officer of the Commission.

3. Corporations subject to the Act must file the names and duties of the principal executive officers and the board of directors of the corporation. They must also transmit to the Commission product line reports, voting stock ownership reports, debt structure reports and Federal income tax reports. All of this information is to be made available to the public.

4. No person serving on the Board of Directors or as an officer of any corporation required to be chartered pursuant to the Act, shall serve at the same time on the Board of Directors or as an officer of any other corporation which is required to be chartered under Act or on the board of any financial institution.

5. The Commission shall have the power to devise plans for the reorganization of oligopolies. The purpose of the reorganization plans is to maximize competition, minimize vertical integration and not impair the economies of scale. Furthermore, in their reorganization plans Commission members must provide for the protection of employee pension, health, and other benefit plans, and shareholder interests.

6. In granting new charters to reorganized corporations, the Commission may define the permissible scope of operations by product line and provide for limitations on the holding of assets.

7. Congress may disapprove reorganization plans by concurrent resolution and corporate challenges to the plans may be brought in the United States District Court for the District of Columbia.

8. Under the Act, any interested person may bring a civil suit to compel the Commission to institute reorganization proceedings.

9. For a failure to register or for breach of director status (being a member of two boards) there is a civil penalty of not less than $10,000.00 for each day after the day upon which the Commission finds that a violation has occurred. Other persons who violate the Act are liable for a $1,000/diem fine from the date of the violation and persons failing to comply with reporting and public disclosure requirements may be prosecuted by the Attorney General and fined not more than $10,000, or imprisoned not more than one year or both.

10. No person shall be indemnified for such penalties from the corporation with which he is associated.

11. The Commission also has the right to revoke charters or seek injunctive relief in the District Court where the corporation is located in order to
A revised version of the bill was introduced in Congress on July 29, 1975, nearly identical to the first bill but including some minor typographical changes. Hearings on these matters, as well as the general topic of federal incorporation, are scheduled for the Spring of 1976 before the Senate Commerce Committee and before the House Government Operations Committee this Summer. While the bill has not yet obtained an avalanche of support, some collateral effects can be seen. For example, in an apparent effort to institute annual reporting by large corporations, similar to the reporting required under many federal chartering plans, the Federal Trade Commission has ordered 450 manufacturers, including DuPont, ICI America, and Hercules to answer detailed questionnaires on price structure, the profitability of specific lines, expenses for advertising, other selling expenses, expenses for research and development, details on depreciation, cash flows, payroll and cost of materials. The difference between the Federal Trade Commission reporting methods and those suggested by Representative Stanton is that the FTC has no intention of making public the information supplied. Additionally, although the information is to be used in formulating an anti-trust policy, the FTC has promised firms that it will not use any of the data in a legal action against the firms. More than 100 firms are suing the FTC over the orders, claiming that the questionnaires jeopardize the proprietary nature of their businesses.

More recently, Ralph Nader has begun a major campaign for federal incorporation and has completed an exhaustive study of the area. The Nader Plan has many of the same features of proposals previously introduced and, although not transcribed into legislative language yet, it is prevent it from engaging in interstate commerce and to secure compliance with the Act.

12. The Commission must report to Congress annually and make recommendations as to the inclusion or deletion of various corporations from compliance with the provisions of the Act.
124. Information supplied by Joel Seligman, The Corporate Accountability Research Group, and Congressman James V. Stanton (Democrat, Ohio).
127. Id.
128. Id.
129. Id.
130. NADER, supra note 8.
131. Id. at 86-326. Specific provisions of The Nader Plan include:

1. That corporations with a sales volume of $250 million would be the only companies subject to his bill. According to Nader, only 700 corporations out of 1.8 million currently operating in the United States would be affected by his proposal.
2. The plan calls for corporations under the federal system to hire a full-time, wholly outside board of directors with a full-time staff to supervise
expected that the Plan will be the subject of debate during the Congressional Hearings on federal chartering scheduled for the Spring and Summer of 1976.  

**CONCLUSION**

In summary, throughout history, federal chartering proposals have failed time and again. At the turn of the century, following the outrage against trusts in New Jersey and the attention being drawn to corporate abuses by muckrakers, alternatives to federal chartering were enacted. The Sherman Act in 1890, the Interstate Commerce Commission Act in 1887, and the establishment of the Bureau of Corporations in 1903 were enacted as remedies to problems which federal chartering was supposed to correct. After the Taft-Wickersham Bill and the commotions preceding its introduction into Congress, the Federal Trade Commission Act and the Clayton Act were passed; and considerations of federal chartering were diverted to the war effort. Besides the Taft-Wickersham era, the next significant period for federal chartering arose with the O'Mahoney-Borah legislation. Again, an alternative remedy was found and New Deal federalism took the place of federal chartering. Congress opted for the SEC, the NLRA and the FCC instead of the more drastic concept of federal incorporation. Popular movements behind the concept were again diverted in 1941 by U.S. intervention in World War II. Now, in the 1970's, the theory has appeared once again looking for new attention, and we must consider whether it is worthy of our consideration.

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the performance of management. The board would be comprised of nine members and would have the power to set salaries and make major management decisions. Each board member would act as a general director and specialize in a particular aspect of the corporation such as employee welfare, community relations, or consumer protection. The board would also be required under the act to file environmental "impact" statements.

3. Shareholders with more than one percent of stock or representing more than 100 individuals would be permitted to nominate three persons to the board.

4. Only shareholders could vote for directors and cumulative voting would be permitted under the plan.

5. The act also would permit the affected community to vote on what to do about health hazards caused by a corporation. Only three directors or three percent of the voting shares need find that the corporation is causing a public health hazard.

6. The Nader plan would increase disclosure requirements for air pollution violations, toxic substances in work areas, minority hiring, substantiation of advertising claims, tax returns, costs and profits per product line, expenditures for lobbying, federal contracts obtained and the 100 largest security holders in each class of stock issued.

7. The plan calls for a Bill of Rights for employees encompassing First Amendment guarantees of free speech, thus protecting employees reporting violations of the federal incorporation statute. The Bill of Rights would also prohibit invasion of employee privacy on the job by use of listening devices and cameras. The Bill would also permit an employee full access to his or her personnel file for purposes of inspection.
Despite a long absence of thirty (30) years, federal chartering has emerged as an item of significance. The Georgetown student proposal, Representative Stanton's legislation, and Nader's study make the area fertile for exploration and debate. Congressional Hearings on the matter are forthcoming and a spokesman for Nader suggests that there will be an attempt to include federal chartering in the 1976 Democratic Platform.\textsuperscript{133}

It would seem, however, highly questionable as to whether federal chartering legislation can be seriously considered for passage at this time. At a seminar on federal incorporation held at Georgetown University in 1972, Senator Philip A. Hart of Michigan, Chairman of the Anti-trust and Monopoly Subcommittee of the Senate Judiciary Committee, indicated that he could think of no more than six senators who would vote for federal chartering.\textsuperscript{134} Additionally, there is even some pessimism among proponents of the idea.

According to a Stanton aide, the bill [The Corporate Citizenship And Competition Act] breaks new ground by making Congress the jury which decides that certain anticompetitive industries are illegal \textit{per se} and dictates what changes should be made.

Stanton, who staff members identify as "a practical politician," knows the bill is an idea whose time has not yet come, the aide said.

"But if it has any chance at all, it has it in this climate," he added. Any far-reaching reform takes years of building a record, he pointed out, and now is the time to get started.\textsuperscript{135}

If federal chartering is not viable at this time, it would seem that precedent will, in all probability, be followed; and an alternative sought. Professor William Cary, in an apparent effort to accommodate competing interests, has suggested a solution in the form of a Federal Corporate Minimum Standards Act.\textsuperscript{136} The compromise measure calls, among other things, for:

(1) federal fiduciary standards with respect to directors and officers and controlling shareholders; (2) an "interested directors" provision prescribing fairness as a prerequisite to any transaction; (3) a requirement of certain uniform provisions to be incorporated in the certificate of incorporation; for example, authority to amend by-laws, initiate corporate action, or draw up the agenda of shareholders' meetings shall not be vested exclusively in management; (4) a more frequent requirement of shareholder approval of corporate transactions, with limits placed upon the number of shares authorized at any one time; (5) abolition of non-voting shares; (6) the scope of

\textsuperscript{133} Supra note 124.


indemnification of directors specifically prescribed and made exclusive; (7) adoption of a long-arm provision comparable to § 27 of the Securities Exchange Act to apply to all transactions within the corporate structure involving shareholders, directors and officers. 137

While the authors find much merit in the proposals for advocating federal incorporation, we unfortunately see no ground swell of support for the idea. Indeed, at the time of this writing, the authors assert that popular sentiment in favor of the concept was much greater during the times of the Taft-Wickersham and O'Mahoney-Borah Bills. In the light of history, we note that federal incorporation has persistently failed to muster sufficient strength for passage. Nonetheless, corporate abuses resulting from enabling incorporation statutes remain unabated, and it would seem that federal chartering or a suitable alternative solution is of timely significance.

Richard G. Handler
Thomas F. Liotti

THE DEFINITION OF A "SECURITY": POST-GLENN TURNER DECISIONS

The Securities Act of 1933 provides that the term "security" includes:
any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. 1

This language is incorporated into the definition of a security in the Securities Exchange Act of 1934, which, however, excludes currency and certain short-term notes, drafts, bills of exchange, and banker's acceptances. 2

In the intervening years many suits have been brought by persons who have invested in a wide variety of schemes, seeking to have their investments brought within the jurisdiction of the federal securities laws. Because of the broad language of the acts, many courts have been perplexed over what types of investments the acts should properly be held to regulate.

137. Id. at 1115.

1. 15 U.S.C. § 77(b) (1).
2. 15 U.S.C. § 78c(a) (10).