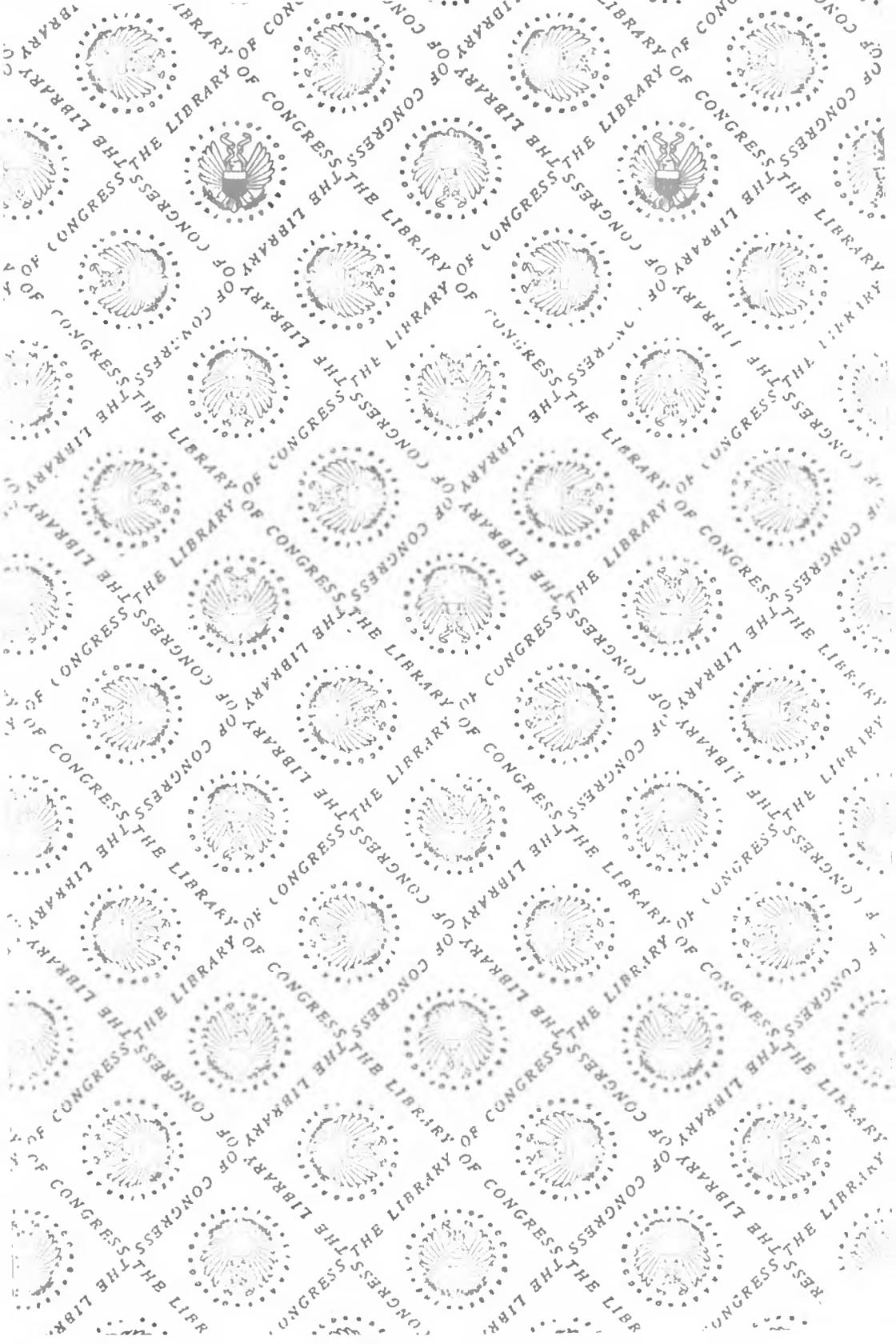


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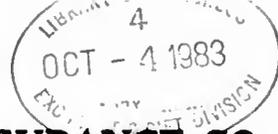
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United States.



ACACIA MUTUAL LIFE INSURANCE CO.

HEARING

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 2479

ACACIA MUTUAL LIFE INSURANCE CO.

MAY 12, 1983

Serial No. 10



Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1983

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ACACIA MUTUAL LIFE INSURANCE CO.

THURSDAY, MAY 12, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ADMINISTRATIVE LAW AND
GOVERNMENTAL RELATIONS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2 p.m., in room B-352, Rayburn House Office Building, Hon. Sam B. Hall, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Hall, Mazzoli, Frank, Kindness, and McCollum.

Staff present: William P. Shattuck, counsel; Wade Harrison, assistant counsel; Dave Karmol, associate counsel; and Florence McGrady, legal assistant.

Mr. HALL. The Subcommittee on Administrative Law and Governmental Relations will come to order.

We have several bills today. The first will be H.R. 2479.

Mr. Davis, you may proceed as you see fit, and identify those persons who are with you for the record.

TESTIMONY OF F. ELWOOD DAVIS, SPECIAL COUNSEL FOR ACACIA MUTUAL LIFE INSURANCE CO., ACCOMPANIED BY DUANE B. ADAMS, CHAIRMAN OF THE BOARD OF ACACIA MUTUAL LIFE INSURANCE CO.; AND JOHN E. BOICE, JR., ESQ.

Mr. DAVIS. I am F. Elwood Davis, special counsel for Acacia Mutual Life Insurance Co., and this is Mr. Duane Adams, who is chairman of the board of Acacia Mutual Life Insurance Co., and Mr. John E. Boice, who is a partner of mine.

Mr. HALL. We have a vote on. We are going to vote and come back before we start any testimony. Your prepared statement will be inserted in the record at this point.

[Recess.]

[The statement and letters follow.]

STATEMENT IN SUPPORT OF H.R. 2479, AN ACT TO AMEND THE CHARTER OF ACACIA MUTUAL LIFE INSURANCE CO.

Chairman Peter W. Rodino, Jr. has requested Special Counsel for Acacia Mutual Life Insurance Company for an expression of his views with respect to H.R. 2479. The Bill makes several amendments in Acacia's charter. Special Counsel believes that H.R. 2479 is in the best interests of Acacia and its policyholders and urges its adoption.

Acacia was chartered by a special act of Congress on March 3, 1869 under the name of "Masonic Mutual Relief Association of the District of Columbia." At the time Acacia was chartered, there was no general corporation law in existence in the

District of Columbia under which it could have incorporated. Congress has reserved the right to amend, alter or repeal Acacia's charter. Acacia's charter has been amended by Congress nine times, the last of such amendments occurring in 1932.

Acacia was originally organized as a fraternal benefit society to provide life insurance protection for members of the Masonic orders and their beneficiaries. In 1932 Acacia discontinued the practice of limiting coverage to Masons and evolved into a full-fledged mutual legal reserve life insurance company. Acacia now offers life and other forms of insurance to the public at large in the District of Columbia and thirty-six states in which it operates. Acacia's insurance business is subject to regulation by the District of Columbia Insurance Department and the states in which it is licensed.

H.R. 2479 makes several changes in Section 3 of Acacia's charter. At the present time Acacia is required to have a minimum of twenty-one directors. This is an exceptionally large number of directors by modern corporate standards. Acacia believes it could operate more efficiently with a smaller and more active board of directors. Also, due to the decision of the Ninth Circuit Court of Appeals in *United States v. Crocker National Corp.*, 656 F. 2d 428, now on appeal to the United States Supreme Court, directors of banks and other financial institutions may be barred by the antitrust laws from serving as directors of insurance companies with which they compete for mortgage loans and other financial services. If this decision is upheld on appeal, Acacia may be required to reduce the number of its directors to less than the mandatory twenty-one. Under the Bill, the exact number of directors will continue to be fixed by the by-laws, but shall be at least three. H.R. 2479 also reduces the number of directors required to constitute a quorum from twelve to a simple majority and gives Acacia the option of not filling a vacancy on its board of directors except to meet the requirement as to the minimum number of directors.

H.R. 2479 is concerned solely with changes in the regulation of the internal affairs of Acacia. The Bill confers no new substantive rights or privileges on Acacia that it does not already possess under its existing charter.

The amendments have been approved by Acacia's board of directors with the request that Congress adopt the necessary enabling legislation. The District of Columbia Insurance Department has no objection to the Bill as will appear from the Department's separate statement filed with the Subcommittee. Neither Acacia nor its Special Counsel are aware of any opposition to H.R. 2479.

REASONER, DAVIS & VINSON,
Washington, D.C., June 22, 1983.

WILLIAM P. SHATTUCK,
Counsel, Committee on the Judiciary,
Washington, D.C.

DEAR MR. SHATTUCK: I enclose a supplemental statement signed by Mr. F. Elwood Davis of this office in support of H.R. 2479. The enclosed statement supplements Mr. Davis' earlier statement dated May 9, 1983, on the same subject.

You may recall that one of the reasons cited in Mr. Davis' earlier statement for reducing the minimum number of directors that Acacia is required to have was to avoid a possible violation of the antitrust laws due to the decision of the Ninth Circuit Court of Appeals in *U.S. v. Crocker National Corporation*, 656 F.2d 428. The *Crocker* decision was on appeal to the U.S. Supreme Court at the time of the Subcommittee's hearing on H.R. 2479 on May 9, 1983. Last week I advised Mr. Wade Harrison that the Supreme Court had revised the decision of the Ninth Circuit Court of Appeals. He thought that for the sake of completeness a further statement should be prepared for Mr. Davis' signature in order that the record might reflect this latest development.

I wish to assure you that this latest development has in no way diminished Acacia's desire to reduce the size of its board of directors for the reasons given in Mr. Davis' earlier statement.

Sincerely yours,

JOHN E. BOICE, Jr.

REASONER, DAVIS & VINSON,
Washington, D.C., June 21 1983.

Hon. SAM B. HALL, Jr.
Chairman, Administrative and Governmental Relations Subcommittee,
Washington, D.C.

DEAR CONGRESSMAN HALL: This will supplement the writer's statement filed with the Subcommittee on May 9, 1983 in support of H.R. 2479, An Act to Amend the Charter of the Acacia Mutual Life Insurance Company.

One of the reasons cited by the writer for reducing the minimum number of directors which Acacia is required to have was to avoid a possible violation of the anti-trust laws. The Ninth Circuit Court of Appeals had held in *United States v. Crocker National Corporation*, 656 F. 2d 428, that directors of banking institutions were prohibited from serving as directors of insurance companies with which they compete for mortgage loans and other financial services. This decision would have had a significant impact on Acacia. At the time of the Subcommittee hearing on H.R. 2479, the *Crocker* case was on appeal to the United States Supreme Court. On June 8, 1983 the Supreme Court reversed the decision of the Ninth Circuit Court of Appeals which effectively eliminated this issue as a problem for Acacia.

Resolution of the potential antitrust problem, welcome though it is, has not diminished Acacia's desire to reduce the size of its board of directors. As stated in the writer's original statement, Acacia's present charter requires it to have a minimum of twenty-one directors which is exceptionally large by modern corporate standards. Acacia sincerely believes that it could operate more efficiently with a smaller and more active board of directors.

It is requested that this supplemental statement be made a part of the record in support of H.R. 2479.

Respectfully submitted.

F. ELWOOD DAVIS, Esq.
Special Counsel for
Acacia Mutual Life Insurance Co.

Mr. HALL. The subcommittee will come to order.

You may proceed as you so desire.

Mr. DAVIS. Thank you very much.

Mr. ADAMS. Chairman Hall, I would like to thank you, first of all, for arranging this hearing and entertaining this amendment to our charter.

My name is Duane Adams. I am chairman of the board of Acacia Mutual Life.

The purpose that we seek to be achieved in this amendment is twofold.

The first is to continue a long-range program of cost reduction in Acacia. That is in its 10th year now.

At the time that the charter was developed for our company we had some 1,500 employees here in the city of Washington, and 21 directors with modest roles and low fees were appropriate. Today, with 21 directors, we have 1 director for virtually every 11 employees. It is certainly too much supervision.

In addition, we are reassigning the hopefully reducing number of directors to more strictly defined roles in the organization.

That constitutes the first reason.

The second is that there is a pending lawsuit which may require the expunging of bank directors from insurance boards. In that case that would affect about half of our present directorate.

So, those are the main reasons, and we hope that you will be sympathetic with those objectives.

Thank you.

Mr. DAVIS. Thank you very much, Mr. Adams.

My name is Elwood Davis, and I'm special counsel for Acacia Mutual Life Insurance Co.

I have prepared a statement and filed it with the committee.

I have pointed out that the changes that we are interested in today affect merely the internal affairs of Acacia. The bill confers no new substantive rights or privileges on Acacia that it does not already possess in its existing charter.

Historically, Acacia was organized and chartered by a special act of Congress on March 3, 1869. The last time our charter was amended was more than 50 years ago, in 1932.

Acacia was originally organized as a fraternal benefit society to provide life insurance protection for members of the Masonic orders and their beneficiaries.

In 1932 Acacia discontinued the practice of limiting coverage to Masons and evolved into a full-fledged mutual legal reserve life insurance company. Acacia now offers life and other forms of insurance to the public at large in the District of Columbia and in 36 States where it is qualified.

Acacia's insurance business is subject to regulation by the District of Columbia Insurance Department and the States in which it is licensed.

H.R. 2479 makes several changes in section 3 of Acacia's charter. At the present time Acacia is required to have a minimum of 21 directors. This is an exceptionally large number, as Mr. Adams just stated. Acacia believes it could operate more efficiently with a smaller and more active board of directors.

Also, the case now pending before the Supreme Court, which has been argued but not decided on, also gives us some concern of whether or not we might be subject to losing a number of our bank directors who represent approximately 50 percent of our board.

Under the bill the exact number of directors will continue to be fixed by the bylaws, but shall be at least three. And H.R. 2479 also reduces the number of directors required to constitute a quorum from the present 12 that is in our charter to a simple majority, and gives the Acacia board the option of not filling a vacancy on its board of directors except to meet the requirement as to the minimum number of directors.

The amendment has been approved by the Acacia board of directors with the request that the Congress adopt the necessary enabling legislation. The District of Columbia Insurance Department has no objection to the bill, as appears from a letter in your files from the insurance commissioner for the District of Columbia.

Mr. HALL. That letter, dated May 9, 1983, addressed to me, S. B. Hall, Jr., signed by Margurite C. Stokes, Superintendent of Insurance, will be made a part of this record.

Mr. DAVIS. Thank you very much.

[The letter follows:]

GOVERNMENT OF THE DISTRICT OF COLUMBIA,
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS,
Washington, D.C., May 9, 1983.

Hon. SAM B. HALL, JR.,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HALL: Several months ago Mr. C. Lawrence Evans, Jr. and Mr. Herbert E. Martin, Jr., discussed with Mr. James Montgomery, who was Acting Superintendent at that time, Acacia Mutual's plans to have a bill introduced in Congress which would amend the company's Congressional Charter. The amend-

ment would reduce the minimum number of directors required by the charter. After discussing the reasons for this action, Mr. Montgomery indicated that he had no objection to it.

I understand that the present bill is H.R. 2479 and that it would reduce the minimum number of directors required by Acacia Mutual's charter from twenty-one to three. I agree with Mr. Montgomery's position and have no objection to the enactment of this bill.

Sincerely,

MARGURITE C. STOKES,
Superintendent of Insurance.

Mr. DAVIS. Mr. Chairman and members of the committee, we know of no objections to this legislation by anyone.

Mr. HALL. I think the only thing this amendment does technically is to reduce the number of members of your board from the present 21 to a number not less than 3.

Mr. DAVIS. Yes, sir.

Mr. HALL. How much insurance do you have in force, approximately?

Mr. ADAMS. Almost \$6 billion, Mr. Chairman.

Mr. DAVIS. Also, Mr. Chairman, it has a technical change of making the quorum, which is presently provided at 12, a majority.

Mr. HALL. The gentleman from Ohio.

Mr. KINDNESS. Thank you, Mr. Chairman, and thank you, gentlemen, for your testimony today.

I am confronted with a concern that recurs in this subcommittee with some frequency, and that is how in the world did we ever get into the federally chartered corporation business to begin with. We have no administrative facility for dealing with it, but we have quite a number of such Federal charters outstanding.

Please understand that my questioning from this point forward is not directed toward your organization only. But somehow or another I feel that we must make some sense and order out of what has been built up over the past years, and in fairly recent years this subcommittee and the Senate Judiciary Subcommittee have attempted, but not in a concerted fashion always, to try to bring some order into this matter.

One of the problems that I would like to elicit your comment about is that our subcommittee rules for the granting of Federal charters has certain requirements, one of which is that the organization is operating under a charter granted by a State or the District of Columbia. And yet that is not uniformly applied because some of the older charters have not been up for any revisions.

But this is the time for us to take a look at what should be done, what is in the best interest of the corporations in part and in the interest of some orderliness in dealing with federally chartered corporations.

I would like to ask whether there has been any consideration at any time of incorporation in any State or the District of Columbia, realizing that you are qualified under the corporation laws of 36 States presumably as well as the insurance laws of those States. Certainly it would seem that there must have been an occasion here and there where a secretary of state's office or corporation counsel's office had raised a question as to, well, just what is a Federal charter.

What is your degree of regulation under that Federal charter and has it ever caused any problem in terms of qualifying the corporation in other States?

Might I solicit some comment?

Mr. DAVIS. The answer to that, Mr. Kindness, is that under our charter it provides that we will be subject to the laws of the District of Columbia and any State in which we are licensed to do business. We are subject to the regulations as a commitment that we assume when we qualify, and we are supervised by the Insurance Commissioner of the District of Columbia.

Mr. KINDNESS. Are corporations incorporated and qualified in the District of Columbia still under the supervision of the Corporation Counsel?

Mr. DAVIS. The Insurance Commissioner looks to the Corporation Counsel for advice. But unless the Insurance Commissioner has a question that he directs the Corporation Counsel to follow up on, we deal strictly with the Insurance Commissioner and his department.

Mr. KINDNESS. I guess one of the questions we have to tussle with in this subcommittee and perhaps in the full committee is whether there is a point of order that would be sustained against the bill that would amend your charter because of noncompliance with the subcommittee's rules with respect to standards for the granting of Federal charters. I'll grant you there is a difference between granting and amending, and presumably this is the way we are proceeding. But I want to anticipate this, because what we are dealing with is a process that is subject to very easy slowing down or stopping because of an objection that can come from one person. We want the path to be properly prepared as the legislation moves, naturally.

Mr. DAVIS. I appreciate that question. I would like to point out that our firm was requested to give an opinion as to whether or not the City Council of the District had the authority to amend this charter, and we gave an opinion that it does not. So, in order to get this amendment we had to come back to Congress.

Mr. KINDNESS. May I ask whether if it became necessary for any reason other than the consideration of this subcommittee to incorporate Acacia Mutual under the laws of the District of Columbia, under the corporation laws of the District of Columbia, would that constitute a hardship or a problem?

Mr. DAVIS. I have to answer that honestly. We could reincorporate Acacia under the laws of the District of Columbia or another State. Would it cause a hardship? Yes; I think it would. It would cost considerable money; we'd lose our congressional charter that we are very proud of.

Mr. KINDNESS. In that respect, I'm not speaking of eliminating the charter but just the rule that the federally chartered corporations now must also be originally incorporated in a State or the District of Columbia. It wouldn't remove that Federal charter.

Mr. ADAMS. Congressman, I believe if that were the case we would then carefully consider in which State we sought incorporation and charter.

Mr. KINDNESS. There would be different financial ramifications, I'm sure.

Mr. ADAMS. Yes, sir. It would go beyond the questions that are on the table now.

Mr. KINDNESS. I certainly am not seeking to create a financial burden that is not justified. I'm just wondering where we go from where we are.

Mr. ADAMS. I don't know the level of activity that these Federal charters require of the Congress. This is our first time in 50 years to be back.

Mr. KINDNESS. Yes; you all certainly haven't caused any trouble. [Laughter.]

Mr. BOICE. Congressman, I might add that if we were to change our charter to a State, the District or a State, we would probably have to be relicensed in all 36 States since technically it's a different corporation. We have been through this with other insurance clients that were registered in 12 or 15 States, and it's a very time-consuming and very expensive process.

Mr. KINDNESS. The other thing is that most federally chartered corporations are nonprofit organizations. They are educational or veterans groups and that sort of thing. We have a different situation here. It is a historical fact. I'm not fighting the fact; I'm just wondering where we go from here without causing harm or disarray or problems to Acacia Mutual.

I guess in short the situation which has existed for these many years doesn't really fit the Federal charter type of situation as we view it today. In 1869 it was a fraternal, nonprofit type of an arrangement, and in 1932 the change wasn't given this kind of scrutiny, I guess. So, it is a terrible time at this point to throw up an obstacle or create a hardship. I'm just afraid it might come in the process of getting this legislation through the tortuous process that a private bill follows.

Mr. DAVIS. And also, as we say in our statement, when Acacia was incorporated in 1869 there was no corporation law for the District of Columbia.

Mr. KINDNESS. In 1932 it just wasn't considered in the same light as today, and I understand that.

Mr. Chairman, I would yield back, having raised more questions than I have answers to, certainly.

I appreciate your responses, gentlemen.

Mr. HALL. The gentleman from Florida.

Mr. McCOLLUM. I have no questions. Thank you, Mr. Chairman.

Mr. HALL. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. No questions.

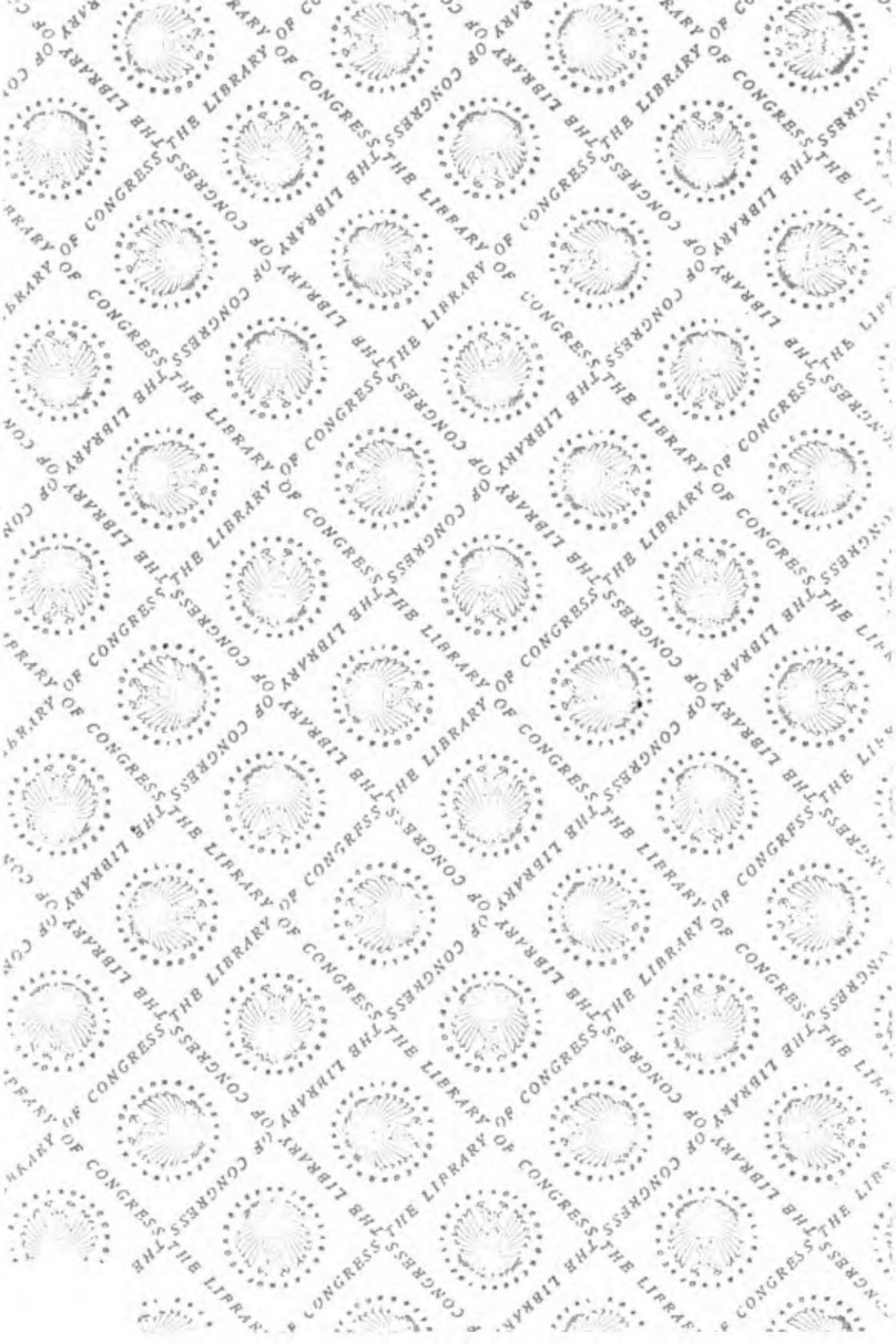
Mr. HALL. The gentleman from Kentucky, Mr. Mazzoli.

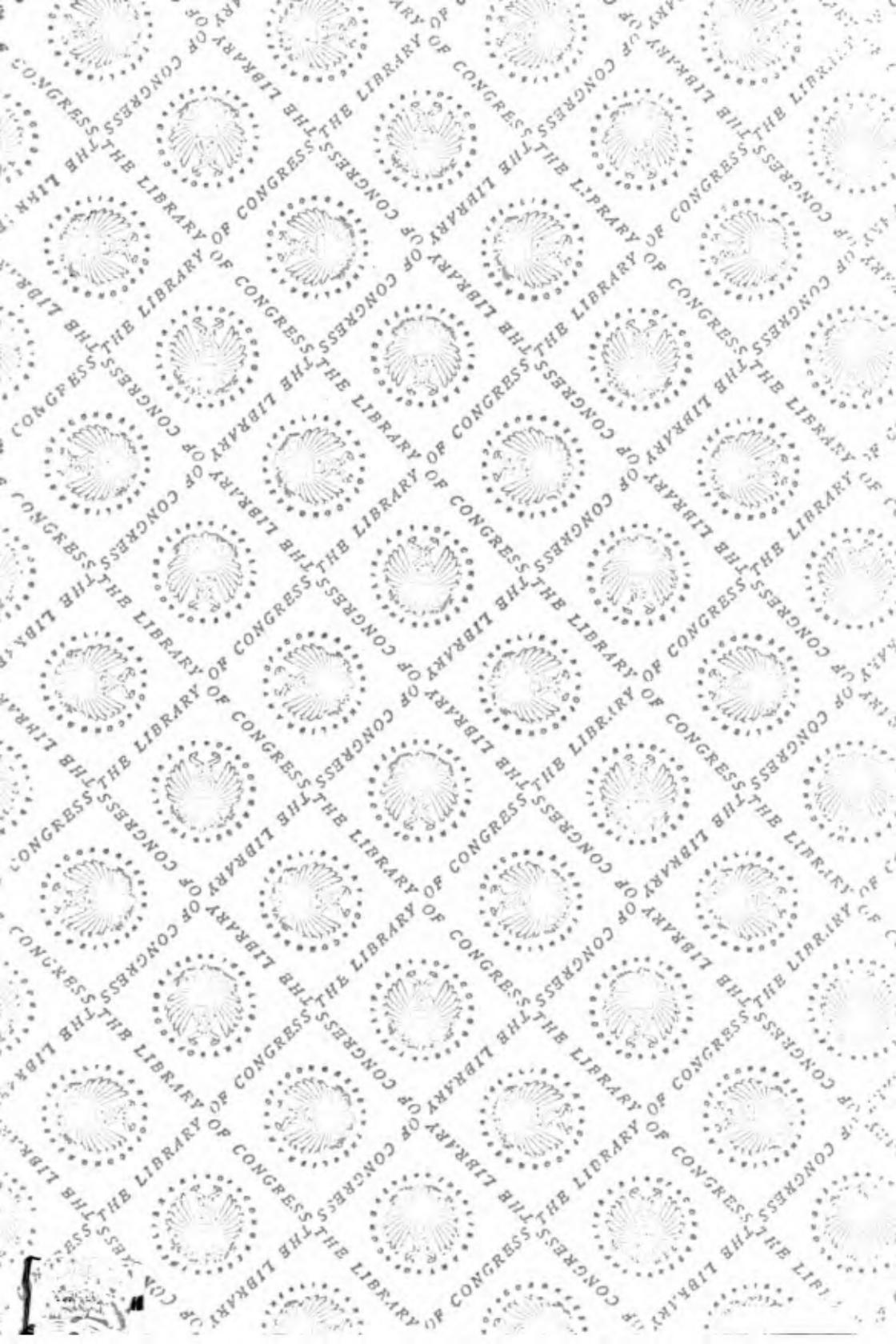
Mr. MAZZOLI. I have no questions.

Mr. HALL. Thank you, gentlemen, we appreciate very much your being with us today.

[Whereupon at 2:45 p.m. the hearing was adjourned.]







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