INCREASED TAX CREDITS FOR CONTRIBUTIONS TO CANDIDATES FOR THE U.S. SENATE

HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT GENERALLY

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

S. 1471

A BILL TO AMEND THE INTERNAL REVENUE CODE OF 1954 WITH RESPECT TO CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE

MAY 19, 1977

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INCREASED TAX CREDITS FOR CONTRIBUTIONS TO CANDIDATES FOR THE U.S. SENATE

THURSDAY, MAY 19, 1977

U.S. SENATE,
SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT GENERALLY,
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:30 a.m. in room 2221, Dirksen Senate Office Building, Hon. Harry F. Byrd (chairman of the subcommittee) presiding.

Present: Senators Long, Byrd, Jr., of Virginia, Dole, and Packwood.

Senator BYRD. The committee will come to order, 9:30 having arrived. As chairman of the Subcommittee on Taxation and Debt Management Generally, I would like to take this opportunity to welcome the witnesses to this day of hearings on S. 1471.

S. 1471, introduced by Senator Bob Packwood of Oregon, provides a tax credit for contributions for candidates to the U.S. Senate. The purpose of this bill is to encourage small contributors to give to political campaigns. The bill addresses an issue that has significant implications for our electoral process.

[The committee press release announcing this hearing and the text of the bill, S. 1471 follows:]

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT ANNOUNCES HEARINGS ON S. 1471, A BILL TO INCREASE THE TAX CREDIT FOR POLITICAL CONTRIBUTIONS TO CANDIDATES FOR THE U.S. SENATE

Subcommittee Chairman Harry F. Byrd, (I., Va.), announced today that the Subcommittee on Taxation and Debt Management will hold hearings on May 19, 1977, on S. 1471, a bill to increase the tax credit for contributions to candidates for the United States Senate.

The hearings will begin at 9:30 a.m. in room 2221, Dirksen Senate Office Building.

S. 1471 provides for an increase in the tax credit for contributions to candidates for the United States Senate to 75 percent of the contribution made with a maximum of $100 in the case of individual taxpayers and $200 in the case of married couples filing joint returns. This bill contrasts with other legislation designed to provide public financing for political campaigns and a prohibition on private contributions.

Requests to Testify.—Senator Byrd advised that witnesses desiring to testify during this hearing must submit their requests to Michael Stern, Staff Director, Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C. 20510, not later than 12 noon, Friday, May 13, 1977. Witnesses will be notified as soon as possible after this cutoff date as to whether they are scheduled to appear. If for some reason the witness is unable to appear as scheduled, he may file a written statement for the record of the hearing in lieu of a personal appearance.

Consolidated Testimony.—Senator Byrd also stated that the Committee urges all witnesses who have a common position or with the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. All witnesses should exert a maximum effort, taking into account the limited advance notice, to consolidate and coordinate their statements.

Legislative Reorganization Act.—Senator Byrd stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify must comply with the following rules:

(1) A copy of the statement must be filed by the close of business two days before the day the witness is scheduled to testify.

(2) All witnesses must include with their written statement a summary of the principal points included in the statement.

(3) The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted by the close of business the day before the witness is scheduled to testify.

(4) Witnesses are not to read their written statements to the Committee, but are to confine their ten-minute oral presentations to a summary of the points included in the statement.

(5) Not more than 10 minutes will be allowed for oral presentation.

Written Testimony.—Senator Byrd stated that the Committee would be pleased to receive written testimony from those persons or organizations who wish to submit statements for the record. Statements submitted for inclusion in the record should be typewritten, not more than 25 double-spaced pages in length and mailed with five copies by Friday, May 20, 1977, to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D.C. 20510.

[S. 1471, 95th Cong., 1st sess.]

A BILL To amend the Internal Revenue Code of 1954 with respect to contributions to candidates for public office

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INCREASE IN CREDIT FOR CONTRIBUTIONS TO CANDIDATES FOR THE UNITED STATES SENATE

(a) INCREASE IN PORTION OF CONTRIBUTION CREDITABLE.—Subsection (a) of section 41 of the Internal Revenue Code of 1954 (relating to general rule for contributions to candidates for public office) is amended to read as follows:

"(a) GENERAL RULE.—In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to the sum of—

"(1) one-half of all political contributions (other than those described in paragraph (2)) and all newsletter fund contributions, and

"(2) 75 percent of the sum of all political contributions to candidates for nomination for election to the United States Senate or for election thereto, payment of which is made by the taxpayer within the taxable year.".

(b) INCREASE IN MAXIMUM CREDIT LIMITATION.—Paragraph (1) of section 41(b) of such Code (relating to maximum credit) is amended—

(1) by striking out "$25" and inserting in lieu thereof "$100",

(2) by striking out "$50" and inserting in lieu thereof "$200", and

(3) by inserting before the period at the end thereof the following: "of which not more than $25 ($50 in the case of a joint return under section 6013) shall be determined under paragraph (1) of subsection (a)".

(c) DENIAL OF ALTERNATIVE DEDUCTION FOR SENATE CAMPAIGN CONTRIBUTIONS.—Subsection (a) of section 218 of such Code (relating to allowance of deduction for contributions to candidates for public office) is amended by inserting after "(as defined in section 41(c)(1))" the following: "other than a political contribution (as so defined) to a candidate for nomination for election to the United States Senate, or for election thereto.".

(d) EFFECTIVE DATE.—The amendments made by this section apply with respect to taxable years beginning after December 31, 1976.

Senator BYRD. We will begin our hearings this morning with the testimony of the Honorable Donald C. Lubick, Deputy Assistant Secretary of the Treasury for Tax Policy.

Welcome, Mr. Lubick. You may proceed as you wish.

STATEMENT OF HON. DONALD C. LUBICK, DEPUTY ASSISTANT SECRETARY OF THE TREASURY FOR TAX POLICY

Mr. LUBICK. Mr. Chairman and members of the committee. I am pleased to appear before this committee to present the Treasury's views on S. 1471 which would add to the existing tax credit for political contributions, an additional credit for 75 percent of all political contributions to candidates for nomination or election to the U.S. Senate up to certain specified maximums.

To understand S. 1471, it is necessary first to describe the tax law deductions and credits for political contributions under present law as a base upon which S. 1471 builds.

Under present law, a taxpayer who makes political contributions to qualified political candidates or committees, whether National, State or local, may elect to deduct his contributions as an itemized deduction in arriving at his taxable income, or he may elect to claim a credit against his tax liability for one-half of his contributions. The maximum deduction is $100, or $200 in the case of a joint return. The maximum credit is $25, or $50 in the case of a joint return. The deduction and credit are mutually exclusive alternatives—the taxpayer must elect one or the other and may not combine their use.

A taxpayer whose income is taxed in a high marginal bracket would find it to his advantage to claim the deduction. At the 70 percent top bracket, $200 of contribution deductions will give him $140 of tax reduction. At a 14 percent bracket, $200 of contribution deductions will give a benefit of only $28. The taxpayer in the 14 percent bracket would prefer the use of the credit, which would allow $50 of tax reduction. For $100 of contributions, a taxpayer in the 50 percent bracket will break even, whether he elects the deduction or the credit, aside from state income tax factors.

The deduction alternative is available in practice only to a taxpayer who itemizes his deductions. A taxpayer claiming the standard deduction, which will be 75 percent of all taxpayers, would necessarily be able to claim only the credit, and would have a maximum tax reduction of $50.

For the first year of the credit-or-deduction option, 1972, the percentage of voting-age persons making campaign contributions remained at the 12 percent level it was at in 1960 and 1964. For the 1972 Presidential election year, 2.3 percent of all returns claimed the credit and 1.2 percent claimed the deduction. In 1975, the percentages were even less: 1.9 percent claimed the credit and less than 1 percent claimed the deduction.

The estimated revenue loss as a tax expenditure of the present deduction and credit is $84 million in a Presidential election year, $74

million in a congressional election year, and $58 million in a year between national elections.

S. 1471 would add to the existing credit mechanism, but not to the deduction allowable, in the case of contributions to campaigns for nomination or election to the United States Senate. It would allow, in the case of Senate campaigns only, a credit of 75 percent of contributions, in lieu of the 50 percent limit applicable to contributions generally.

In the case of Senate contributions, the maximum allowable credit is raised by $75 above the existing $25 maximum, for a total of $100. In the case of a joint return, the existing $50 maximum is raised by $150, for a total of $200. The excess credits over the existing $25 and $50 are allowable only for contributions to Senate campaigns. The lower limits are retained for other national office campaigns and for contributions at the State and local levels.

Apparently if one uses the new Senate contribution credit, he is barred from using even the general deduction of $100 for contributions to other campaigns.

Senator Packwood has stated that S. 1471 was introduced to provide an alternative to S. 926, which provides for public financing of Senate campaigns under the existing checkoff system. Under the checkoff system, taxpayers may designate on their tax returns that $1, or $2 in the case of a joint return, be transferred to a Presidential campaign fund. The fund is distributed to Presidential candidates who have demonstrated substantial public support.

The checkoff system does not require any outlay of contributions by a taxpayer; it is, consequently, unlike the credit or deduction in that it is simply a mechanism to appropriate public financing of campaign expenses.

The Treasury is opposed to S. 1471.

On March 22, 1977, President Carter sent a message to the Congress which included recommendations on campaign financing. He urged the extension of the system of financing Presidential campaigns to congressional campaigns, pointing out that public financing "not only minimizes even the appearance of obligation to special interest contributors, but also provides an opportunity for qualified persons who lack funds to seek public office."

He urged that the checkoff system be used to allocate funds necessary to support congressional candidates.

The President set forth four principles which should be part of any plan of congressional campaign finance:

First, the plan should require that candidates demonstrate substantial public support before they receive public funds to help finance their campaign. S. 1471 violates this principle. It provides public financing through a tax expenditure—and the revenue foregone through the tax credit is as much an expenditure of public funds as a direct appropriation—to any candidate, however frivolous.

Second, the plan should not provide an excessively low limit on overall expenditures so as to prevent an adequate presentation of candidates and their platform to the people. S. 1471 does not deal with this problem.

Third, candidates who accept public financing should not be placed at a serious disadvantage in competing with opponents who have ex-

traordinarily abundant private funds. S. 1471 leaves fundraising as at present, but gives credits for individual contributions. The likely effect of the tax credit approach of S. 1471 is to give an advantage to the candidate currently supported by wealthy contributors, without giving any assurance of adequate overall minimum financing, as does the checkoff system.

The fourth principle urges public financing of primaries as well as general elections, and S. 1471 is consistent with this principle.

As drafted, S. 1471 is hopelessly complex, difficult to administer, and almost totally unworkable as a device to broaden support. Taxpayers would have to evaluate a general credit, a special senatorial credit and a deduction. Many taxpayers are now unaware of the tax incentives in this area. It is unlikely that the two levels of credit and the option between the two levels of credit versus one level of deduction would be understood by other than a small group of taxpayers.

This type of complexity impairs any incentive value to the credit. It increases the windfall effect of the credit, while complicating the tax return.

I know that Senator Packwood has recognized the illogic of a special credit for senatorial campaigns only, and therefore assume that the question he poses is the more general one of use of the tax system to subsidize political contributions, versus public financing by direct appropriations.

More importantly, S. 1471 is undesirable even if broadened to include all national, State, and local contributions as under present law, but with an increased limit. As such it would simply subsidize giving by higher-income taxpayers.

First, converting the credit of S. 1471 to a deduction would not help. In terms of "one man, one vote, one dollar," it would be highly inequitable. For every $100 of contributions, the 70-percent-bracket taxpayer would buy $70 of subsidy for his candidate. The 14-percent-bracket taxpayer's same $100 would buy him only $14 of subsidy.

A deduction would enable the higher-income taxpayer to make his or her contribution more cheaply than a lower-income taxpayer. All other taxpayers then would subsidize this funding of the high-income taxpayers' relatively cheap political contribution.

Second, although a credit is more equitable than a deduction, in that it spreads the tax benefit more evenly, it too operates imperfectly. It is unavailable to the 19 million eligible low-income voters who pay no taxes.

A tax credit's incentive effect is diminished in the case of a low-income taxpayer. Such a taxpayer must pay out the full amount of the contribution and then wait until his or her tax return is filed to receive one-half of that amount in return.

In the past, the credit and deduction have been claimed more than 25 times as often by taxpayers with adjusted gross incomes of $20,000 or more as by those with incomes under $5,000. Yet these higher-income taxpayers have been only nine times as likely to make political contributions as the lowest-income taxpayers. Two experts in the field of campaign financing have stated, "the tax benefit is just a minor windfall received for doing what political contributors would do anyway."

Those who have examined the various incentive systems are convinced that the tax credit and especially the deduction are much less effective and efficient means of public support for political campaigns than direct expenditures would be.

Instead of spreading the tax benefits to a wide spectrum of candidates, the credit/deduction system encourages contributions to those who seek the first deductible or creditable dollars from a taxpayer. There is no attempt to spread the tax funds evenly.

No candidate is guaranteed a floor, or a minimum amount, or even a prorated share of the deduction. The checkoff system assures minimum support for viable candidates without spending public dollars on frivolous candidates.

In contrast to the credit and deduction, the checkoff system requires both a decision on the part of the taxpayer to participate and a demonstration of meaningful public support. The current checkoff system requires candidates for Presidential nomination to collect a minimum of contributions before they are eligible for matching public funds.

S. 1471 makes no attempt to impose such a requirement.

Those who support the extension of the credit and deduction—in contrast to the checkoff or another broad-based system—also contend that a person should not contribute to a fund which will distribute money to a candidate who may be repugnant to the taxpayer.

This contention ignores the fact that the burden of tax expenditures is borne by all taxpayers. Political tax credits and deductions are a form of tax expenditure, shifting the burden of the tax system to those who do not claim these benefits.

Therefore, under the tax credit and deduction system, more than 96 percent of all taxpayers are subsidizing the slightly over 3 percent who claim the tax benefits in their choice of candidates.

The supporters of a credit/deduction system also claim it is superior because it does not require an elaborate enforcement mechanism. In fact, campaign contributions are coming under close scrutiny because of their lack of regulation. Furthermore, the Internal Revenue Service is responsible for enforcing the legitimacy of credits and deductions.

Complex regulations have been proposed to govern the verification of contributions and the form of receipts. The IRS must investigate the activities of political committees to make sure they are within the permissible limits of the statute. The IRS is introduced into the business of regulating the expenditure activities of political candidates and committees.

The enforcement mechanisms in the case of credits and deductions are, at the same time, less effective and less visible than under the checkoff or any other broader public financing system.

The checkoff—in contrast to the credit/deduction—is being used by lower-income taxpayers. Surveys by the Twentieth Century Fund and others indicate that the checkoff plan will continue to gain in popularity. As it does, these surveys indicate it will be used by persons in all classes, and in proportion to their numbers in the classes.

Because of the widespread use of the checkoff, and because all taxpayers contribute the same amount—"one dollar, one taxpayer, one vote"—the amounts allocated and the number of participants will be proportionate to each income group's percentage of the population.

In a checkoff system, high-income persons are less than half again as likely to participate as are low-income persons. Under the credit/deduction system, high-income contributors participate at a rate three times that of low-income contributors.

The checkoff system and a direct grant system, therefore, do not shift the tax burden of campaign contributions to those who traditionally have not participated in the political process or to low-income taxpayers, as do the credit and deduction.

Finally, the checkoff and grant are fairer means of accomplishing the goals of those who favor campaign financing reform, because they encourage broader participation in the election of public officials and a lessening of the impact of special interest contributors. The checkoff and grant provide the necessary funds to encourage the candidacies of qualified persons who would not otherwise seek public office.

For these reasons, the Treasury Department is opposed to S. 1471.

Senator BYRD. Thank you.

Senator Packwood?

Senator PACKWOOD. Are you seriously contending that a tax credit system will be more difficult to finance than public financing for a minimum of 870 House candidates and Senate candidates and whatever primary financing we get into?

Mr. LUBICK. If you look at the regulations proposed by the Treasury Department and the Internal Revenue Service which are required under the statute, you find very difficult audit questions that will be raised by the Intenal Revenue Service. I do not want to compare which is more difficult.

Senator PACKWOOD. It took 200 FEC employees to cover 15 primaries, and it is only Governor Shapp who has to pay back money he did not know about. You are going to say that is going to be an easier system? Because that is what you said in here, an easier system to administer with thousands of candidates.

Mr. LUBICK. I do not want to say that one is easier than the other. It is important, however, not to downplay the fact that there are very significant administrative problems in putting the IRS into regulating political activities. I do not really think that the IRS is the appropriate agency to determine whether a political committee is spending its contributions for purposes that are proper or not.

Senator PACKWOOD. They have to administer that now.

Mr. LUBICK. I think that causes some very severe difficulties.

Senator PACKWOOD. That is going to continue anyway. All we are adding is not anything different than expanding the present law.

Mr. LUBICK. I think first of all this is complicated by having several levels.

Senator PACKWOOD. You have several levels now.

Mr. LUBICK. At the present time there is one credit. Under S. 1471 we would have two different types of credit.

Senator PACKWOOD. There is a credit and a deduction now.

Mr. LUBICK. Under S. 1471 there would be one credit which is applicable across the board, national, State, and local. Then there would be one credit limited to Senate—or presumably, if the House went along, it would be limited to congressional campaigns. You may have two different credits on one return.

Then the IRS would have to follow the rules as set forth in the regulations as to whether the candidate qualifies, the committee qualifies, whether that committee has expended——

Senator PACKWOOD. The IRS has to do all of that now. We are not adding anything new.

Mr. LUBICK. That is correct. You are magnifying the problem.

Senator PACKWOOD. Do not add that as a problem of administration; that already exists.

Mr. LUBICK. As a serious problem, it is something we are going to have to take into account in making recommendations.

Senator PACKWOOD. This bill does not change any of that.

Mr. LUBICK. By increasing——

Senator PACKWOOD. By increasing the credit.

Mr. LUBICK. The amount, the number.

Senator PACKWOOD. It does not say a political committee is legitimate or qualified.

Mr. LUBICK. No, it does not.

Senator PACKWOOD. Let me ask you one other question. You indicated S. 926, the public financing, is a fair method because it spreads more evenly the rich and the poor in terms of the value of their contributions. Is it not true that President Carter's campaign, his contributions from matching funds were substantially more than Congressman Udall's, although Congressman Udall had more contributors, that his contributors could not afford to give as much as President Carter's contributors?

Mr. LUBICK. That is correct.

Senator PACKWOOD. Does this not really leverage, even under public financing wealthy contributors, because the Government would match the larger contributions?

Mr. LUBICK. There are limits as to the amount of matching. Under S. 926, they match only to the extent of $100. Whether that is the appropriate dollar amount——

Senator PACKWOOD. In the campaign, the average contribution to Governor Carter in the matching was $41.09, to Congressman Udall $21.84. Granted it was under $100. Most campaigns are financed on averages substantially less than that.

Mr. LUBICK. From the Treasury Department, I do not have the background to speak for the White House on this. It seems that is something that could be remedied by changing the limit, the matching limit.

Nevertheless, some system of public financing and matching certainly seems to reach a broader spectrum and provide more equity in the base of support.

Senator PACKWOOD. You are saying the same theory would apply in terms of contributions to charity, or eleemosynary institutions, to finance it through Government checkoff instead of encouraging millions of people to donate?

Mr. LUBICK. I do not think the analogy to charities is the same. First of all, you have some difficult constitutional problems involved in the Government supporting a number of charitable organizations, especially those involved with religion. I do not think we could have direct appropriations.

Senator PACKWOOD. I think you are not going to have constitutional problems in S. 926, but assuming the theory is right under a matching

basis. I assume the churches would take Government handouts and not violate the freedom of religion, although the church voluntarily accepted Government money.

Mr. LUBICK. I am not a constitutional expert. I have grave doubts about that.

Senator PACKWOOD. I have no further questions.

Senator BYRD. Senator Long?

Senator LONG. Let me get straight in my mind how the bill the administration is recommending would work. How would you provide aid to candidates in both the primaries and the general elections, or only to general elections?

Mr. LUBICK. First of all, I do not think the administration at this point is recommending S. 926. That is not an administration bill.

The President sent up a message recommending in general, among his principles, the extension of the checkoff system, but I do not believe the administration at this time has formulated the specifices of its plan in this regard.

But S. 926——

Senator LONG. Let us get this straight.

Do I understand, then, that the President is not recommending any specific way that funds should be distributed among candidates or whether it should be in the primary or general elections?

Mr. LUBICK. Specifically one of his principles is that there should be public financing applicable to primaries as well as general elections. He has not endorsed a specific bill or made specific legislative recommendation.

He sent up a statement that contained four principles, one of which is the one you just stated, that public financing should be applicable in both primary and general elections.

Senator LONG. He has not undertaken to say whether everybody would get it, even the so-called nuisance candidates, or whether it would apply to all candidates?

Mr. LUBICK. He has stated in his first principle that the plan should require that candidates demonstrate substantial public support before they get public funds to help finance their campaigns. This would safeguard against frivolous candidates depleting the present funds available.

The formula in the last primaries gave us a successful link between total public funds received and candidates' ability to prove general public support in total political contributions.

Senator LONG. I have worked in this area for a long time. I am sure you know I was able to put the checkoff system on the statute books as early as 1967.

Mr. LUBICK. I think it was 1966, Senator.

Senator LONG. There was an awful lot of fighting about it back at that time, and it does make a difference. In my judgment, if that had remained the law at the time that we passed it, Hubert Humphrey would have been elected President in the succeeding election rather than Mr. Nixon. I say that because Mr. Nixon had a great deal more funding. I think if you take the difference in what the two candidates had to spend coming down the home stretch, as close as that was, chances are Mr. Humphrey would have won that race.

I also find myself thinking that that would have made the difference between Mr. Carter winning and losing, when we finally had the check-

off system in effect in this last round, as close as the race was in a number of States. That checkoff made quite a difference. Both candidates had the same amount of financing. I guess it worked out that Mr. Carter had a little bit more financing because Mr. Ford had some that he did not know was there. He did not spend all the money he had. I am sure that that is a mistake that will not be repeated by his party the next time.

I have had some doubt as to whether that system, tailored as it is to a Presidential race, is going to work very well when we try to apply it to Senatorial campaigns. We worked out, at one time, what we thought might be a proper approach and proposed it. I think we managed to get a majority of the Finance Committee to back such a campaign financing proposal.

It is not so, when the average person votes, it is not at all unusual for that person to decide his vote, seeking to expres his own, self-serving interest? In other words, when a person votes for a candidate does he not oftentimes cast a vote, make a decision with his own interests at heart?

Mr. LUBICK. I would expect that everybody does. One may regard the good for the greatest number as his own self-interest; another may feel that he is voting for a particular candidate because he supports a particular project he is in favor of, or he may vote against someone because he feels that person is advocating something that he is against. Certainly all of these motives are involved.

Senator LONG. I recall when there was a candidate for Governor of Louisiana who looked people in the eye and said:

> If you elect me as Governor you are going to get $50 the first of every month We will ask you to spend that $50 before the first of the next month. If you do, the check will be sent to you.

Well, those who heard that campaign commitment and voted for the man, they were definitely voting to express their own financial interests, assuming the man was telling the truth.

Oftentimes a person in voting is really voting for his own selfish interests. It seems to me that that is the beauty of our system, as far as the economics of it are concerned. We try to arrange it so that each person serving his own interest is at the same time serving the interest of society. I have had some doubts about whether, having drafted the public-financing change and shifted political power in this Government by the checkoff system in Presidential races, whether we ought to, at this time, launch ourselves into putting congressional races on the same basis.

Sometimes I find myself feeling that it would be desirable to see just how much difference it is going to make. We have the first President that has been elected by the checkoff system. I believe that made a difference between President Carter's winning and losing. He had less commitment to anybody for campaign contributions than any President has ever had. At the same time, I find myself wondering—and maybe you can help me with this matter—is it not well-considered what we would like to see achieved by this Government?

In other words, take a look at the Congress. Would you like to see it more liberal, or would you like to see it more conservative? Which way would you like to see it go? Which way is it going to go if you finance these congressional campaigns with public financing?

Mr. LUBICK. You want me to answer the first question, as to whether I see it more liberal or conservative?

Senator LONG. Not which way you would like to see it, but which way you think it will be, assuming that we finance all candidates with entirely public financing, all serious candidates.

Do you think that the Congress will be more liberal or conservative?

Mr. LUBICK. I am not qualified to answer that question. I came up here representing the Treasury Department because I do not think the tax system is a good way to accomplish the objective of financing, public financing. If the Congress is making a decision that there should be public funds used in support of candidates, I think the direct approach is a much more effective way to do it than the tax system.

I have private views on public financing. I am not the spokesman for the administration in that area. I have not studied it. I do not want myself held out as an expert in that area.

Senator LONG. Here is the part that occurs to me about all of this I think I was the grandfather of the checkoff system. I had some help from the fine people on this committee staff who did a lot of the work on the details. I had good support from people like Henry Fowler in the Treasury, even Lyndon Johnson, President of the United States. I appreciate all of that help, because I think we did a good thing for the country. When we were fighting that battle and had a long filibuster, I can recall a time when I was not mustering a single Republican vote, and I think I can understand why.

From my point of view, if that provision passed, that was going to increase the Democrats' chances of defeating the Republicans, and it did. It was going to tend to make the Government, truly, as you suggest, less responsive to private campaign contributions. Also, it was going to make the Government more liberal in terms of voting for something that conservatives view as socialistic in nature, such as complete national health insurance without any private participation by any private group.

For those who feel that way about it, it would increase the probability of those types of measures being enacted. I do not think we can pretend that we are acting entirely in a vacuum here. When we pass either one of these bills, I do not care what course you take—it is going to make a difference in what is going to happen to the Congress.

It seems to me that there is something out there filling that void I know there is. I have been involved in a lot of it. I have been held up in the press perhaps more than anybody else in the Congress because of my putting it on the line. Common Cause says that some of these contributions get so big that there is no difference between a contribution and a bribe; and we have done a lot to move toward smaller campaign contributions.

I ask you, is it realistic to pretend that we cannot predict about what the course is likely to be when we go to the public financing law campaign?

Mr. LUBICK. People have perceived views of what the result is going to be. It may be the Republicans or Democrats, or vice versa, many feel one or the other is going to get an edge. Our history has shown many times, these short-run edges turn out to be long-run disadvantages.

I do not think anyone can say that Republican candidates with the benefit of public financing may not be persuasive and eloquent and persuade Americans to vote for them.

Senator DOLE. If the Senator would yield, I think the point that has not been made—at least while I have been here—is what we did in the last campaign. We allowed organized labor to spend $11 million on the Carter campaign. Other public interest groups are going to catch up with that.

Labor tends to jump ahead of business. Sooner or later, if we are going to have everything publicly financed, we are going to have all of that money that went into House, Senate, and Presidential races used in other areas of politics, not directly supporting the candidate.

It seems to me that it was not the checkoff that may have benefited Carter, but the fact that labor was turned loose to spend all the money they may have otherwise given to Carter; they spent on related activities, such as communications, newsletters.

Interest groups last election in the House and Senate race spent $23 million. If we are going to expand public financing even more, they are going to spend the $23 million they had given to candidates in some related activity. There is no doubt in my mind, if there is any single factor that meant the defeat of President Ford, it was probably that $11 million that resulted from public financing.

Mr. LUBICK. I do not want to participate with this expert group giving my opinion as to who is responsible for what.

Senator DOLE. The point is, what happens if you free everybody up, remove all these interests? Do you think labor and business and others are just going to sit back and take no part in politics?

Mr. LUBICK. I would hope that everybody would take a part in politics. S. 926 does preserve—it is not complete public financing—it does preserve an area for private activity, but it does assure some minimum of financing for all candidates and to that end public financing does enable at least some minimum chance for all candidates to take their case to the electorate.

To that extent, it is desirable.

The President's principle is that a candidate, in order to be eligible for the matching funds, has to command a minimum measure of public support. So I think what he is doing is recommending a program that will assure some balance; at least he is not entirely throwing out the right of private individuals to participate in the process, but he is assuring that both sides will have a chance to be heard.

Senator LONG. Let us get to the point that I want to think about, and I want you to help me think about it. I have not closed my mind to this thing at all. My mind is open to being convinced one way or the other about the matter.

I just think we ought to try to look at the whole thing and analyze it and see where we stand. Is there any doubt in your mind that, at least in the short run, this proposal will tend to shift both the Democratic Party and the Republican Party to a more liberal position, that is, more to the left?

Mr. LUBICK. I do not think I am prepared to accept that, Senator Long. I think that the response of the electorate as to whether they favor more liberal or less liberal candidates is probably influenced by external events, not the availability of money to participate candidates.

If the public is highly concerned with inflation and its impact on the economy, they may tend to adopt somewhat more conservative voting patterns at a particular time; if they are concerned at a particular time about high unemployment, things like that, I think you might find in an election year, they may tend to go for those things which are usually referred to as liberal programs. That word is a very difficult one.

Senator LONG. Let us think of the influence of the business community. I would think that most of the money going into campaigns right now is coming from the business community. They tend to be the more successful people in the country. They are the achievers. They have done the most and have made a success, at least in the commercial areas, of their lives.

Is there any doubt in your mind that by going to public financing we will reduce the influence of that group in this government?

Mr. LUBICK. I think you will make available to candidates who are not dependent on support from those sources money that they might not otherwise have. I am not sure that you will seriously impair the chance of business to have its views expressed and exert its influence on candidates.

I have seen business leaders participate with Congressmen who are from their districts who are very, very liberal when it comes down to doing things that affect jobs, and I think businesses are responsible for jobs. I think even the most liberal Congressmen listen to the voice of those businessmen and are influenced by the responsible positions that they take.

Senator LONG. Do you think public financing will increase the probability of the average incumbent being defeated or increase the probability of his retaining his seat?

Mr. LUBICK. Obviously, I think it depends on the amount of public financing. If there is a relatively low level of spending capacity, I think the incumbent has a great advantage because of the publicity that he is able to engender simply by doing his job.

I think the incumbents, most of whom do a good job, normally are difficult to defeat in any event.

Senator LONG. Common Cause seems to be very unhappy about the fact that a majority of the incumbents in the last go-round, for example, were returned to office. But analyzing that result over in the Democratic Campaign Committee, we were not unhappy about that matter. We look at the candidates that we had who had formidable opponents, we look at the Republicans that had formidable opponents, and we discount those whom we think could not have beaten anybody in a race against a good opponent. It looked to us as though the way it worked out during the last election, for those who had formidable opponents, the result was overwhelmingly against the incumbents. Forty percent of those incumbents who faced strong opposition were not returned.

If you proceed to discount those fellows who, from the point of view of politicians, did not know the first thing about how to attract votes or how to tell the public what they wanted to hear, or how to have a chance of prevailing, take those people out of it—I am talking about the retreads from the military and all that kind of thing—then you have a different picture. Take out those people who were successful in some other endeavor and think they should automatically be successful in politics. Any good mayor or good State legislator could beat the socks off of them because they don't know the first thing about government and seeking public office. It's a pretty specialized endeavor, by the way.

Look at the people who had formidable opponents, big city mayors running against them, Governors running against them. Look at incumbents who ran against a man who had been before the public in elections and who had developed a good record, from the public's point of view—a man who knew how to run a campaign. On that basis, just in the last election, looking at just the senatorial races, the results were overwhelmingly against the incumbent.

So the question that I ask you is: Would it not be appropriate in judging a measure of this sort, for us to take a look at how much we want to weight the scales against the incumbent based upon the way things are going now?

Mr. LUBRICK. I think the scales at the present time are in favor of the incumbent, notwithstanding your reference to the formidable opponents. The formidable opponents you are talking about are people who have proven themselves, in the vote-getting arena, anyway; in a sense, they are incumbents in a different office. I do not think public financing or nonpublic financing is going to make much difference.

If you have a person in a particular State who has been the Governor of that State and is running against an incumbent Senator in a primary, they are both known on a statewide basis, and I do not think the availability, or lack of availability, of public financing, is going to be the crucial decision. When you are talking about two formidable candidates, that, of course, diminishes the advantages of incumbency because the Governor, in this case, happens to have had a forum to make himself known and his views known to the voters of that particular State.

I do not think public financing enters into that one way or the other. I think at the present time, and even under public financing, the incumbent generally has an advantage simply because of the public recognition of his name and his activities and the way in which he has been able to carry out his office. I think, by and large, people tend to bear those ills they have than fly to others they know not of. That gives an advantage to incumbents.

Senator LONG. It seems to me you could have an incumbent that has a 70-percent approval rate by the people, and if you are going to have public financing, you will be bringing challengers out of the woodwork to run against that fellow because challengers would know that if they make any kind of showing at all—25 percent of the votes or even 20 percent—they are going to get Federal funds to pay for their campaign. You will take some very good incumbents out of office if you decide to go that route.

I always had the highest admiration for Congressman Hale Boggs. He served Louisiana in the House. Other than for a tragic airplane accident, he would be Speaker of the House today. He is one of the great men in my time. I can recall the election where, after a complete unknown ran against him in the primary campaign, a well-regarded campaigner came along and tackled him in the general election. I was sitting there listening to the returns at midnight when Congressman Boggs was still behind. He just squeaked through by a fraction of 1 percent. That is under the existing system.

When we go beyond that and we put public financing in both the primary campaigns and in the general election, we are going to take a lot of popular incumbents out of office.

It seems to me that we should look at the consequences of our actions.

Is that not what you are advocating here, what the British have in effect today?

Mr. LUBICK. I am not familiar with the British system.

Senator LONG. Do you not think you ought to find out? If what you are advocating exists elsewhere, should we not profit by the experience of other people?

Mr. LUBICK. We certainly should. As I indicated to you, my principal reason for being here was involving the tax system and the regulation of candidates and committees, and getting the IRS involved in that sort of activity, complicating the tax return and appropriating public money that way.

Senator LONG. One other practical matter. When you really get down to it, what we do about financing campaigns, is that not going to dictate what the government is going to be like 4, 6, 8, 10 years from now? And looked at in that light, is not really irrelevant whether Treasury is going to have some little difficulty writing regulations and administering it?

I know you speak for the Treasury, but looking at the overall totality of what is involved in this question, is that not a minor thing as to whether you are going to need 100 employees or 200 or 300? Is that not a very minor consideration when you look at the totality of the impact and what the likelihood of change for better or worse will be on this Government?

Mr. LUBICK. I think there are a couple of questions. The narrow question to which you are referring is whether the tax system should be used. I think that there is very serious question whether using the tax system this way is accomplishing any thing in the area of public financing.

I think the evidence so far is that it has not had any impact and it will not have any impact.

I think 200 IRS employees, of course, is an unimportant thing; involving the Internal Revenue Service in looking at political committees, into what they should or should not be doing, I think is an undesirable thing.

Looking at the broad question which I think is the one which you are addressing, should there be public financing, I think that is one that Senator Packwood is undoubtedly the most concerned with. It is a much broader question in his bill, because he stated he was introducing his bill as a demonstration of an alternative.

I do not want to put words in your mouth. Obviously I cannot. But I suspect that you are more motivated by your feeling toward what the problems are with public finance than you are with a particular little tax credit. Those very broad questions of whether public financing is going to influence the shape of the Government, I think, are the important questions. You are perfectly right, and the integrity of the political process is something that we are all concerned with and it should be your primary concern.

Those questions, I think, have to be debated on the merits, on public financing or not public financing, and really, they are not much involved in the context of a tax credit.

Senator LONG. Your answer is what I was trying to get at, that is, what we do about public financing or the alternatives to it, will have a great deal to do with what this Government is going to do and what this economy is going to be 10 years from now. It will have a great deal to do with the outcome of the elections, the attitude of the candidates, and with the way they will vote when elected.

Do you agree with that?

Mr. LUBICK. If public financing does have an impact, and a significant impact on the nature of the Representatives that people have in the Congress, obviously it is going to have a major impact on Government. That, of course, is the reason I think the administration is advocating public financing.

Senator LONG. If you thought that by going to entirely public financing we were choosing for ourselves 10 years from now what England has today, would you be advocating it?

Mr. LUBICK. No, sir.

Senator LONG. It seems to me we have to look down the road and say, when we do all of this, what is likely to be the upshot of it.

Mr. LUBICK. The administration, of course, does not advocate going entirely to public financing.

Senator LONG. Relative to that is the attitude I take toward welfare. When I came here I was the biggest welfare advocate on Capitol Hill. Then I found myself in the sad position of opposing the President's family assistance plan, because I was convinced that you do people a disservice to pay them for doing absolutely nothing. You tend to destroy their lives rather than to improve their lives. We ought to be able to move people into proud, self-reliant endeavors to improve their lives, trying to encourage them to do the right kinds of things, to set the right kinds of patterns for their children, rather than just encouraging them to sit there and not use their resources for their own advantage, or to set an example for their children and improve their community and themselves.

I am a little bit troubled about the public financing of congressional campaigns. I am afraid that although our intentions are good, the results might be something far different than what we hoped for. The Supreme Court's decisions on law and order—each voted on by honest people doing the best they could to try to make the Constitution live and breathe and move forward and inspire people to better things—are a good example. They have contributed to a major increase in crime, and we must now try to pass laws and constitutional amendments to try to make all of those good intentions yield a better system and a better society and something that is good for all people concerned.

Thank you very much, Mr. Lubick.

Senator BYRD. Senator Dole?

Senator DOLE. Thank you, Mr. Chairman.

Senator Long must have been thinking about public financing when he started talking about welfare. In essence, that is what it is; welfare for those of us who are running. I understand why your mind may have drifted into welfare reform.

I would like to include a statement in support of S. 1471, and I am not certain whether I was hearing tax policy or political policy. In any event, I think you would rather confine your remarks to tax policy.

[The statement referred to above follows:]

STATEMENT BY SENATOR BOB DOLE

I want to thank the distinguished chairman of this subcommittee, Senator Byrd, for the opportunity to express my views on S. 1471. This bill relates to contributions to candidates for the Senate. Individuals would be encouraged to contribute by increasing the tax credit to 75 percent of political contributions with a $100 maximum credit per person.

S. 1471 was introduced by Senator Packwood explicitly as an alternative to S. 926 introduced by Senator Clark and Senator Kennedy among others. This latter piece of legislation is designed to extend to Senate elections the public financing now accorded to Presidential campaigns. The argument for S. 926 apparently is that if restrictions are placed on Presidential campaigns, for the sake of symmetry, the freedom of action of U.S. citizens must be further limited with respect to Congressional elections too.

The avowed aim of public financing is to eliminate the undue influence of big money of candidates. The result has only been to increase the influence of the largest spenders and to lessen the importance of the ordinary citizen. The biggest spenders are virtually uninhibited by the type of public financing legislation now on the books.

The activities of labor unions in the 1976 Presidential election furnish an excellent example of the true impact of public financing. Conservative estimates place the total labor effort in support of the Carter-Mondale ticket at over $11 million. This total is impressive in absolute terms. However, comparison of this figure with the $21.8 million that a Presidential candidate is limited to makes the $11 million look even larger. In effect, labor unions accounted for over one-third of the total campaign effort for the Democratic ticket.

Clearly, labor has been the big winner from the 1974 and 1976 campaign finance laws. This year they are heavily in favor of extending public financing to Congressional races. Here also, the vast amounts labor has available to spend which can be used without regard to any ceilings makes their potential influence immense. The irony is that the proponents of expanded public financing cite the large sums of money spent in 1976 Congressional races by labor and other special interest groups as a justification for public financing.

While labor has been the big beneficiary so far because they were prepared to use the elections laws to their advantage last year, we can be certain that other special interest groups will learn the lesson quickly. These one issue organizations will flood their members with political information without any restraint from the public financing law. Congressional candidates with an absolute ceiling on expenditures will be forced to more seriously consider the impact of opposing the views of these organizations. This is the exact undue influence which public financing is supposedly eliminating.

S. 1471 has a different answer for reducing the influence of special interests. The answer is to increase the participation of low- and middle-income voters in the financing of campaigns. S. 1471 will expand the opportunity and incentive for individual citizens to get actively involved in the political process outside of any narrow special interest group concern.

As with charitable contributions, a greater tax incentive will increase the inducements to giving by those in low- and middle-income brackets. As opposed to a check-off system like public financing, S. 1471 would retain the individual's freedom of choice as to what candidate to support.

There is an additional benefit gained by increasing direct individual contributions to political candidates. Persons who contribute are more likely to actively be involved in politics in other ways. Public financing promotes spectator politics by individuals. The approach taken by S. 1471 would increase willingness of citizens to get out and work for the candidate of their choice. Public financing does not give anyone the freedom to choose.

S. 1471 is an excellent alternative to S. 926 or any other public financing scheme. I commend Senator Packwood for introducing S. 1471 and look forward to having the full Finance Committee consider the legislation.

Senator DOLE. I did not learn a thing from your political comments. Having lost, I probably should. But it just seems to me that one thing that you must address is what will happen if we have public financing and the extent there is going to be any shifting. The special interests are not going to move out of politics. Organized labor, business, the environmentalists or whatever will continue to be involved.

There is going to be a shifting of activity and, a shifting of money. We are not going to spend less money; we are going to spend more money. They can spend it independently, can spend it against a candidate, can do all sorts of things that permit them to help the incumbent or help the nonincumbent.

I have not seen that question addressed. We talk about the need for public financing to get away from these groups. I do not see that happening. I ask that an article in the National Journal be made a part of the record. It states what happened in the 1976 Presidential race when organized labor was freed up from any contribution to candidates. They did something else with it, to the tune of $11 million.

They also had another $2 million for voter registration and for getting out the vote, compared to President Ford's $37,000 in that area.

There are many areas we have not touched on that makes a good speech and good rhetoric to run around the country talking about public financing; for instance removing all of the special interest groups.

I do not think the Packwood initiative complicates anything that is not already complicated. That is the problem of the IRS. I support Senator Packwood's proposal.

[The article referred to follows:]

POLITICAL REPORT

Labor, Business and Money —A Post-Election Analysis

The campaign finance law was supposed to bring an end to the days when special interests could control campaigns. But it hasn't worked out that way.

BY MICHAEL J. MALBIN

When Congress amended the campaign finance law in 1974 and 1976, the bills' supporters said they would bring an end to the days when special interests could have undue influence over elections.

It hasn't worked out that way.

The new law has eliminated some of the ways that money can influence politics. But the net result of limiting some contributors has been to increase the power of other big spenders who were permitted to operate as they always did.

The biggest winner was organized labor. The magnitude and sophistication of labor's efforts last year are even more impressive when stacked up against what others could do, particularly on the presidential level. Public financing for the general election campaign shut off private contributions to the two major presidential candidates. Contributions to the national party committees were permitted, but even this was limited. In contrast, labor was able to spend as much as it wanted to in communicating with union members and their families, registering them to vote and getting them to the polls.

While the total spending on these efforts cannot be determined with any precision, a conservative estimate of what they were worth to the ticket of Jimmy Carter and Walter F. Mondale is at least $8.5 million. Uncounted and unreported additional spending almost certainly pushed the total up to or over the $11 million mark, compared with the $2.18 million that the ticket legally was permitted to spend.

By comparison, the top 154 contributors in 1972 to the Committee for the Reelection of the President accounted for only a third of the money that Richard Nixon raised that year.

Some of the provisions of the 1974 and 1976 amendments to the campaign finance law also seemed to be favorable to business, and corporations, in fact, have been forming new political action committees at a remarkable pace in the past two years. But so far, most corporate committees have been cautious and have limited themselves to $500 or $1,000 gifts to incumbent Members of Congress from their own districts or to members of congressional committees that handle legislation important to them. But even if corporations were to give candidates the maximum legal gift of $5,000 per election, they never would match labor's unreported, in-kind contributions. Stockholders almost certainly would sue to prevent massive corporate activities on a par with labor's, even though such activities would not violate the campaign laws.

More important, electoral activities of business suffer from the same liabilities that business faces when it lobbies the government. Businesses often are successful when they concentrate on items that affect them directly, but they tend to dissipate their power when they deal with broader public issues that lack a single "business" point of view around which lobbyists or political action groups can coalesce. Even if there were, a company's specific interests are too important to permit it the luxury of not backing an incumbent because of the broader issues. In this respect, the activities of labor and business simply are not parallel.

Labor and business groups were not the only ones affected by the law, of course. Incumbents, professional fund raisers, ideological purists and wealthy candidates all had their positions enhanced by one or more of its provisions. But these people, even less than those in the business world, have few interests in common.

The net result has been that a law that appeared to be even-handed in theory has proven to be uneven in practice. With the virtual extinction of the individual big giver, a number of different groups appear to be the gainers in terms of political influence. But when the relative positions of these groups are assessed, labor comes out well ahead of the rest.

Labor, not surprisingly, supported the 1974 and 1976 amendments to the campaign finance law. For the future, it supports an extension of public financing to congressional elections and favors universal voter registration. Public financing could leave labor in as dominant a position on congressional elections as it was in 1976 on the presidential. Universal registration would permit labor to divert the resources it now applies to registration to such purposes as beefing up its communications and voter participation programs. *(For highlights of the campaign finance law, see box, p. 414.)*

Campaign Finance Law

This is the first of two reports on how the new campaign finance law worked in the 1976 elections. A second report, on the role of the Federal Election Commission, will appear in the next issue of *National Journal*.

LABOR'S EFFORTS

Labor groups contributed $8.2 million to congressional candidates in 1976—an average of $17,500 per district—but that is only a small part of the whole picture.

Members of the labor movement are proud to say that their direct contributions are dwarfed by the rest of their effort, both in terms of the money and

the volunteer workers involved. "We don't think it's the money that's decisive. It's the services they imply," said Ben Albert, director of public relations for the AFL-CIO's Committee on Political Education (COPE).

But the money is at least a starting point—the necessary condition for labor's massive volunteer network. Victor Riesel, a syndicated labor columnist and frequent critic of labor's power in the electoral process, has asserted that unions spend eight or 10 times as much on political activity as they contribute directly to candidates.

Albert called Riesel "amateurish," but did not dispute his conclusion. He objected specifically to Riesel's failure to break labor's community and "political education" activities into their political and non-political components and to distinguish between the people working on COPE projects who are pure volunteers and those who receive strike benefits or other compensation. When asked for his own estimates, however, Albert refused to give any, saying that bookkeeping complexities made it impossible to do so.

Despite Albert's reticence in coming up with totals, one can identify a few of the bigger parts of the picture. At least four key items have to be included: communications with union members and their families advocating the election or defeat of specific candidates and reported to the Federal Election Commission (FEC), more general communications that escaped the election laws' reporting requirements, registration and voter participation campaigns, and overhead costs.

The 1976 amendments to the campaign finance law provide that a union's communications with its members or a corporation's communications with executive employees and stockholders are not contributions limited by the law. Labor used this exemption to great advantage during the presidential election campaign, where private contributions were prohibited.

Labor legally could have spent its money on communications with the general public. Some labor leaders wanted to do this, but it was rejected. The political advantage of labor's internal communications is that they were but one part of a concerted campaign to convince union members that their vote for Jimmy Carter would make a difference. Had the message been presented to the public at large without the other parts of the voter participation package, it would have been lost among the rest of the campaign verbiage, opponents said.

More important from a legal standpoint, communications with the general public are permissible under the law only if they are independent of and uncoordinated with the candidate's own activities and only if they are paid by voluntary contributions kept in a separate fund instead of by union dues. To have qualified for these "independent expenditures," labor would have had to sever the intimate ties it had built up with the Carter campaign. This would have damaged the efficacy of the voter participation program and lessened labor's future access to the White House.

By the time the campaign was over, it became difficult to distinguish labor's efforts from those of the Democratic National Committee (DNC) or Carter. COPE research director Mary Zon, for example, was paid by the Carter campaign to serve three days a week as its liaison with labor groups. The DNC's 42-member campaign steering committee included COPE national director Alexander E. Barkan, International Association of Machinists and Aerospace Workers president Floyd E. Smith and United Auto Workers (UAW) president Leonard Woodcock.

This network enabled the DNC and organized labor to target their efforts in a manner that best fit the Carter campaign strategy. It meant that registration efforts could be concentrated in large states that Carter's polls showed to be up for grabs. It also meant that the DNC and labor did not duplicate their efforts. In some key states, labor's registration efforts were almost the only ones in operation.

The only reported expenses in this carefully coordinated effort were the

Labor unions successfully—and legally—used publications such as this one to get their political messages to their members without coming under the limits of the election law.

Regulating the Contributors

Campaign contributions by individuals, corporations, labor unions and special-interest groups are regulated by provisions of the Federal Election Campaign Act Amendments of 1974 (88 Stat 1263) and 1976 (90 Stat 475). Here is a summary of key provisions:

- Individuals may give up to $1,000 per election to a candidate for federal office. Primary, runoff and general elections are considered separate elections, but all presidential primaries are counted as one election. Individuals may give no more than $5,000 in any one year to all candidates for federal office, but independent expenditures on behalf of candidates have no limits.
- Multi-candidate committees may give no more than $5,000 per election to a candidate. These committees must have more than 50 members and must support five or more candidates.
- Individuals may contribute up to $20,000 per year to a political party; multi-candidate committees may give up to $15,000.
- National party committees may contribute $10,000 to each House candidate and $17,500 to each Senate candidate. They also were permitted in 1976 to spend $3.8 million on behalf of the presidential tickets.
- Corporations and labor unions may not contribute corporate or union funds to candidates. Under the 1976 amendments, however, they may use these funds to pay for the administrative and fund-raising costs of a separate, voluntary political contributions fund.
- Labor unions may spend an unlimited amount of money communicating with their own members. Expenditures for this purpose must be reported to the Federal Election Commission (FEC) only if the main purpose of the communication is to advocate directly the election or defeat of a specific candidate.
- Corporations are granted a similar exemption for communications with their administrative personnel and stockholders.
- Unions and corporations may spend an unlimited amount for "nonpartisan" registration and voter participation drives directed at a union's members or a corporation's stockholders and administrative personnel. These expenditures need not be reported to the FEC. *(For background on the 1974 act, see Vol. 7, No. 28, p. 1012. For the Supreme Court's ruling on the act, see Vol. 8, No. 6, p. 167. For background on the 1976 amendments, see Vol 8, No. 13, p. 470 and No. 20, p 650)*

ones associated with direct communications with union members, which were reported only when they were focused on specific candidates. Admonitions to "vote Democratic" did not have to be reported, nor did direct advocacy of a specific candidate if the basic purpose of the communication was not political. Virtually every newsletter mailed to members in September and October included material praising Carter or criticizing Ford, usually with a picture of Carter on the cover. Almost none of this was reported to the FEC, presumably because the material appeared in regular publications that normally report on union business.

The AFL-CIO did report that six issues of its *Memo from COPE* cost $16,186.59. Since the publication is only one of many that supported Carter during the pre-election period, it can safely be assumed that this figure is only a small fraction of the total cost of labor publications.

The AFL-CIO reported spending $400,558 on all internal communications, $315,982 of which was spent to help Carter. Most of the $289,139 spent by the UAW on internal communications and most of the $120,424 spent by the Communications Workers of America, AFL-CIO, also was spent on behalf of Carter. *(See table, p 415.)*

The help that Carter received from labor in this form alone exceeded the sum that Nixon received in 1972 from any single source, with the sole exception of the $2.1 million he got from Chicago insurance millionaire W. Clement Stone But, since Nixon outspent Carter almost three to one, labor's internal communications spending was more important proportionately than Stone's gifts to Nixon.

Registration and get-out-the-vote drives were financially and politically more important than internal communications. No hard figures are available of the total costs involved, but COPE and UAW sources say their unions spent about $3 million each on these efforts By comparison, the DNC's $2 million drive was the biggest one it ever had conducted. Similarly, the Republican National Committee's $3 million voter identification and participation program was its biggest effort to date. (The RNC did not conduct a registration drive.) This means that the nation's two most active union groups spent more to register voters and get them to the polls than the two major political parties combined. And this does not even begin to take into account the similar activities of other unions.

These expenditures are permissible under the law because they supposedly are "nonpartisan." But no one even pretends that they are in effect. By concentrating on its own members in states where the Democratic ticket needed the most help, labor played what probably was a decisive role in Carter's victory.

There have been several estimates that the concerted registration drives conducted by labor, the DNC and some black organizations added some eight to 10 million new voters to the polls last year. Of the three, labor's registration efforts are considered to have been the most effective.

It generally is accepted among experts analyzing 1976 voter registration patterns that registration efforts by labor and black organizations in Ohio and Texas were instrumental in Carter's victory in those states–and thus, ultimately, in the Electoral College About 43 per cent of all new registrants in the country were registered in Texas.

Even this is not the whole story of what labor's efforts were worth to Carter in terms of dollars. A substantial part of COPE's $2 million overhead must be attributed to the registration drive and other activities related to the national campaign. It would be safe to attribute $1 million of the overhead to these activities.

To these figures should be added a variety of miscellaneous activities. The National Education Association (NEA), for example, spent more than $250,000 to produce a film that contrasted separate interviews with Carter and President Ford. (NEA expenditures on behalf of Carter exceeded $400,000, according to Robert E. Harman, associate director of government relations.)

If reported spending is combined with figures that the AFL-CIO, UAW and NEA revealed to *National Journal*, the total comes to $8.5 million spent on behalf of the Carter-Mondale ticket. And on top of that is still more unreported communications and registration spending. Since Carter was permitted to spend no more than $21.8 million on his own behalf under the campaign law, by a conservative estimate, labor spent for Carter at least half of what he could spend for himself.

BUSINESS ACTIVITIES

Business groups were not much help to President Ford in the general election. Five organizations spent a total of $41,000 on internal communications to help him and that was about it.

But Ford had the power of incumbency in his favor and was able to take advantage of reduced rates for campaign travel by his White House staff and Cabinet officers.

Without a hold on the White House now, Republicans will have to look elsewhere for help. Business's poor track record leaves enough Republicans sufficiently depressed to make them talk about pushing harder for labor support themselves.

The source of the dissatisfaction is not hard to find. Although the campaign law amendments have spurred the growth of corporate political action committees, few corporations have done more than act as conduits for contributions that in the past would have been made by individual businessmen to the candidates.

Unlike labor, business had done almost nothing new under the campaign finance law amendments. A *Wall Street Journal* survey of top corporations published on Oct. 27, 1976 revealed only a few examples of corporations that actively encouraged political participation. Joseph Fanelli, president of the Business-Industry Political Action Committee (BIPAC), told the *Journal* that the new laws could place business "on the verge of a political renaissance," but added that the problem "is whether the will is there." But business's problem may go deeper than that. It may be impossible, structurally, for business ever to muster the unity of purpose that other groups have.

Up to this point, business groups have been involved in rather unimaginative direct campaign contributions. Despite pleas from the Republican National Committee for support for Republican challengers in marginal congressional districts held by Democrats, most business money went to incumbents of both parties. In fact, Democrats received about half of the more than $7 million disbursed by the 675 business political action committees operating in 1976.

The activities of the largest business political committees were typical. The Northwestern Officers Trust Account, affiliated with the Chicago and North Western Transportation Co. (C & NW), spent $122,611.76 in 1976. It gave $1,000 each to former Sen. Frank E. Moss, D-Utah, and to Sen. Howard W. Cannon, D-Nev., who both served the committee with jurisdiction over rail-

Communicating on Political Matters

Labor unions and corporations must report how much they spend to communicate with their own members or stockholders and administrative employees if the communications, as their principal purpose, directly advocated the election or defeat of specific candidates.

Following are lists of all unions whose reported communications costs exceeded $10,000 in 1976 and of all organizations that spent on internal communications on behalf of President Ford.

Most of the union spending was on behalf of the Carter-Mondale ticket, and such spending is listed separately. In most instances where unions sent materials to their members advocating the election of more than one candidate, their reports allocated the expenses among the candidates. In a few cases, *National Journal* allocated the spending, based on what appeared to be the common practice.

According to these figures, labor reported spending $26 on behalf of Carter for every dollar anybody spent on behalf of Ford for internal communications, counting only those communications required to be reported.

All reports were filed 30 days after the election except for a few (indicated by asterisks) that were filed 10 days before the election. The Federal Election Commission did not notify groups affected by the reporting requirement until last September. As a result, some spending that falls within the legal requirements may have gone unreported. – **Compiled by Sarah Jacobs**

Labor for Carter	Total	Carter
AFL-CIO	$400,557.90	$315,981.67
United Auto Workers	289,139 12	240,688.48
Building Construction Trades Department AFL-CIO	177,508 85	41,974 58
Communications Workers of America	120,423.69	106,813.64
Pennsylvania AFL-CIO	101,056 24	9,430 93
Active Ballot Club-Retail Clerks International Association	97,097 98	69,889.97
Ohio AFL-CIO	69,448 00	38,326 00
Michigan AFL-CIO*	45,720.79	–
Indiana AFL-CIO	42,034.16	4,045.98
American Federation of State, County and Municipal Employees	41,014 64	24,170 47
Maryland and D.C. AFL-CIO	34,972 33	3,281 39
New Jersey AFL-CIO*	29,943 00	26,858 00
Texas AFL-CIO	25,196.20	12,946 16
Tennessee State Labor Council*	23,622 42	9,462 61
United Steelworkers of America	23,696 61	15,678 99
Service Employees International Union	20,556 85	–
California Labor Federation, AFL-CIO	17,850 17	11,903.52
Colorado COPE	15,269.36	–
Buffalo AFL-CIO Council	14,683 35	6,412.94
International Association of Bridge, Structural and Ornamental Iron Workers*	13,494 05	13,494 05
Machinists Non-Partisan Political League*	13,959 66	7,666 64
South Carolina Labor Council	13,466 28	6,342 97
International Ladies' Garment Workers' Union	12,571 75	5,342 64
Council 13, AFSCME, AFL-CIO	12,567 00	6,283.00
Los Angeles County Federation of Labor, AFL-CIO	12,187 50	3,046 87
Rhode Island AFL-CIO	10,307 37	7,124 00
Cleveland AFL-CIO	10,265.66	7,699 25
Others	187,877 66	63,446 18
Total	$1,901,703 40	$1,051,897.23

Organizations for Ford	Total	Ford
National Rifle Association Institute for Legislative Action	$101,528 57	$13,204 92
Libbey-Owens-Ford Co.	13,096 38	13,096 38
Dresser Industries Inc.	5,245.00	5,245 00
Cooper Industries Inc.	5,079 40	5,079 40
PepsiCo. Inc.*	4,485 15	4,485 15
Total	$129,434 50	$41,110 85

road legislation. Most of the account's other pre-election gifts were for $500 to $1,000 each to incumbent Senators and Representatives of both parties from states served by the C&NW railroad.

The Nonpartisan Committee for Good Government, affiliated with the Coca-Cola Co., was even more cautious in the way it spent $85,000 in 1976. Its nonpartisanship extended to writing matching checks to the Republican and Democratic National Committees on three different occasions for a total of $6,000 to each. The Atlanta-based firm also gave $1,000 to the Georgia Republican Party and then balanced it by giving $500 each to two Georgia Democrats, Reps. Andrew Young and John J. Flynt Jr. Other Democratic recipients in the month before the election were former Sen. John V. Tunney of California ($500), Sen. Daniel Patrick Moynihan of New York ($500), Rep. Nick Joe Rahall II of West Virginia ($250) and Rep. Bruce F. Vento of Minnesota ($250).

In January 1977, the committee gave $500 to $1,000 to each of six incumbents to help them reduce their 1976 campaign deficits. The recipients, all Democrats, were Young, Flynt, Elliott H. Levitas and Doug Barnard of Georgia, Max Baucus of Montana and Jim Mattox of Texas.

Trade association committees typically have more money to give away than corporate committees. But except for the Realtors' PAC, which concentrated on Republicans, most of them sprinkled their money among incumbents from both parties who were in a position to help. Some, such as the dairy and trial lawyers groups, tried to support candidates who had supported their positions in Congress. Others, such as the American Banking Association's BANKPAC, tended to concentrate on incumbents with relevant committee assignments, without regard to political party.

Thus, Sen. Harrison A. Williams Jr., D-N.J., and former Sen. Vance Hartke, D-Ind., were near the top of Common Cause's separate lists of recipients of both labor and business contributions. Williams chairs the full Human Resources Committee and the Banking, Housing and Urban Affairs Subcommittee on Securities. Hartke chaired what was then the Commerce Subcommittee on Surface Transportation.

Some political action committees, such as those affiliated with the American Medical Association and with related state associations, follow no clear pattern in their gifts to incumbents. At a Nov. 15 panel sponsored by the American Enterprise Institute for Public Policy Research, Common Cause executive vice president Fred Wertheimer noted the California Medical Political Action Committee's 1974 contributions to candidates in its state ranging from Reps. John L. Burton and Ronald V. Dellums, on the left of the Democratic Party, to Reps. Barry M. Goldwater Jr. and John H. Rousselot, on the Republican Party's right.

"The ideology involved there is an ideology of incumbency," Wertheimer said. "Most people in this country assume that business groups are going to give most of their money to Republicans and labor groups to Democrats. When you look at the figures, it appears as if in 1976, business groups will give about half of their money to Democratic Members of the House of Representatives and the Senate ; think the reason is pretty clear. The money is an investment."

Wertheimer said the only answer is public financing of congressional election. But he did not say how public financing could also limit the importance of the indirect spending used so effectively by labor in the publicly financed presidential election campaign. *(For more on PACs, see Vol. 8, No. 43, p. 1514 and No. 15, p. 470.)*

RICH MAN, POOR MAN

Business's cautious backing of incumbents in both parties raises problems for challengers who want to mount serious campaigns without depending on labor. With large individual contributors ruled out, the three basic sources of large amounts of money are personal wealth, ideological groups and direct mail fund-raising.

This year's most expensive House election campaign—the $1 million-plus blockbuster between Republican Robert K. Dornan and Democrat Gary Familian for the California seat vacated by Republican Alphonzo Bell—is a good example of how all of these sources come into play.

The Supreme Court held in *Buckley v. Valeo* that Congress could not constitutionally place a mandatory ceiling on the amount that candidates could spend on their own behalf, although Congress could set such a limit as part of a public financing plan that a candidate is free to accept or reject.

Familian, a Los Angeles plumbing heir, took advantage of the decision to put more than $370,000 of his own money into his $639,000 losing effort. Familian raised more than $30,000 from labor and another $8,000 from various Democratic Party channels, but his own money was the backbone of his campaign.

Familian was not the only person to take advantage of this part of the *Buckley* decision. The record-breaking campaign waged by Sen. H. John Heinz III, R-Pa., was financed almost entirely from more than $2.5 million of the ketchup heir's own money. In West Virginia, Rahall spent $236,000 of his own to capture the seat held by former Rep. Ken Hechler, D, and Democrat Cecil (Cec) Heftel used $463,000 of his money in winning Democratic Sen. Spark M. Matsunaga's House seat in Hawaii.

But spending a vast amount of one's

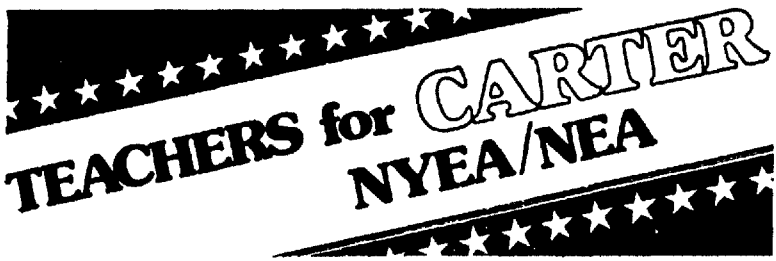
PACs and Congressional Candidates

The table lists the number of political committees that were active in 1976 and the amount of money that they gave to congressional candidates in the 1974 and 1976 elections. It does not reflect contributions made by individuals in the listed areas.

	Currently active committees	New committees since 1/1/75	Contributions to congressional candidates 1976	1974
Business, professional, agriculture	836	537	$11,562,012	$4,804,473
Business	675	485	7,091,374	2,506,946
Health	108	26	2,694,910	1,936,487
Lawyers	8	7	241,280	–
Agriculture	45	19	1,534,447	361,040
Labor	253	92	8,206,528	6,315,498
Miscellaneous	58	26	1,299,928	662,215
Ideological	19	3	1,503,394	723,410
Total	1,166	658	$22,571,912	$12,525,586

1976 figures reflect contributions in 1975 and 1976 through Nov. 22. The 1974 figures reflect contributions from Sept. 1, 1973 through Dec. 31, 1974. Common Cause says the period from January through August 1973 was one of limited group activity.

SOURCE: Common Cause



Bumper stickers were one form of communication between unions and their members – and non-members.

own money does not assure election. Cadillac dealer Richard P. Lorber spent more than $680,000 to win a difficult Democratic Senate primary and then lose the general election to John H. Chafee in Rhode Island by a 58-42 per cent vote. Agribussinessman Merlin Karlock, D, put up more than $410,000 to win only 43 per cent of the vote against the incumbent, Rep. George M. O'Brien, in Illinois. And Morgan Maxfield, a conservative Democrat from Missouri, kicked in $275,000 in losing his race for the seat of the late Rep. Jerry Litton. (Litton had spent more than $200,000 of his money on his successful Senate primary campaign before he died in a plane crash.)

Dornan, a former radio broadcaster, could not counter Familian's wealth with money of his own. But his hardline conservatism made him a favorite of some people who knew how to overcome this handicap.

On May 5, the Committee for the Survival of a Free Congress loaned $5,000 to Dornan, which it mailed directly to the Richard A. Viguerie Co. in Falls Church, Va. Dornan also received a $5,000 check from the National Conservative Political Action Committee. Both of these multi-candidate committees raise most of their funds through direct mail solicitations by Viguerie, who probably is the nation's most successful conservative direct mail fund raiser.

By the end of Dornan's campaign, he had received $9,375 from the Committee for the Survival of a Free Congress, $9,500 from the National Conservative Political Action Committee and $1,095 from the Committee for Responsible Youth Politics, a smaller committee for whom Viguerie raises funds.

Much of this money was plowed directly back to Viguerie to raise more. Over the course of his primary and general election campaign, Dornan paid $35,710.15 to the Viguerie Co., $46,074.39 to Diversified Mail Marketing and $4,365.35 to the Diversified Printing Co. The $86,149.89 spent with these three Viguerie companies represented approximately one-fifth of Dornan's $400,346.56 in total campaign expenditures.

The expenditures paid off for Dornan as well as for Viguerie. Dornan was able to raise $241,185.25 in contributions from individuals who did not give more than $100 each to his campaign. That is an incredibly high 60 per cent of his total $404,118.58 in receipts.

Individual large contributors gave Dornan $56,303.50 – large in absolute terms but a small percentage of his total. Business and professional groups gave him only $13,825 and various Republican committees gave $28,505. The only groups that helped Dornan before his primary were the ideological groups, and they were most responsible for his other fund-raising successes.

The importance of professional fund raisers goes up as the limits on individual contributions go down. Thomas F. McCoy, a Washington-based fund raiser for liberal Democratic candidates, wrote in an unpublished essay, "We are functioning under a system wherein the supporter with financial outreach has supplanted the supporter with personal funds to contribute.

"A banker supporter solicits other bankers and business interests on behalf of a candidate and raises $100,000. Is the candidate less beholden to him than he would be to a donor of the same amount? Take the case of Phil Walden, the president of Capricorn Records, who reportedly raised $100,000 for the Carter campaign from persons in the rock music industry and promoted a series of rock concerts featuring Capricorn record artists that raised over $750,000. Does President Carter owe less to Phil Walden for the money he raised than he would owe to Max Palevsky, Martin Peretz or Clement Stone (who gave large sums to candidates in the past)?"

McCoy said that the only major difference between the fund-raising entrepreneur and the large contributor is that the general public can find out who the large contributor is through a tough disclosure law, but he cannot identify the fund raisers.

McCoy's point is important, but needs to be kept in perspective. His example makes it clear that campaign finance "reform" does not automatically mean more open or more accountable politics. But it also points out the wide variety of people who can act as fund-raising entrepreneurs. As a result, the entrepreneurs are likely to contribute a series of individual favors to candidates without having a systematic impact on politics as a whole. In this respect, therefore, they are not unlike corporate political action committees.

Labor also can be divided internally, especially when it chooses to enter politics before the party nominees are chosen. Unions rarely get involved in congressional primaries, but one or more were active on behalf of virtually every Democratic presidential candidate in 1976. The matching fund form of public financing did not increase the relative power of any of the unions active at that stage, but the spending limits did put a premium on any organization that can provide volunteer assistance, as labor can. However, no single organization or kind of organization was dominant or is likely to be dominant in a multicandidate primary.

Labor also can split over endorsing presidential candidates during a general election, as it did in 1972. But the flat grant public financing system creates a possibility that never existed before. When labor unites behind one candidate, as it did in 1976, a flat-grant system in which private contributions are prohibited leaves it in a position no other groups can match. Little wonder that labor calls the campaign finance experiment a success. □

Senator DOLE. I am wondering, do you have any concern about the shift of money and power among special interest groups, if we go to public financing even on a limited scale? Do you think they are going to take a vacation from politics?

Mr. LUBICK. Obviously they are not, Senator Dole.

Senator DOLE. As Senator Long said, let's look down the road and see what happens. We have one example of $1 million. That is just the tip of the iceberg, $11 million we know of expended for President Carter's campaign by organized labor.

Is that the result that was sought by those who supported the checkoff system? If it was, it worked.

What about those of us who wanted fairness and objectivity? We did not have it. You are not concerned about that?

Mr. LUBICK. I am very concerned with fairness and objectivity. Again, I am reluctant to be the spokesman.

Senator DOLE. I appreciate that.

Mr. LUBICK. I do not come up here to give my political views or to impose them on you and I was pressed to do it. I am not the person to make the case for public financing, although I privately believe there is a very good case.

Senator DOLE. It seems to me that it is something that should be addressed. I have tried to read some of the statements. It has not been touched on, maybe it is not important.

We indirectly influence elections if we adopt public financing. Maybe there is less direct influence in the administration bill. I assume the indirect influence, if you win or lose, the result is the same. But that has not been addressed at all on how you might control other expenditures if we had public financing.

You have not addressed that?

Mr. LUBICK. I have not.

Senator PACKWOOD. May I add the answer is you cannot. Public financing is not going to remove big money from politics. It is going to shift it to large organizations with large membership who are constitutionally free to spend it as they want.

Senator DOLE. That is all I have.

Senator BYRD. Senator Packwood?

Senator PACKWOOD. I would like to correct one statement for the record. I have supported tax credits since I have been in the Congress. We have raised them to $25. I voted to raise them to more than that 3 years ago.

Mr. LUBICK. I did not suggest——

Senator PACKWOOD. You did suggest that I am more motivated by my feelings toward public financing than I am with a "particular little tax credit." The only reason I put this in is as a juxtaposition of the public financing bill. I introduced it to give this Congress a choice.

Frankly, I am tired of these slack-jowled, lazy, laggard, piggy politicians wallowing up to the public trough slurping in public money, because they are too lazy to go out and ask for it themselves. You can raise money in small amounts. People are willing to give in small amounts to the political causes of this country, but for years

politicians went around—if they could get $100,000 from 10 people, $10,000 apiece, they would.

Now we have cut that out and wisely reduced the limits that people can give. Instead of going out and asking 100,000 people for $1 apiece, which you can get, now we are going to wallow up to the public trough and say, give us the money anyway, free from the Treasury, because it is easier to get that way.

That is a backwards step for American politics to take, and an unnecessary step, because the money is there in small amounts and people will voluntarily and freely give it, if you asked them. The tax credit would be an added incentive for those people to give.

Mr. LUBICK. That is where we differ. The evidence is that the tax credit itself is neither essential or effective in increasing the contributions.

Senator PACKWOOD. Did you ever go out and raise political money?

Mr. LUBICK. Yes, sir.

Senator PACKWOOD. You are saying to me if you go down to the main street of the town and walk into every store and ask every employer and employee, give me $100 for a campaign, you get $75 off your income tax, that is no incentive?

Mr. LUBICK. The effect of this credit and deduction that has been for some time——

Senator PACKWOOD. Answer the question. You think that is no incentive? You think that is no more incentive than no credit at all?

Mr. LUBICK. No; obviously, it is more incentive than no credit at all. Most of the incentive, most of the money, is going to be raised from people who would give money anyway.

Senator PACKWOOD. I disagree with you totally. I am convinced that donations of $10 to $100, those people, especially if they had some voucher system where they could get it back immediately, you could raise that money very quickly in small amounts.

The problem in politics is not that people have been unwilling to give. Politicians have been unwilling to ask.

Mr. LUBICK. Senator, you have asked me the question. I have acted as treasurer in local campaigns, my wife's campaign committee in three elections. We have raised a lot of money. I cannot extrapolate nationwide, but I cannot believe that the tax credit or the tax deduction was a factor at all, although I went through all the IRS forms and registered the committee. I do believe it was a consideration in raising any money.

Senator BYRD. May I say in connection with Senator Packwood's statement, individuals will contribute to a campaign. In my campaign last year, I had 12,000 individual contributors, more than twice as many who had ever contributed to any other Virginia campaign.

The average contribution was about $55 or $53, and more than 12,000 individuals contributed to my campaign.

What is proposed under public financing is to raid the public Treasury with the amount being voted on by the individual Members of the Congress themselves. There will not be any limit, as I see it, to the amount of money that will be appropriated from the Congress. Because they will be here in Congress every year, individual Senators

and individual Congressmen will want more and more funds out of the public Treasury.

I am not impressed at all with the argument for public financing.

Let me ask you one question and then we will go to the next witness. How is the present checkoff audited? Do you have a group in the Treasury Department that goes through each return to see if each taxpayer has marked the appropriate checkoff box, or do you just sample the checkoff portion of the return and, for example, take the sample and multiply it by 10 and assume that this is the number of taxpayers electing to contribute to the Presidential campaign fund.

Mr. LUBICK. I understand they are checked precisely.

Senator BYRD. How many people does it take to do that?

Mr. LUBICK. I can find that out for you.

Senator BYRD. How many individual income tax returns are filed with the Federal Government?

Mr. LUBICK. For 1975, there were 82,229,000-some odd tax returns.

Senator BYRD. Each of those returns, you said, were checked precisely. How many individuals did it take to precisely check 82,229,000 returns?

Mr. LUBICK. With your permission, I would like to be able to write you on that question. I do not know.

Senator BYRD. Thank you.

Senator LONG. Let me ask a question, since you brought that up.

Out of 82 million returns, how many of them checked the checkoff?

Mr. LUBICK. In 1975, 21,182,000 persons availed themselves of the checkoff.

Senator LONG. Is that the latest you have? You do not have anything for 1976 and 1977?

Mr. LUBICK. I have the 1976 returns that were processed through May 11, 1977. That showed 18,044,000. The comparison, Senator Long, that is appropriate with the returns that were processed for 1975 at the same point in time in 1976 was 16,763,000. There is an additional 1,300,000 persons that availed themselves of the checkoff in the returns that were processed for the first 20 days or so after the last date for filing.

Senator LONG. Please understand, I am an ardent advocate of the checkoff for the President system. I check it. I have even tried to get some TV spots to urge you to check it. I advocated it, and continue to do so, and try to get everybody to advocate it.

To be entirely fair about the matter, if you look upon that as a referendum, and for me to be the devil's advocate for a moment, you could say the public is voting 3-to-1 against public financing on the referendum on the virtue of the fact that 75 percent of the taxpayers are not marking it.

Someone who did not agree with you about the checkoff could make that argument.

Mr. LUBICK. You could make the argument, but the trend shows that starting with 1972 returns of 3 percent, it has been going up every year. I think people are getting more familiar with it. I think there was a problem, was there not, for a period of time as to where the checkoff was located on the return.

Senator LONG. They did not know where it was. Did not understand the idea. Did not understand both sides of the argument.

There is more understanding now, and it keeps picking up. I think the checkoff is a success. That much of it. I was appalled on whether it should extend to the Senate race. I have some doubts.

Senator BYRD. Before concluding, I want to say that I would like to have a better understanding as to the accuracy of these checkoff figures.

Mr. LUBICK. Senator Byrd, we will forward a letter to you explaining the method by which the checkoff is audited by the Internal Revenue Service when the returns are filed, an estimate of the work involved, the number of IRS employees that are involved in that procedure. I believe that is what you want.

Senator BYRD. Yes, that is what I would like to have.

[The following was subsequently supplied for the record:]

DEPARTMENT OF THE TREASURY,
Washington, D.C., May 24, 1977.

Hon. HARRY F. BYRD, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BYRD: At the hearing before your Subcommittee on Taxation and Debt Management on May 19, 1977, on S. 1471, a bill to provide an increased tax credit for contributions to Senate campaigns, you requested information relating to the Internal Revenue Service tabulations of the checkoffs for the Presidential Election Campaign Fund. As I stated at that time, the Service counts each check-off—both "yes" and "no" check-offs—as the returns are processed. When tax returns are processed by the Internal Revenue Service, the information on each return is transcribed into a computer. Each return's check-off information is therefore put into the computer and added up individually. The information transcribed into the computer includes which block ("yes" or "no") was checked, and if the return is a joint return, whether $1 or $2 is to be allocated to the Fund.

You also asked the number of employees required to process the check-off. Because the employees transcribe entire returns, it is necessary to allocate the time required for the check-off alone. The Service thus estimates the employee time for the check-off at 40 average positions for the current year. The cost of coding, editing, transcribing and machine time, which includes personnel costs, is estimated at $530,000 for the current year.

If I can be of any further assistance, please let me know.

Sincerely,

DONALD C. LUBICK,
Deputy Assistant Secretary
for Tax Policy.

Senator BYRD. You said that each return was precisely determined whether there was or was not a checkoff?

Mr. LUBICK. I am going to write you specifically with respect to that question.

Senator BYRD. I want to know whether it is an estimate. I know how these Government estimates can be. When they want to increase the funds, they just estimate it higher. I want to know whether it is an estimate or a precise figure.

Mr. LUBICK. We will write you precisely with respect to that question as to whether it is precise.

Senator BYRD. Thank you.

The next witness is Congressman Frenzel.

Senator PACKWOOD. May I ask unanimous consent to put Congressman Frenzel's statement into the record? He had to leave for a House vote.

Senator BYRD. May the Chair say that the Chair is sorry the Congressman cannot testify. He is unavoidably detained to House business. I know his testimony would add a great deal to these hearings. I have read statements that Congressman Frenzel has made with regard to the basic overall problem, and I have been very much impressed with what Congressman Frenzel has had to say.

[The prepared statement of Hon. Bill Frenzel follows:]

STATEMENT OF CONGRESSMAN BILL FRENZEL

Mr. Chairman and members of the committee. I am grateful for the opportunity to appear before this distinguished committee in support of the Packwood bill, S. 1471.

In 1971, we provided deductibility for political contributions of $100, or a tax credit of 50 percent of the contribution up to a maximum of $12.50 for a single return or $25 for a joint return. In 1975, we raised the tax credit to a maximum of $25 for a single return and $50 for a joint return. These tax incentives were excellent inducements for political contributions.

It is impossible to determine by quantitative analysis how successful this incentive has been, because no gross number of contributors, either before or after the credit became effective, is available. Also, the number of contributors has been affected by other factors, like contribution limits, disclosure, Watergate, public financing and the like. Nevertheless, I believe that deductibility had a salutary effect on the number of people contributing and would have had an even greater effect if political committees would promote it more aggressively.

The Treasury, of course, has the figures for those who have used tax credits or claimed deductibility. Preliminary figures from 1975 indicate over a million and a half returns claiming credit of over $37 million.

Since the last time we changed the law in 1975, the cost of living has increased over 15 percent and will probably go up another 7 percent this year. It is time to increase the tax credit, not only to take into account the rise in the cost of living but also to add greater incentive for financial participation in our election processes.

Because I believe a good concept ought to be extended and updated, I support the Packwood proposal to make the tax incentive more attractive. I believe the tax credit should be increased. The judgment of this committee, or of the Congress, is undoubtedly better than mine as to whether the specific amounts of S. 1471 are exactly right. In any case, the current tax credit ought to be increased.

Because we want to increase the incentive for the giver of $100 and less, it makes good sense not to increase the deductibility but instead to increase the tax credit as is the case in S. 1471. The average political giver contributes under $100. In fact, the average contribution to the 15 primary Presidential candidates certified in 1975 was just under $27. It is this contributor who would benefit by a higher percentage tax credit for his or her contribution.

It has been suggested that the increase in the tax credit is a good alternative to public financing of congressional elections. I believe so, but I also believe that we should raise the tax credit no matter what we do with the issue of public financing.

The most important distinction between the so-called "check-off" and the tax credit is that the latter leaves the decision about who the public will subsidize to the individual taxpaying contributor. Both public financing and tax credits involve a Federal subsidy for political campaigns. Under the tax credit approach, however, the Federal Government plays no part in determining which candidates are to receive public funds or the amount to be received. It is the citizen and the citizen alone who makes this determination. The tax credit system, like many of our other Federal programs, demands local participation. The public financing system enables potential political participants to say, "I gave at the office."

Mr. Chairman, I commend the committee for its consideration of this legislation and urges your support for an increase in the tax credit.

Senator PACKWOOD. I have another unanimous consent request.

First, I would like the record to show, after the statement that Mr. Lubick made that checkoff is increasing in public favor, in Oregon on

the ballot in 1976, we had a public financing issue on the ballot almost identical to the bill now before the Rules Committee. The voters in Oregon defeated that 263,738 to 659,327 against. To the best of my knowledge that is the only statewide poll, if you want to call it that, where all the voters had a chance to express themselves as to whether or not they wanted public financing.

Senator BYRD. Those are very interesting figures. I have the feeling that the public is getting a little bit upset with Congress just appropriating more and more tax funds for every conceivable project that comes along just because somebody says well, it is a good idea. The thought among many Members of Congress seems to be: "It is a good idea, let the Government take care of it."

The Government is trying to take care of everything in the world these days. We are getting into worse shape all of the time.

Senator Long, in his comments, said he thought it might be that well, that our country would benefit from the experience of other countries. He specifically had England in mind. I have not seem much evidence, that the Government of the United States is benefiting, or seeking to benefit, from the experience of other countries.

Senator PACKWOOD. I would also ask unanimous consent for the record to insert two articles by Alexander Keema, one article by Professor Fay and one article by the FEC on the investigation of Gov. Milton Shapp.

Senator BYRD. Without objection, also the article referred to by Senator Dole. We will make it a part of the record.[1]

[The material referred to follows. Oral testimony continues on p. 52.]

PUBLIC FINANCING OF POLITICAL CAMPAIGNS—AN ALTERNATIVE CONCEPTUAL APPROACH

(By Alexander W. Keema)

Since April 1972, I have had the opportunity to observe at close hand, and to participate in, the evolution of campaign finance "reform" at the Federal level. I have been involved in the process of policy development and administration of the law and the regulations, and have participated in audits, investigations, and statistical studies of political committees and candidates, for the GAO and for the Senate Select Committee on Presidential Campaign Activities (Watergate Committee).

The following are some general observations on the evolution of the Campaign Finance Law from the perspective of one who has long been associated with it. The object of this paper is to present an alternative conceptual approach to public financing of the political process, which I believe would reach the ultimate goals of campaign finance reform more directly and more efficiently than other public financing proposals recently put forward in the Congress.

THE 1971 ACT

The Federal Election Campaign Act of 1971 was the culmination of a long-term election reform movement backed by "public interest" lobbies, such as Common Cause, as well as other groups. It accomplished three basic goals:

1. Full disclosure of campaign finance activities

The 1971 Act provided the same basic disclosure requirements now in effect under the present law; i.e., full disclosure of all financial activity and itemization of transactions in excess of $100.

2. Limitations on how much a candidate could spend in his own campaign out of his personal funds, and the funds of his immediate family

These provisions (limiting Presidential candidates to $50,000, Senate candidates to $35,000 and House candidates to $25,000) grew out of the notoriety received

[1] The article referred to by Senator Dole appears on p. 19.

by a number of wealthy candidates who ran in 1970 and in earlier years, who financed their campaigns largely from personal wealth. The reformers argued that wealthy individuals should not be allowed to "buy" their way into office simply because they happened to be wealthy. The limitation provisions were designed to provide more equal opportunity to candidates who did not have personal wealth.

3. Limitations on the total amount a candidate could spend on media advertising

These provisions (limiting media spending to 10 cents per eligible voter) grew out of criticism, common at the time, of the impact of media advertising, particularly television, on the electoral process. The reformers argued that candidates were being "packaged" for sale to the public through slick media campaigns created by Madison Avenue. The 1968 Nixon Campaign was a frequently cited example. (The media limitations were thrown out by the courts as unconstitutional, prior to the passage of the 1974 Amendments.)

THE 1974 AMENDMENTS

The 1974 Amendments to the Federal Election Campaign Act of 1971 created the Federal Election Commission and added several significant provisions to the law; the principal ones being:

1. Imposition of contribution limits

The 1974 Amendments to the campaign finance law were passed in the wake of the Watergate scandals. The Watergate Committee revealed not only that the Nixon Administration had been involved in unlawful acts, but also that huge campaign contributions had flowed into the Nixon campaign coffers from both personal and corporate sources. Many of these contributions were made with an implied promise of a "quid pro quo," in the form of favorable government action on behalf of the contributors. However, it was little noted in the press that the great majority of large contributions, and virtually all of those contributions which were illegal, were made prior to April 7, 1972, the effective date of the 1971 Act. Some $20 million was raised by the Nixon campaign prior to April 7th and none of it was subject to disclosure, or to audit by the General Accounting Office. That is was ultimately disclosed more than a year later was the result of subpoenas issued by the Senate Watergate Committee, and a civil suit filed by Common Cause. It is highly unlikely that the same fundraising methods would have been used by those responsible in the Nixon campaign, had they known that the sources of these contributions and the amounts raised would ultimately be disclosed to the public, and to law enforcement agencies.

Nevertheless, the disclosures made of financial abuses uncovered in the 1972 campaign provided ample justification for the contribution limits imposed by the 1974 Amendments. ($1,000 per individual for each election, and $5,000 per qualified multicandidate committee.) The reformers reasoned that large contributions made to candidates by wealthy individuals and groups representing particular economic interests bought, if not any specific "quid pro quo", at least access to the candidate, and therefore influence on the candidate's thinking. The limitations were designed to curb such influence.

2. Spending limitations

With the 1971 media limitations ruled unconstitutional, there remained no effective curb on campaign spending by Federal candidates. The Congress imposed, in the 1974 Amendments, limits on total campaign spending. Many believed that his provision primarily served the interests of incumbents, since incumbents have built-in advantages such as the "frank," a high level of name recognition, etc. Others opposed expenditure limits on the grounds that political campaigns, on the whole, are actually under-financed rather than over-financed. Dr. Herbert Alexander, Director of the Citizens' Research Foundation, and author of several books on campaign financing, has often expressed this view.

3. Public financing

The reformers in Congress realized that, with tight contribution limits imposed on political fundraising, it would be extremely difficult for Presidential candidates to raise sufficient funds to conduct a nationwide primary campaign for nomination, or to run a nationwide general election campaign. The answer to this problem was found in public financing of Presidential campaigns. The primary election process presented an obvious problem since virtually anyone can declare himself a Presidential candidate in the primaries. The solution was found in the "threshold concept," requiring the raising of $5,000 in each of 20

states in amounts of $250 or less, in order to qualify for Federal matching funds. Fifteen candidates running for nomination by the two major parties met the threshold, and received matching funds totalling about $24 million during 1976. An additional $43.6 million in straight grants was distributed to the major party Presidential nominees for the General Election, and $4.1 million was paid to the two major parties to finance their national nominating conventions.

BUCKLEY V. VALEO AND THE 1976 AMENDMENTS

Aside from its direct impact upon the Federal Election Commission itself (requiring reconstitution as an Executive Agency) the Supreme Court decision of January 30, 1976, had a major effect upon the character of campaign financing in Senate and House races.

1. Elimination of spending limits while retaining contribution limits

The elimination of spending limits did not, in most cases, result in increased total spending in Senate and House races. The greatest curb on total spending resulted from the inability of candidates to raise funds under the tight contribution limits upheld by the Supreme Court ruling. In fact, total spending in Senate and House races appeared to be significantly less in 1976 than in prior election years.

2. Elimination of the limits imposed upon candidates' use of their personal funds

This ruling by the Supreme Court brought campaign finance "reform" to precisely the opposite result from that intended in the original 1971 Act. The 1971 Act was designed to prevent wealthy candidates from "buying" their way into office at the expense of their less wealthy opponents. Under present law, a millionaire candidate is free to spend unlimited amounts from his own pocket, while his "unwealthy" opponent is limited to what he can raise in $1,000 (or $5,000) contributions. Thus, the wealthy candidate has a far greater advantage than he did prior to 1971 "reform."

3. Administration of public financing

The Federal Election Commission found it necessary to employ approximately 35 people, full time, to administer the matching fund provisions of the campaign law, to insure that Federal funds were equitably distributed, and to insure that the public treasury was protected. A similar manpower commitment has also been made to audit the campaigns of Presidential candidates who received matching funds. The high costs to eligible candidates of obtaining matching funds are apparent from the millions of dollars allocated by those candidates to "legal and accounting expenditures." What may be less apparent, at the present time, are the difficulties which can be expected to arise as a result of the audits. The Commission will be presented, in the near future, with "laundry lists" of expenditures made in Presidential campaigns which raise substantive questions as to whether they represent "qualified campaign expenditures" under the law. Each such expenditure may require a separate policy decision. There is also an imminent question regarding expenditures for which the campaign does not have adequate documentation as required by the law.

Should the Commission rule that certain expenditures are not "qualified campaign expenditures" under the law, a repayment to the U.S. Treasury is required in like amount. Where funds for such repayments will be found is highly problematical, considering the fact that few unsuccessful Presidential campaigns have any remaining cash.

THE 1977 AMENDMENTS?

The press has frequently noted, and most observers agree, that the 1976 elections entailed significantly less political spending than elections in prior years. Much has been made of the lack of local citizen involvement, the lack of bumper stickers and posters, and the lack of local fund raising and spending. The turnout of registered voters in the general election continued its downward trend approaching only 50 percent of those eligible to vote.

The reason for the subdued nature of the 1976 campaign lies primarily in the contribution limits, and in the expenditure limits imposed on Presidential campaigns receiving Federal funds. Candidates, with the exception of those who used their personal wealth, generally had less money to spend. Local groups stayed out of the political process for fear of making illegal "contributions-in-kind." The party structure has been weakened through the application of a single

contribution limit to all party committees in the same state, while the power of special interest group committees has been enhanced through their ability to make unlimited "independent expenditures" on behalf of candidates they favor.

The Congress can be expected to move, in 1977, to remedy the paucity of funds evident in the 1976 campaigns. However, the cure most commonly proposed is to provide Federal matching funds for Senate and House campaigns in the next general election, and possibly in the primaries as well.

While public financing of Presidential campaigns during 1976 can be viewed as reasonably successful, the extension of this concept to House and Senate campaigns, in the form of matching funds, would greatly increase the administrative complexity of campaign financing, both for the Federal Election Commission and for the candidates involved. It is difficult to calculate the number of people necessary to maintain adequate control over the certification of matching funds to perhaps 1,000 Federal candidates, or to conduct post-certification audits of all such campaigns within a reasonable time after the election. In any case, it seems fair to say that a major increase in the size and complexity of the administrative machinery would be inevitable, under any extension of the matching funds concept beyond the Presidential level.

AN ALTERNATIVE APPROACH TO PUBLIC FINANCING OF ELECTIONS

The following pages outline an alternative approach to public financing of the political process which I believe would:

1. Significantly expand citizen participation in the political process;
2. Substantially increase available funding for political process at all levels;
3. Substantially reduce the costs of fundraising for political campaigns;
4. Significantly increase the financial resources of regular party organizations;
5. Significantly curb the financial power of special economic and other interest groups to affect the political process; and,
6. Reduce the advantage now enjoyed by wealthy candidates who finance their campaigns from personal funds.

These goals can be achieved, in my view, through adoption by Congress of the following legislative changes in present campaign finance law:

1. *Amend Title 26, Internal Revenue Code, Section 41(a) as follows:*

Section 41. Contributions to candidates for public office

(a) General rule. In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to [one half] *the full amount* of all political contributions and all newsletter fund contributions, payment of which is made by the taxpayer within the taxable year.

(b) Limitations.

(1) Maximum credit. The credit allowed by subsection (a) for a taxable year shall not exceed $25 ($50 in the case of a joint return under Section 6013).

2. *Repeal of Subsection (c)(1)(B) of Section 41, restricting the definition of "political contribution" as follows:*

(c) Definitions. For purposes of this section—

(1) Political contribution. The term "political contribution" means a contribution or gift of money to—

(A) an individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, for the use by such individual to further his candidacy for nomination or election to such office;

[(B) any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, for use by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to such office;]

(B) [(C)] the national committee of a national political party;

(C) [(D)] the State committee of a national political party as designated by the national committee of such party; or

(D) [(E)] a local committee of a national political party as designated by the State committee of such party designated under subparagraph [(D).] (C).

3. *Repeal Chapters 95 and 96 of Title 26 (The Public Financing Provisions).*

ARGUMENTS IN SUPPORT OF THE PROPOSED AMENDMENTS

Let us examine how the proposed Amendments to present law might bring about the desired results as outlined above:

1. The proposed modifications to Section 41(a) of Title 26 create a "citizen-controlled "form of public financing for the electoral process at all levels of government. Each taxpayer is provided with a personal "franchise" to distribute a maximum of $25 in public funds to the candidate(s) or party(ies) of his choice during each calendar year. Citizens should be encouraged to exercise this franchise, just as they are now routinely encouraged to exercise their franchise to vote.

The existence of this public financing franchise could be expected to increase substantially the total amount of funding available to candidates, their committees, and political parties, as well as to expand citizen participation in the political process itself. With an estimated 128 million taxpayers in the United States, a participation rate of only 10 percent would inject up to $390 million into the political process, all in individual contributions of $25 or less. Given this franchise, citizen interest and involvement in the political process could be expected to increase, for the same reason that a person's interest in football game could be expected to increase as a result of a wager placed on the outcome of the game. In political terms, this means more citizen interest in candidates and their issues. The existence of a public financing franchise, available to all taxpayers, should also reduce the fundraising costs to political campaigns, as "spontaneous" contributions flow to those candidates who generate citizen support through news reports of their positions on vital issues.

2. The repeal of Subsection (c)(1)(B) of Section 41 would restrict public financing in the political process to candidates and regular party committees. This modification would make it more difficult for political action committees to raise contributions, since such contributions would represent private, rather than public funds. Under the present 50 percent tax credit system, half of all small contributions ($50.00 or less) made to special interest political action committees could represent public funds. Under the proposed 100 percent tax credit plan, restricted to candidates and regular party organizations, an increasing proportion of campaign financing should be generated in small amounts, directly from private citizens, while the financial impact of special interest groups on the political process would be correspondingly reduced.

3. With the introduction of a citizen's public financing franchise, in the form of a 100 percent tax credit, the present form of public financing and the complex administrative machinery necessary to implement it would become unnecessary. The present "matching funds" concept is designed to provide the greatest amount of public funding to those candidates who generate the widest public support, as evidenced by the largest number of small contributions received. The system I propose would reach precisely this same result in a far more direct way, without the necessity of the Federal Election Commission acting as an intermediary. The role of the Commission would be to administer and enforce the disclosure and limitation provisions of the law, an extremely complex task in itself.

AVAILABLE STATISTICS

Dr. Herbert Alexander, in his book, "Financing the 1972 Election," estimates that some $425 million was spent by political parties and candidates during 1972 on political activity at all levels. Surveys taken by the Center for Political Studies at the University of Michigan, following the 1972 election, indicate that about 10.4 percent of the adult noninstitutionalized population (about 14.3 million people) made political contributions during 1972. These figures suggest that the average political contribution was about $30. However, data released by the Internal Revenue Service, taken from 1972 individual tax returns, indicates that tax credits for political contributions totalling $26.5 million were claimed on about 1.8 million returns, and tax deductions totalling about $52.3 million were claimed on an additional 1 million returns. (The tax deduction is generally more advantageous to the large contributor because he can deduct four times the amount he could otherwise take as a credit; i.e.: a $50 deduction

vs. a $12.50 credit in 1972; and $100 deduction vs. a $25 credit since enactment of the 1974 Amendments). Assuming that 75 percent of the tax returns on which credits or deductions were claimed were joint returns, the total number of contributors who took advantage of the available tax incentives in 1972 was about 5 million. This leaves more than 9 million people who made political contributions in 1972 which were not claimed on their tax returns. Apparently, the majority of political contributors in 1972 were not aware of the availability of tax credits or tax deductions for such contributions.

In 1974, the University of Michigan survey indicated that about 8.4 percent of the non-institutionalized adult population (about 12 million people) made political contributions. Tax statistics available from IRS indicate that credits or deductions were claimed for political contributions on about 2.1 million tax returns. Again it would appear that either the survey results are overstated in terms of the total number of contributors, or, what seems more likely, that the majority of contributors do not take advantage of the available tax provisions. In any case, the cost to the public of the present 50 percent tax credit/deduction system appears to be about $50 million for an election year and somewhat less for non-election years. A significant portion of this public funding presumably goes into the coffers of special interest political action committees, and is subsequently distributed to candidates and parties.

It would appear that if the public were better informed of the tax incentives available now for making political contributions, the total amount of public funding injected into the political process would increase, whether or not the total number of contributors increased. If more than half of all political contributors are not aware of the available tax deductions and credits, then presumably the vast majority of non-contributors (90.4 percent of the adult population) are also unaware of these provisions.

THE UNKNOWN ELEMENTS

The principal unknown in the 100 percent tax credit proposal is the degree to which it would stimulate small contributions by the public. Some knowledgeable observers would undoubtedly argue that a 100 percent tax credit for political contributions would not appreciably increase the number of individual contributors beyond those who now contribute under the present tax structure. However, this argument tends to ignore the substantive distinction between a 50 percent tax credit and a 100 percent tax credit. Under a 50 percent tax credit the contributor makes a real sacrifice in his own consumption of goods and services in order to support the candidate or party of his choice. Under a 100 percent tax credit, the sacrifice in consumption is only temporary, since the full amount contributed will be deducted from the contributor's tax bill (or added to his tax refund) in the following year.

The other side of the public participation argument is that so many people might take advantage of their opportunity to make a political contribution using Federal tax money that the political process would become overfinanced, leading to waste and mismanagement in political campaigns. However, neither argument is supported, at this point, by much reliable statistical data.

The necessary statistical data to support a political decision on a 100 percent tax credit might be gathered through a nationwide poll of the voting age, taxpaying public. Such a poll should ascertain, among other things, the percentage of people who made political contributions in 1976, as compared to the percentage of people who say they would make a contribution under the 100 percent tax credit plan, outlined in this paper.

The results of such a poll, assuming the responses are reliable, could be used as the basis for the key policy decisions with regard to the 100 percent tax credit. If, for example, 10 percent of those responding said they would contribute to political parties and candidates if the 100 percent tax credit were available, and a determination was made that $400 million in public funds should be provided to support the political process, then the maximum allowable tax credit would be $32.

$$\frac{\$400 \text{ million}}{128 \text{ million taxpayers} \times 10 \text{ percent}} = \$32 \text{ per contributor}$$

If, on the other hand, 20 percent of those surveyed said they would contribute under a 100 percent tax credit, and the same $400 million in public funding was desired, then the maximum allowable tax credit would be only $16 per individual.

In either case, the essential ingredients for public policy purposes are:

1. A determination of how much public funding is needed in the political process; and

2. An accurate estimate of the rate of public participation in financing the political process through proposed 100 percent tax credit mechanism.

The extent of public financing necessary is, in turn, largely dependent upon the statutory contribution limits. If the limitations on contributions by political action committees and individuals ($5,000 and $1,000 respectively) were reduced, then the total requirement for public funding through the 100 percent tax credit mechanism would be correspondingly increased, necessitating a higher maximum allowable credit per individual. In any case, the maximum amount allowed as a tax credit provides a readily adjustable mechanism to control overall public financing of the political process. The decision as to which political parties and candidates receive public financing and the actual distribution of it, are left to the discretion of the public. Minor party candidates would have equal access to public funding to the extent they could generate public support.

Finally, for a 100 percent tax credit to stimulate a significant increase in the total number of small contributors, the general public must be made aware of it. This could be accomplished through a public information campaign, financed by Congress, as part of an overall election reform package.

The GAO Review

(By Alexander W. Keema III)

Campaign finance reform: limiting campaign contributions

The Federal Election Campaign Act of 1971 places responsibility on the Comptroller General to monitor reporting of campaign financial data by Presidential and Vice Presidential candidates and their supporting committees. The Office of Federal Elections performs this function. A number of changes in the act have been proposed in the 93d Congress. One very significant proposal would place a limitation of $3,000 on individual contributions to Presidential campaigns.

Mr. Keema, a "charter" member of the OFE's auditing and investigating staff, undertook the study on which he writes while temporarily assigned to the Senate Select Committee on Presidential Campaign Activities (the "Watergate Committee") earlier this year to assist the Committee in evaluating the proposed limitation and certain alternatives.

This paper represents an attempt to quantify and evaluate the probable impact on Presidential campaigns of the enactment of a $3,000 limit on individual contributions to Presidential candidates. Such a limit is included in Senate bill 3044 which has been passed by the Senate.

Table A on page 56 shows the total receipts of four 1972 Presidential candidates (including all contributions and loans, but not including transfers received from other political committees) and the total receipts which would not have been available to their campaigns had a $3,000 per individual contribution limit been in effect during the preelection period.

TABLE A

Period	Total contributions received	Amount that would be lost to campaign (in excess of $3,000)	Amount that would be available to campaign ($3,000 or less)	Percent of contribution lost under $3,000 limit
Richard M. Nixon:				
Pre-Apr. 7, 1972	$19,940,000	$15,516,000	$4,424,000	78
Apr. 7-Dec. 31, 1972	43,287,000	17,227,000	26,060,000	40
Total	36,227,000	32,743,000	30,484,000	52
George S. McGovern:				
Pre-Apr. 7, 1972	728,000	454,000	274,000	62
Apr. 7-Dec. 31, 1972	48,932,000	12,794,000	36,138,000	26
Total	49,660,000	13,248,000	36,412,000	27
Hubert H. Humphrey:				
Pre-Apr. 7, 1972	781,000	538,000	243,000	69
Apr. 7-Dec. 31, 1972	4,268,000	2,934,000	1,334,000	69
Total	5,049,000	3,472,000	1,577,000	69
Edmund S. Muskie:				
Pre-Apr. 7, 1972	1,589,000	554,000	1,035,000	35
Apr. 7-Dec. 31, 1972	723,000	318,000	405,000	44
Total	2,312,000	872,000	1,440,000	38

Note: The following qualifications should be considered in comparing and drawing inferences from the figures in table A: (1) Incompleteness of pre-Apr. 7, 1972, data The pre-Apr. 7, figures for the Democratic candidates were compiled from contributions voluntarily disclosed by the candidates, and do not include contributions of less than $500. The total receipts of these candidates for the pre-Apr. 7 period are thus necessarily understated while the percentage of receipts lost (in excess of $3,000) is somewhat overstated. (2) Computer aggregation—A computer program was used to aggregate the multiple contributions made by many individuals to the numerous committees supporting each candidat (such multiple contributions were usually made to avoid gift taxes). The contributions were aggregated by matching the names and addresses of the contributors. Unavoidably some contributions were not aggregated due to differences in street names, numbers, middle initials, etc. Such differences resulted in the treatment of some multiple contributions by the same individuals as contributions by different people. This distortion is reflected in the post-Apr. 7 contributions of all candidates. Becau se of this ype of distortion, the amount theoretically lost under a $3,000 contribution limit would be somewhat understated while the net amount available to the campaign would be overstated. However, the inability of the computer to distinguish between contributions from individuals and those from a man and wife resulted in the treatment of all contributions as though they were made by single individuals. This distortion would tend to offset the incomplete aggregation problem. A sampling of the computer detail indicates that, overall, the total of post-Apr. 7 contributions of $3,000 or less is somewhat overstated while the total of contributions in excess of $3,000 is somewhat understated.

The table is broken down into two periods: the period from January 1, 1971, through April 6, 1972; and the period from April 7 through December 31, 1972. The pre-April 7. 1972, figures for the three Democratic candidates were taken from a Citizens Research Foundation report entitled "Political Contributions of $500 or more Voluntarily Disclosed by 1972 Presidential Candidates." The pre-April 7, 1972, figures for the Republican candidate were taken from a report filed with the Clerk of the House of Representatives on September 28, 1973, by the Finance Committee to Re-elect the President pursuant to a court order obtained by Common Cause on July 24, 1973. All figures for the period April 7 through December 31, 1972, were taken from reports filed by committees of the four candidates with GAO, under the provisions of the Federal Election Campaign Act of 1971.

Table B on page 58 shows the relative use and importance of loans to the four candidates.

Evaluation of the data

While the data presented in tables A and B may be subject to varying interpretation, it is clear that a $3,000 per individual contribution limit would have had a very major impact on the 1972 Presidential campaign. On their face the figures show that the President's reelection effort would have been deprived of over $30,000,000 in financing and would have had $6,000,000 less than Senator McGovern's campaign. However, the total amount of small contributions ($3,000 or less) to the two major candidates would have undoubtedly been far different had the $3,000 contribution limit been in effect during the entire pre-election period. In fact, such a limitation might well have altered the outcome of the Democratic Presidential primaries.

TABLE B

Candidate	Total contributions received	Total loans received	Total loans repaid	Net receipts available to campaign	Loans as percent of total contributions
Richard M. Nixon	$63,227,000	$1,249,000	$589,000	$62,638,000	2
George S. McGovern	49,660,000	9,633,000	5,209,000	44,451,000	19
Hubert H. Humphrey	5,049,000	1,533,000	464,000	4,585,000	30
Edmund S. Muskie	2,312,000	223,000	114,000	2,198,000	10

Note: As indicated in table B, the 4 candidates made widely varying use of loans to finance their campaigns. To the extent that these loans were repaid, the "Total contributions received" figures overstate the amounts that the candidates had available for normal campaign expenditures. Loans which were not repaid by the candidates' committees were generally forgiven and thus converted into ordinary contributions. While the great majority of loans were made to political committees by individuals, a few loans were made between political committees. Thus the total loan figures in table B may be slightly overstated.

The pre-April 7, 1972, contribution figures for the three Democratic candidates, shown on table A, indicate that Senator Muskie had approximately twice the funding of his two opponents in the early primaries. Furthermore, because of his frontrunner status and national recognition, he was much less dependent upon large contributors than were Senator McGovern and Senator Humphrey. Senator McGovern, for example, received 40% of his contributions from only four individuals, while Senator Humphrey received only 60% of his contributions in amounts of $25,000 or more.

Had a $3,000 contribution limit been in effect during the early primaries, Senator Muskie would have had to 5 to 1 money edge over his two opponents rather than only a 2 to 1 advantage. Needless to say, such a difference would have drastically affected the course of the primary campaigns and would have probably been reflected in the ultimate results at the polls. A $3,000 contribution limit in the early Presidential primaries would appear to be clearly to the advantage of a nationally know frontrunning candidate and to the disadvantage of his lesser known opponents.

President Nixon's campaign received about 78% of its funding during the pre-April 7, 1972, period in contributions exceeding $3,000. However, both the total receipts during this period and the average size of individual contributions were no doubt affected by the rush to solicit anonymous contributions prior to the April 7, 1972, disclosure deadline of the Federal Election Campaign Act of 1971.

In the post-April 7, 1972, period the figures on table A show that the McGovern campaign generated substantially more contributions of $3,000 or less than did the Nixon campaign. However, the majority of small contributions to both campaigns were raised through direct mail solicitations, and it is very questionable whether the McGovern campaign could have financed such an extensive direct mail effort without the aid of early large contributors. As the figures show, the Nixon campaign had raised 17 times what the McGovern campaign had raised in contributions of $3,000 or less by April 7, 1972. In addition, as an incumbent President and an overwhelming favorite in the Republican primaries, President Nixon had very limited spending requirements prior to the general election campaign. Senator McGovern, on the other hand, required large amounts of early money to campaign in 23 tightly contested primaries.

This again illustrates the tremendous advantage conferred by a $3,000 contribution limit upon a nationally recognized front-runner—an advantage which is greatly compounded if the candidate happens also to be an incumbent President.

As table B shows, a great percentage of Senator McGovern's larger contributors made their contributions in the form of loans (loans are considered to be contributions under the Federal Election Campaign Act of 1971). Of over $9,000,000 in loans made to the McGovern campaign, over half were ultimately repaid, presumably with money later raised through direct mail solicitation. Under a $3,000 contribution limit this type of temporary financing would be virtually eliminated.

The Nixon campaign, in contrast, raised very little of its money in the form of loans as adequate financing was already available through straight contributions. Again the front-runner/incumbent advantage is obvious under the limitations imposed by S. 3044 and other bills.

Alternate financing proposals

All of the public financing bills introduced in the 93d Congress implicitly recognize the need to replace, in some way, the political money which has traditionally been provided by the large contributors.

TOTAL PUBLIC FINANCING

Schemes for total public financing of campaigns seemingly solve the problems evident in the foregoing analysis but at the same time deny to the general public the right to participate in the political process by contributing to the candidate of their choice. The argument is often made that financing campaigns through the general tax revenue, in effect, forces individuals to support with their taxes candidates whom they oppose. (President Nixon made this argument in his press conference on March 6, 1974.)

In addition, prohibiting by statute all private contributions or campaign expenditures may well prove to be a violation of the First Amendment rights of the citizens. Finally, the administrative problems arising out of public financing are immense—determining what are legitimate uses of campaign funds, accountability of campaign treasures, auditing of campaign expenditures by a Federal agency, and a host of others.

Assuming that these problems can be solved, the great unsolved problem which remains is how to weed out the "serious" from the "frivolous" candidates in the primaries. Obviously, if all candidates are financed equally we are likely to have scores of candidates in the major party primaries, many of whom are primarily seeking publicity.

PARTIAL PUBLIC FINANCING

A number of bills introduced in the Senate and the House propose to solve the "frivolous candidate" problem by means of a matching funds formula for the primaries. For example, the Anderson-Udall bill (H.R. 7612) proposed a $2,500 contribution limit to presidential candidates with Federal grants matching contributions of $50 or less contingent on the candidate raising a threshold amount of $15,000 in such small contributions. Frivolous candidates would presumably be limited by the requirement to raise the threshold amount in small contributions.

The above formula appears a reasonable one. However, as table A reflects, it is precisely in the area of raising small contributions that the lesser known challenger in the primaries has the biggest disadvantage and the well known front-runner the advantage. The front-runner already has the broad-based recognition and support needed to raise small contributions and to match those with Federal funds would only amplify that advantage by providing additional financing for direct mail appeals. In any case, Federal matching of $50 and under contributions in the early primaries is unlikely to inject a great deal of money into the campaigns and will certainly not replace the rich benefactors who traditionally have provided the bulk of the initial organizing money for challengers such as Senator McGovern and Senator Humphrey in the 1972 campaign.

In addition to the probable ineffectiveness of the partial Federal financing proposal, it is also subject to all the administrative problems of total public financing.

Indirect public financing through tax credits

Generating the vast amounts of cash required to organize and conduct a Presidential campaign without relying on large contributors necessarily implies broadening the financial base upon which campaigns are run. One way, of course, is direct public financing as discussed above.

Another way might be by indirect public financing through tax credits. A $25 tax credit which could be deducted on a taxpayer's return, dollar for dollar, might provide the vast numbers of small contributors needed to replace the large donors. The $25 could be contributed in whole or in part to any Federal candidates or political parties which have legitimately registered as required under the current Federal Election Campaign Act of 1971. Such contributions would, in effect, be a form of public financing since the contributor's taxes would be reduced by the amount of his contribution, but the system would not include the objectionable aspects of other public financing schemes. There would not be the administrative problems involved with a federally administered voucher system; i.e., defining proper use of Federal appropriations, auditing of campaign expenditures, and the like. In addition, no complicated threshold formulas would be

required, and the taxpayers would have a choice as to which candidates they choose to support with their tax money.

A 50% tax credit is now allowable for political contributions up to $25 under title VII of the Revenue Act of 1971 (Public Law 92-178). Title VII could be amended extending that credit to 100%.

A 100% individual tax credit would be somewhat analogous to the present $1 income tax checkoff system except that it would give the taxpayer a choice of which candidate(s) or party to support. Presumably, not all taxpayers would participate in a tax credit system as evidenced by the relatively low rate (14%) of current participation in the tax checkoff system. However, if only 10% of the taxpayers participated, this could represent up to $300,000,000 in new financing for Federal candidates at all levels. Controls over total campaign spending could be provided simply by raising or lowering the allowabe tax credit.

In order to promote wide participation in a Federal tax credit system, the Congress could provide funds for a public educational campaign. Ultimately, instead of political candidates having to spend vast amounts of money to locate likely supporters and convince them to contribute, we may have a system where millions of average people are actively seeking out candidates of like mind to whom they can make their "free" $25 contribution. Such a system would surely involve much greater numbers of average citizens in the political process than now participate and could substantially reduce the fundraising costs of campaigns.

A $25 tax credit in itself would not automatically equalize the financing of Federal campaigns or eliminate the inherent advantages of incumbency (name recognition, franking privilege, etc.). However, the incumbent advantage in fundraising (the ability to obtain large donations from special interest groups, wealthy friends, etc.) might be substantially reduced by enacting contribution limits like those proposed in S. 3044 and H.R. 7612. The elimination of large contributors and contributions would force all candidates, incumbent and challenger alike, to appeal to the general public for the major share of their campaign financing requirements. A $25 tax credit would help to promote the broad public participation needed to meet those requirements.

Under such a system, the winner of an election would owe his victory, at least in financial terms, more to his small contributors than his larger ones. While this would not necessarily guarantee against corruption and favoritism in public office, it would surely represent a substantial improvement over the traditional system of financing political campaigns in America.

STATEMENT AND VIEWS ON S. 1471 BY PROF. JAMES S. FAY, ASSOCIATE PROFESSOR OF POLITICAL SCIENCE, CALIFORNIA STATE UNIVERSITY, HAYWARD, AND MEMBER OF THE POLITICAL REFORM EVALUATION PROJECT OF THE GRADUATE THEOLOGICAL UNION, BERKELEY, CALIF.

I am pleased to submit views on S. 1471, a bill to broaden the tax credit for contributions to candidates for the U.S. Senate. The views I express will be my own.

I'll be testifying in two capacities: First, as an academic analyst and second, as a political activist and concerned citizen. I have been a student of election finance for the past few years, as well as an elected party office holder in my county, and a manager of several political campaigns. In the latter two capacities I have had the opportunity to get some idea of the impact of recent changes in our election finance laws. My most recent Federal election experience was as the northern California manager of Congressman Udall's Presidential campaign, a campaign which added to my humility and my appreciation of the term "moral victory."

Although I still have great admiration for Congressman Udall, I have serious reservations about the approach to election subsidies which he is sponsoring in the House (H.R. 5157). My opposition extends to a similar Senate bill sponsored by Senators Clark, Cranston, Mathias and Kennedy (S. 926).

Both H.R. 5157 and S. 926 are based on the assumption that public financing of the 1976 Presidential campaign was a success. I believe just the opposite was true and that the manipulation of the act by the incumbent President Gerald Ford confirmed the worst fears of public subsidy opponents that the law would be subverted by incumbents for their own advantage. Gerald Ford delayed signing the amended Presidential Election Campaign Act, he delayed appointing

the commissioners to the Federal Election Commission, and he delayed the swearing-in ceremony. The President and his advisors reasoned that such a delay, which would halt the flow of matching funds to challenger Ronald Reagan and impede Reagan's campaign, was the rational political course of action. They were correct.

Placing vast additional powers in the hands of the Federal Election Commission not only to oversee the financial purity of Congressional elections but also to provide a large share of the money to run such campaigns seems to me to be the most naive and dangerous so-called reform imaginable. Can it honestly be maintained that seventy years of experience with independent federal and state commissions has demonstrated that they act in the public interest with such uniform consistency that we can now turn over the core of our election system to such a commission, expecting it to perform with impeccable neutrality against the constant pressure of incumbents?

Even if the current Federal Election Commission had performed well in 1976 keeping its honor and neutrality intact, which it did not, could we expect this always to be the case? Our founding fathers tried to design a system of government to anticipate and check the worst consequences of human nature and political circumstance. Few such checks are built into most proposals to alter election financing. We must assume, albeit with chagrin, that weak or ignorant or evil individuals will at some time in the future hold the highest positions in national government. Such individuals would then make appointments to the sensitive Federal Election Commission. Those appointees would be in an ideal position to frustrate or sabotage the election campaigns of the incumbent administration's opponents. One can imagine how impartially a Federal Election Commission dominated by Nixon appointees would have guarded the public interest. To ignore such potential, if not probable, abuses, as many well-intentioned reformers are prone to do, is to engage in wanton disregard of our recent history and to ignore some of our most valued political traditions.

Another fundamental problem with H.R. 5157 and S. 926 is that both bills ignore the caste issue in our election finance system. A distinct minority of adults in our country, 27 percent, have ever in their lives contributed money to a political campaign. Only 8 percent of the population contributed to any campaign or party last year. Those who contribute are not the average citizens. Contributors tend to fall into the upper-middle and upper class income brackets. This prosperous minority increase is already a significant political influence by dominating the financing of campaigns. Will the "matching" bills, H.R. 5157 and S. 926 alter this influence? I don't believe so.

The same well-to-do-segment of American society who now provide the money for most campaigns will have its influence doubled because all of those $50, $75, and $100 contributions will be matched by tax dollars. Candidates will quickly discover that they need work only half as hard to raise their campaign kitties. Candidates will solicit their campaign money in the most efficient way possible. They will ask for $50–$100 checks from prosperous individuals in their constituencies. Therefore, this so-called "reform" of election finance laws will, in all likelihood, guarantee that the number of campaign contributors remains small. In this case, reform maintains the status quo in election finance, and at worst artificially magnifies the political preferences and privileges of the well-to-do, exacerbating caste tendencies of American politics.

We are faced with the irony that while the Administration proposes to increase political participation by dismantling voter registraton barriers, the Congress works to decrease another kind of participation the campaign contribution.

An additional flaw shared by S. 926 and H.R. 5157 is their cavilier disregard of political parties. Our parties have not always been textbook examples of civic virtue, but they have on occasion played a valued and in some ways indispensible role in providing a forum for the discussion of public issues and in establishing an organizational framework under which the diverse social forces of the nation could participate in recruiting candidates and in governing the nation. To subsidize candidates but not parties with public funds and to denigrate the role of the parties as unifying forces in society is to accelerate the atomized, candidate-oriented, personality politics which we have come to know and despise. The infirmity of the parties is no argument for government sponsored euthanasia administered through public election subsidies.

S. 926 also makes it difficult if not impossible for minor party and independent candidates to run for the Senate by imposing stiffer financial eligibility requirements on these individuals than on major party aspirants. To that extent

open competition for Congressional seats and challenges to the two party monopoly receive the back of the reformer's hand.

S. 926 and H.R. 5157 will add another order of magnitude to the complexity of Federal election law and will likely lead to further centralization of political campaigns. The complexity of these bills will force many candidates to hire attorneys and accountants to manage the financial details of the campaign and to avoid honest pitfalls and errors which might ruin the credibility and reputation of the candidate and result in defeat at the polls on election day. Local units of major campaigns will be unable to provide the accounting and legal expertise needed to comply with the new law. As a result the influence and participation of grass-roots politics will likely diminish as campaign finance and decision making are centralized in the hands of the professionals. An argument could be made that sponsors of such a far reaching bill should be required to provide a kind of political impact statement on the likely effects of the bill before Congress begins its deliberations.

The final difficulty with direct government campaign subsidies comes from the sketchy record of such laws in Europe where, according to some recent reports, government grants for political campaigns have increased as rapidly as public support for the whole concept of public financing has decreased. Once the politicians get automatic election grants, they may become rather independent of their constituents and progressively less accountable to them.

Given this sorry litany of problems, is it possible to design any system of campaign subsidies which would have a chance of reducing some of the patent unfairness of the present election finance system while skirting the worst pitfalls of incumbent control over elections?

Most of the problems in current public financing proposals stem from a tendency to bureaucratize the collection of campaign contributions, thus giving dangerous and anti-civil libertarian control over election finance to an agency of government. The insidious logic of this control is clear when one understands that government, once it begins to distribute matching tax dollars during the campaign, must protect itself from scandal by imposing a variety of bureaucratic guidelines and procedures upon the financing of campaigns and the candidates who collect and spend campaign funds. Thus government controlled by incumbents sets itself up as the ultimate arbiter of the election process by controlling the flow of a critical political resource—money.

The path away from this hazardous stratification of campaigns may lie in the application of a device already widely used by state and national government—the tax subsidy. Federal and some state tax policies already encourage a number of activities presumed to be socially desirable, such as child care, work incentive programs, and (in California) the installation of solar energy devices. In fact, Federal and many state tax forms permit political contributions, up to a certain limit, to be counted as itemized deductions against income. Congress also provides that the citizen can claim a tax credit of up to one-half of his or her political contribution. This can amount to a maximum $50 credit on a joint return. Such itemized deductions and tax credits for campaign contributions resulted in a tax loss to the Federal Treasury, or a Federal campaign subsidy, of over $40 million dollars in 1975. So in a way we have had this back door kind of public financing for some time.

Unfortunately, from the perspective of widespread democratic participation, tax deductions and credits don't work very well in their current form. Most tax payers don't itemize deductions. Of those who do, only a tiny fraction (under two percent in California) claim a deduction for campaign contributions. The same problem appears with the Federal tax credit for political contributions. Nationwide, less than two percent of taxpayers claim such a credit.

Such low figures are not surprising in light of that previously noted Gallup poll finding that only eight percent of the national population made any kind of monetary contribution to a campaign in 1976. Modifying the existing Federal tax credit procedure may enlarge this relatively low eight percent figure and provide a way to pump a significant number of modest contributions into the political process while minimizing government interference in campaigns.

On a joint return, the existing tax credit of 50 percent of campaign contributions up to $100 has not operated as an adequate incentive to stimulate millions of relatively modest contributions. Assuming therefore that a higher percentage credit will stimulate more average-income citizens to contribute, we should consider increasing the incentive by raising the credit to 90 percent or as S. 1471

suggests, 75 percent. The prime advantages of this tax credit approach to election finance is that government would not become the major intermediary between the contributor and the candidate and government would not be doling out large amounts of campaign funds directly to the candidate. With a tax credit system, government's risky involvement in the campaign process would be sharply reduced. Tax credits would force government to deal directly with the contributor only after the election when government's ability to interfere with the campaign is negligible. The credit would be claimed in the spring on the normal IRS tax form. Then 75 or 90 percent of the contribution up to $100 could be refundable. One of the beauties of the tax credit approach to election finance is that if a candidate for the Senate or House of Representatives has a good deal of constituency support, the candidate will be able, without great difficulty, to raise enough money in small contributions for an adequate campaign. This is in stark contrast to some alternative proposals for financing the general election which simply provide a large grant of tax money to major party nominees regardless of their constituency support.

Under a tax credit approach to campaign finance, contributions from low income citizens could be encouraged by guaranteeing reimbursement for political contributions, even if the contributor had no tax liability. A similar procedure is used in California to give a tax credit to renters.

Although a 75 or 90 percent reimbursement would stimulate more average citizens to make campaign contributions, it is not likely that citizens would simply throw their money at candidates. The citizen will be parting with hard earned cash during a spring primary or a fall general election and the contributor will not be reimbursed for his financial largess until the following spring. The tax subsidy plan makes contributing easier but not too easy.

Overall I believe that the Packwood bill, S. 1471, is at the same time a conservative and highly innovative approach to the problems of election finance. I think it will accomplish most of the goals of the sponsors of rival legislation and do so while preserving one of our most important civil liberties, free elections, and limiting costs and the heavy hand of bureaucracy on the election process.

I would like to make a few suggestions which apply both to the current Federal Election law and this proposed legislation in particular. First, there should be a provision in the election statutes that it is not Congressional policy to prosecute, harass, or fine candidates and campaign activists for minor technical violations of the law.

Second, the Federal Election Commission should be required to administer all election statutes under its authority in such a manner as to simplify and clarify all of its forms, reports, and procedures to facilitate public compliance. Furthermore, the Commission should be required to supply all candidates and political committees with clear step-by-step instructions regarding the completion of its relevant forms and reports.

Third, the Commission, in cooperation with the Internal Revenue Service, should be directed to establish a program to inform the public about the new tax credit program so as to increase public awareness and participation.

Fourth, the Congress should provide for a detailed evaluation of the tax credit program, if it passes, to determine if and whether the credits are working as Congress intended. Far too much of the debate on election finance reform has been conducted on the basis of insufficient data and analysis. Congress should also consider a special analysis of existing election subsidy laws in Canada, Great Britain, Finland, the Federal Republic of Germany, and Italy. Although all of these nations have parliamentary systems, we can probably learn valuable lessons from the election finance problems which they have been experiencing.

I am happy to have been able to provide my views for the Finance Committee. I hope that Senator Packwood and the sponsors of S. 1471 will be able to convince other members of Congress of the merit of their proposal.

Federal Election Commission Statement of Reasons for Determination of Repayment From Milton Shapp.

The Federal Election Campaign Act Amendments of 1974 established a novel system for financing primary campaigns for nomination to the office of President of the United States. That Act provides that matching funds from the dollar tax checkoff system established by the Revenue Act of 1971 would be available to

candidates who demonstrated broad, nationwide support for their candidacies.[1] To receive public funds for primary campaigns, a candidate must personally certify that s/he has met certain threshold eligibility requirements for federal funds under Chapter 96 of Title 26, United States Code. More specifically, Congress concluded that no candidate would obtain public funds, no matter how much money s/he might have raised, unless s/he certified that s/he had "received matching contributions from residents of each of at least 20 States; and . . . the aggregate of contributions certified with respect to any person . . . does not exceed $250."[2]

Contributions must meet the statutory requirements in order to be matched.[3] Contributions which are otherwise legal but do not meet the statutory requirements (e.g., contributions from an individual in an amount exceeding $250, contributions from a political committee, and contributions from an out-of- state resident when counted in the threshold amount for a particular state)[4] are not matchable. And those contributions which are prohibited by the Act (e.g., contributions which exceed the Act's limitations, corporate contributions, contributions made by government contractors, and contributions made by persons in the name of another)[5] are not matchable.

During the period November 17, 1975, through January 12, 1976, Governor Milton Shapp submitted to the Federal Election Commission (hereinafter referred to as the Commission) documentation, including the candidate's certification letter of January 21, 1976, stating that he had received matching contributions which in the aggregate exceeded $5,000 in contributions from each of 20 states.[6]

The 20 states in this "threshold submission' included: Alabama, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Texas, and Washington, D.C.

In the normal course of carrying out its supervisory responsibilities, the Commission began a thorough examination and audit of the qualified campaign expenses of Governor Shapp and his authorized committees pursuant to 26 U.S.C. § 9038. As a result of this examination, evidence was found that certain persons had made contributions in the name of another which had been matched with federal funds.

The Commission's examination focused on interviews with listed contributors and an analysis of Shapp for President Committee records. This examination disclosed that in at least five of the twenty states used by the candidate in his "threshold submission," certain contribution were included, for which the funds had not been provided by the purported contributors. (In other words, the contributions were made in the name of another.) If these improperly included payments are subtracted from the total threshold submission for each of the five states, the candidate fails to meet the threshold amounts in those five states. Even if the matching contributions in the remaining fifteen states were all counted, the candidate did not meet the twenty state threshold requirement of § 9033(b)(3).

B. SUMMARY OF RESULTS OF COMMISSION EXAMINATION IN FIVE STATES

The five states used in the candidate's "threshold submission" in which the Commission's examination disclosed evidence of improperly included payments are: Alabama, Georgia, Nevada, North Carolina, and Texas.

Set forth below is a summary of the audit and examination findings.

(1) *Alabama*

The aggregate amount of contributions certified by Governor Shapp on January 21, 1976, for the State of Alabama was $5,000.

The audit and examination in this state disclosed the following evidence concerning payments included in the threshold submission for Alabama:

Carol Deaton, Linda Bishop, Joe Earnest, Mary Berryhill, Jewel Lawrence, Bonnie Ganey, and Beverly Skinner each signed letters stating they were mak-

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[1] Senator Allen, 120 Cong. Rec. S18533 (daily ed., Oct. 8, 1974) and Congressman Brademas, 120 Cong. Rec. H10328 (daily ed., Oct. 10, 1974).
[2] 26 U.S.C. § 9033(b) (3) and (4).
[3] See Commission's regulations, Part § 130.9.
[4] 26 U.S.C. § 9033(b)(3) and (4).
[5] 2 U.S.C. §§ 441a, 441b, 441c, 441f.
[6] Virginia is the only other state which, upon later submissions, would have met the $5,000 threshold.

ing a $100 contribution to the Shapp for President Committee. None of these persons provided personal funds to the Committee.

Richard Moss gave $250 to the Shapp for President Committee. At the time this payment was made Moss was a resident of Mississippi and not a resident of Alabama as required by 26 U.S.C. § 9033(b)(3).

Zora Lee Nunley gave $250 to the Shapp for President Committee. Richard Moss provided the funds for the contribution in Ms. Nunley's name.

Thomas Vaughn and Ella Mae Vaughn, James Byram, Jerry Webster and Ann Webster, and Carole Stovall (Winslett) wrote checks representing a $250 contribution from each, payable to the Shapp for President Committee. Funds were provided by Hugh Walker, who was, in turn, reimbursed by Winfield Manufacturing Company.

Hugh Walker wrote a check in the amount of $500, representing a $250 contribution for himself and his wife, payable to the Shapp for President Committee, for which funds were provided by Winfield Manufacturing Company.

Each of the above-mentioned payments was included in the candidate's $5,000 threshold submission for the State of Alabama. If these improper payments, totalling $3,200 are subtracted, $1,800 remains, an amount which does not meet the eligibility requirements of 26 U.S.C. § 9033.

(2) *Georgia*

The aggregate amount of contributions certified by Governor Shapp on January 21, 1976, for the State of Georgia was $5,306.[7] The audit and examination in this state disclosed the following evidence concerning payments included in the threshold submission for Georgia:

Nysia Lanier, Daniel Moss, and Morrie Siegel each wrote checks in the amount of $250 payable to the Shapp for President Committee. Funds for the contributions made in the names of these individuals were provided by Stanley Siegel.

Charles Martel, Richard Rudolph, Charles M. Smith, Marvin Fine, and Stanley Kameron each signed forms indicating that they were making contributions of $100 to the Shapp for President Committee. The funds for the contributions made in the names of these individuals were provided by Stanley Siegel.

Each of the above-mentioned payments was included in the candidate's $5,606 threshold submission for the State of Georgia.[7] If these improper payments, totalling $1,250 are subtracted from the amount of matchable contributions in the submission, $4,356 remains, an amount which does not meet the eligibility requirements of 26 U.S.C. § 9033.

(3) *Nevada*

The aggregate amount of contributions certified by Governor Shapp on January 21, 1976, for the State of Nevada was $5,000. The audit and examination in this state disclosed the following evidence concerning payments included in the threshold submission for Nevada:

Ticket stubs representing the sale of five tickets to a fundraiser for the Shapp campaign were sent to the Shapp for President Committee with the following names listed as having each paid $100.

Patricia Henry, Samuel Hoffman and Donald J. Hughes. None of these individuals provided the funds for these tickets, nod did they sign their names on the stubs; they did, however, sign letters indicating they were making a $100 contribution.

James Blake. James Blake was given a ticket by another person. He did not provide the funds, nor did he sign a letter indicating that he was making a $100 contribution.

Harry "Bob" Burnstein. Mr. Burnstein neither provided the funds for the ticket nor signed his name to the ticket stub.

Each of the above-mentioned payments was included in the candidate's $5,000 threshold submission for the State of Nevada. If these improper payments, totalling $500 are subtracted, $4,500 remains, an amount which does not meet the eligibility requirements of 26 U.S.C. § 9033.

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[7] Two contributions totaling $200 in the Jan. 21, 1976 submission needed further documentation. The threshold submission was supplemented prior to the Commission's certification with two contributions totalling $500. When these adjustments are considered the total of the apparently matchable contributions was $5,606.

(4) North Carolina

The aggregate amount of contributions certified by Governor Shapp on January 21, 1976, for the State of North Carolina was $5,000.[8] The audit and examination in this state disclosed the following evidence concerning payments included in the threshold submission for North Carolina:

Elmer Myers signed his wife's name, Betty J. Myers, on a check drawn on a joint account in the amount of $250 payable to the Shapp for President Committee. The funds for this contribution made in Myers name were provided by Gus Nicholas.

William H. Beadling signed a check for $250 payable to the Shapp for President Committee. The funds for the contribution in the name of Beadling were provided by Gus Nicholas.

Each of the above-mentioned payments was included in the candidate's $5,000 threshold submission for the State of North Carolina. If these improper payments, totalling $500 are subtracted, $4,500 remains, an amount which does not meet the eligibility requirements of 26 U.S.C. § 9033.

(5) Texas

The aggregate amount of contributions certified by Governor Shapp on January 21, 1976, for the State of Texas was $5,007. The audit and examination in this state disclosed the following evidence concerning payments included in the threshold submission for Texas:

Charles Luciano purchased a cashier's check in the amount of $150 payable to the Shapp for President Committee in the name of Fred Fraser.

Charles Luciano purchased two money orders each in the amount of $100 payable to the Shapp for President Committee in the name of David Grimes and Evelyn R. Carey (Thomas) respectively.

James Shepard and Don Luciano each wrote checks in the amount of $250 payable to the Shapp for President Committee. The funds for these payments were provided by Charles Luciano.

Thomas Sullivan, Jr. and Glenda Harris each wrote checks in the amount of $100 payable to the Shapp for President Committee, for which Charles Luciano provided the funds. An additional $20 contribution was made in the name of Glenda Harris to the Shapp for President Committee, the funds for which were provided by another person.

A cashier's check was purchased in the name of Dianne Gass in the amount of $250 payable to the Shapp for President Committee. The funds for this contribution were provided by Charles Luciano.

Each of the above-mentioned payments was included in the candidate's $5,007 threshold submission for the State of Texas. If these improper payments, totalling $1,320 are subtracted, $3,687 remains, an amount which does not meet the eligibility requirements of 26 U.S.C. § 9033.

C. CONCLUSION

The repayment provision (26 U.S.C. § 9038(b)(1)) provides:

"If the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary or his delegate an amount equal to the amount of excess payments."

Based on the evidence disclosed in the Commission's audit and examination of five states, the Commission determines that Governor Milton Shapp did not receive matching contributions which in the aggregate exceeded $5,000 in contributions from residents of each of at least 20 states. This determination means that Governor Shapp incorrectly certified that he had obtained the support required by the statute as a prerequisite for obtaining public funds for primary campaigns. That certification lies at the heart of the primary matching fund concept enacted into law by Congress, and its demonstrable inaccuracy in this case thus strikes at the very basis on which the Commission certified all of the matching funds.

Since Governor Shapp was not eligible under 26 U.S.C. § 9033 to become entitled to payments under 26 U.S.C. § 9034 as certified by the Commission pursuant to

[8] Four contributions totaling $1,000 in the Jan. 21, 1976 submission needed further documentation. The threshold submission was supplemented prior to the Commission's certification with an additional four contributions totaling $1,000. William Beadling's contribution was included in the supplemental submission.

26 U.S.C. § 9036 and made from the matching payment account as provided in 26 U.S.C. § 9037, the Commission determines that all matching payments received by him were in excess of the amount of payments to which he was entitled. Accordingly, Governor Milton Shapp is directed to pay to the Secretary of the Treasury or his delegate $299,066.21, an amount equal to the total amount of federal matching payments he received.

[From the New York Tmes, May 13, 1977]

SHARP DENIES BLAME, BUT WILL REPAY FUND

SAYS HE HAD NO KNOWLEDGE OF ANY IMPROPER CAMPAIGN MONEY DRIVE

—Won't Appeal U.S. Ruling

(By James F. Clarity)

HARRISBURG, May 13.—Gov. Milton J. Shapp said today that he had no knowledge of improper fund-raising in his 1976 Presidential campaign, but said he would repay the $299,066.21 in Federal subsidies received by his campaign organization.

The Governor, in a brief appearance before reporters in the state capital, declined to respond to questions. He left his campaign manager and campaign committee counsel to answer questions as to who was ultimately responsible for the funding practices disclosed yesterday by the Federal Election Commission.

The commission found that a number of the campaign contributions used to qualify for Federal matching funds had been made not by the alleged donors but by the Shapp organization. It ordered the subsidy money returned.

The Governor's aides said he would not exercise his right to appeal the commission order. In an appeal, Mr. Shapp would presumably have been summoned to testify before the commission. But the possibility remained that he might still have to testify before the commission in connection with proceedings against other persons involved in the case.

The Governor said that he was "appalled" by the findings of the commission during a six-month investigation of his campaign funding practices.

"I have now had the opportunity to review the report adopted yesterday by the Federal Election Commission," the Governor said during his minute-long public appearance, "and am appalled by what I have read."

Mr. Shapp, who appeared tense and spoke in a nervous voice, added: "At no time during the campaign did I have any knowledge of improper fund-raising. I believed then that everything possible had been done to make certain that the financial aspects of my campaign were in full compliance with the law."

The Governor declared that when he signed the certification to qualify for Federal matching funds, he believed his campaign organization had fulfilled all the necessary conditions. To qualify, Presidential candidates had to certify that they had raised at least $5,000 in contributions of $250 or less in each of 20 states, the threshold for applying the matching fund formula under which the Shapp campaign, which quickly failed, received nearly $300,000. The commission said yesterday that in reality the Shapp organization had raised the required totals in five states through false funding tactics.

COURT ACTION HINTED

The commission's action had raised the possibility of civil and criminal proceedings against the Governor and some of his campaign officials. But the counsel for the Shapp Presidential campaign, Gregory M. Harvey, a lawyer in Philadelphia, said today that the commission had not disclosed "any evidence of any indiscretion on the part of the Governor."

Mr. Harvey added that "I am personally convinced to the highest degree possible, for someone outside the commission" that there would be no civil or criminal proceedings against Mr. Shapp. The lawyer also said that Mr. Shapp's agreement to comply with the order to repay the funds was not in any way designed to preclude possible proceedings against the Governor or his campaign aides, or to slow down the commission's action in the case.

Before his hasty departure from the view of reporters and a dozen television cameras, Mr. Shapp said: "I know there are legal arguments which might defeat the commission's demand. However, I believe it is right that the full amount should be paid back to the United States Treasury. As the law is written, that repayment is my personal responsibility." The Governor did not elaborate on the "legal arguments."

Aides said that Mr. Shapp—a 64-year-old Democrat now in the third year of his second term, who became a millionaire in electronics before entering politics—would personally provide the money to repay the United States Treasury.

REPORTERS' QUERY UNANSWERED

Neither Mr. Shapp, nor his lawyer, Mr. Harvey, nor his campaign manager, Norval D. Reece, now Pennsylvania Secretary of Commerce, seemed to know who was ultimately responsible for the alleged false funding practices, which involved a Philadelphia fund-raiser named Eleanor Elias, who was paid $500 a week in the Presidential campaign and had worked to raise money in prior Shapp campaigns.

"We are all sorry," said the Governor's press secretary, Michael C. McLaughlin.

[From the Washington Post, May 14, 1977]

SHAPP WILL REPAY TREASURY $300,000 IN ELECTION FUNDS

(By Walter Pincus)

Pennsylvania Gov. Milton J. Shapp, a millionaire, will personally pay back to the Treasury almost $300,000 in federal funds collected by his unsuccessful 1976 presidential nomination campaign, his aides said yesterday.

The Federal Election Commission on Thursday ordered Shapp to return the money after an investigation revealed that improper contributions had initially permitted Shapp's campaign to qualify for the federal money.

Yesterday, in a statement delivered in Harrisburg, Shapp said he was "appalled" at the improper fund-raising on his behalf that was disclosed by the FEC investigative report.

Lawyers had recommended that he fight the FES order, Shapp said, but "I believe the full amount" should be repaid and "as the law is written . . . (it) is my responsibility."

Shapp also told reporters that "at no time during the campaign did I have any knowledge of improper fund-raising." But Shapp left before reporters could ask him questions.

Norval Reece, Shapp's 1976 campaign manager and now Pennsylvania commerce secretary, said yesterday that he had told everything he knew about fund-raising to FEC investigators. During the campaign, Reece said, he had "laid down the strictest orders possible . . . to make sure we were in full compliance" with the law.

Reece said he had been surprised by the FEC disclosure but when asked about Shapp's fund-raisers, the former campaign manager said his lawyer advised him "not to discuss specific people in the fund-raising group."

"The matter is still under investigation," Reece said.

The FEC's continuing investigation is focusing on the persons who ran the Shapp fund-raising operation.

Reports filed with the FEC by the Shapp campaign show that two of the chief fund-raisers were individuals with close personal or political connections to the governor.

Eleanor Elias of Merion, Pa., and William Tucker of Harrisburg are listed as "consultants" for "finance coordination" on the Shapp reports.

Elias and her husband are neighbors and friends of Shapp and she, according to one wire service report, was described as a fund-raiser for Shapp in past campaigns.

Tucker is the husband of C. Delores Tucker, Pennsylvania secretary of state and Shapp political ally.

Elias has refused to answer questions from reporters and her lawyer, Patrick Kittredge, said in Philadelphia yesterday it was "inappropriate" for her or him to make any statements.

One FEC deposition alleged that Elias promised reimbursement of campaign contributions to a Georgia donor whose money was needed to make that state's required $5,000 total.

The deponent went on to allege that Elias repaid him $500 to $600 in cash at the end of January or early February, 1976.

According to the Shapp reports to the FEC, Elias was paid $400 a week as a consultant beginning in November, 1975, and running through March, 1976. In addition she received expense reimbursement, with one $1,623.58 payment dated Feb. 5, 1976.

Tucker, according to a former Shapp campaign consultant, "worked in fund-raising, primarily in Pennsylvania."

Neither Tucker nor his wife was reachable yesterday.

Tucker, the Shapp FEC reports disclosed, was paid $12,580 as a fund-raising consultant in 1975 and $7,800 in 1976.

Yesterday it was learned that a third Shapp political associate, Samuel Begler, secretary of the governor's personnel, was directly involved with his fund-raising operation in Nevada.

John Vergiels, a Nevada assemblyman who worked for Shapp, said yesterday that he was with Begler in the Tropicana Hotel in Las Vegas in November, 1975, when Begler was counting Shapp contributions raised "along the (gambling) strip."

Begler, according to Vergiels, "was trying to cull out all the bad" contributions.

Shapp Told To Repay U.S. Funds

(By Walter Pincus)

The Federal Election Commission yesterday ordered Pennsylvania Gov. Milton J. Shapp to repay almost $300,000 in federal campaign funds and said it would continue to investigate possible criminal violations by Shapp's 1976 presidential fund-raising operations.

Among the targets of the inquiry, according to informed sources, is Eleanor Elias, a paid Shapp campaign fund-raiser from Merion, Pa., who allegedly promised to reimburse a Georgia donor whose money was needed to help Shapp's campaign qualify for federal matching funds.

In another instance, according to sworn statements released yesterday by the commission, Elias allegedly asked an Alabama textile plant manager to supply her with letters from employees saying they had made $100 contributions to Shapp when they had not.

Under the law, a candidate must raise at least $5,000 in contributions of $250 or less in 20 states in order to receive an initial $100,000 from the Treasury and one dollar of federal money for every additional contribution of $250 or less collected thereafter.

Yesterday the FEC released its report on a three-month investigation into the fund-raising for Shapp's bid for the Democratic nomination. The investigation found that irregular contributions in five of 20 states, including Georgia and Alabama, had permitted Shapp to claim on Jan. 2, 1976, he had qualified for federal matching funds.

Based on the findings, the commission yesterday ordered Shapp to repay $299,066.21 in federal matching funds his campaign received last year.

Shapp was unavailable for comment yesterday but scheduled a press conference for this morning in Harrisburg. A press aide said yesterday he was studying the FEC investigative report.

A Philadelphia lawyer, Gregory Harvey, who has represented the officers of Shapp's committee during the FEC inquiry, said yesterday he thought Shapp would appeal the ruling that the candidate, himself, was responsible for returning all the federal money given the campaign.

Under FEC rules, Shapp has 30 days to file such an appeal.

The FEC yesterday also announced that fines ranging from $25 to $750 had been levied against 22 of 43 persons involved in the five-state investigation. Other fines are expected as a result of the FEC conciliation system with violators of the campaign fund law.

In the case of possible criminal violations, the FEC investigates—as it is doing with the Shapp fund-raisers—but must turn its findings over to the Justice Department before an actual prosecution can take place.

The Shapp investigation disclosed the first major scandal in the short-lived federal election law. FEC general counsel William C. Oldaker said yesterday, however, that "there is no indication of anything like this" going on in other presidential campaigns.

Yesterday's investigative report showed the following activities in five states:

Alabama: The plant manager of Winfield Manufacturing Co. in Winfield, Ala., Hugh Walker, described in a sworn statement how he had been told by the firm's owner that Shapp needed "some contributions made and some letters."

Walker paid $2,000 of his own money for a $500 contribution in the name of his wife and himself and six $250 contributions sent by plant employees or their wives which Walker said he subsequently reimbursed.

Walker also testified he was called by Elias in January, 1976, about furnishing letters from employees who supposedly were making $100 contributions to Shapp's campaign.

According to Walker, Elias allegedly asked that he get the employees "to sign the letters but not to send any money and that would take care of that."

Attempts to contact Eleanor Elias yesterday were unsuccessful. A woman who answered her phone said she was not available.

Georgia: Stanley Siegel, secretary-treasurer of Norstran Industries, of Atlanta, and an old friend of the Elias family said he was contacted about contributing to Shapp in December, 1975.

Siegal said Elias told him, "Stanley, I hate to say this but if you can get some friends who are not in a position to make a contribution and if you reimburse them I will reimburse you."

Siegel testified he did just that with contributions made in the name of his son, the general manager of his company and five $100 contributions for other employees.

Nevada: Five employees of various Las Vegas casinos testified they signed their names to ticket stubs for a Shapp fund-raiser but never gave the $100 for which they were subsequently recorded in Shapp fund records.

Texas: El Paso insurance man Charles Luciano, pressed by Elias, furnished $1,300 to a daughter and employees for their contributions to the Shapp campaign.

North Carolina: Gus Nicholas, a Pittsburgh resident with a summer home in North Carolina provided $500 for two $250 contributions by residents of that state.

[From the New York Times, May 13, 1977]

SHAPP TOLD TO RETURN VOTE FUNDS

(By Warren Weaver)

WASHINGTON, May 12.—Gov. William J. Shapp of Pennsylvania was ordered by the Federal Election Commission today to return nearly $300,000 in public subsidies given to his brief 1976 Presidential campaign on the ground that his claim of eligibility for the money was partly false.

Testimony taken by the agency in a six-month investigation and made public today indicated that a number of the campaign contributions used to qualify Governor Shapp for Federal matching funds had been made not by the alleged donors but by the Shapp organization.

In addition to ordering the repayment of $299,066 to the Treasury, today's commission action raised the possibility of a civil lawsuit by the agency against the Governor, involving penalties of $5,000 or more, and a recommendation for criminal prosecution that could result in a fine, a jail sentence or both.

[In New Orleans, a Federal grand jury indicated Richard A. Tonry, who resigned as a Louisiana Representative last week, on charges of soliciting and concealing illegal campaign contributions. Page A10].

In Harrisburg, Mr. Shapp refused to comment on the commission's action. In Washington, a lawyer representing the Shapp campaign committee indicated that the Governor might go to court to challenge the order.

It was the first time that any of the 15 Presidential candidates who received more than $24 million in Federal subsidies in the 1976 primaries was accused of impropriety in acquisition or use of the funds.

The case appeared likely to provide some political ammunition for Congressional opponents of campaign subsidies for Senate and House candidates, but com-

mission officials believed that they had demonstrated that prompt and firm response could provide adequate regulation for such a system.

Specifically, the commission accused the Shapp campaign of having reported that it raised $5,000 in contributions of $250 or less in each of 20 states, which is the threshold requirement for qualifying for Federal subsidies. The commission said that in reality that figure had been reached in only five of those states.

Most of the donations that were allegedly made illegally so the Shapp organization could qualify for the subsidies reportedly involved a donor falsely claiming to have contributed when the money in fact had come from someone else, either a local Shapp backer or unnamed persons in the candidate's national organization.

In other cases, contributions that helped Mr. Shapp to qualify for subsidies came from corporate funds and at least one Government contractor.

Gregory Harvey, who said that he represented some officials of the Shapp campaign committee, charged after the commission meeting that the agency had not produced "any shred of evidence the Governor had any knowledge of these things."

Any candidate seeking to qualify for matching funds personally certifies the evidence he submits to the commission about private contributions in the requisite number of states. Within G. Oldaker, general counsel of the commission, said today that this made the candidate "responsible."

In Harrisburg, Governor Shapp remained in his private office, away from reporters. He held his weekly awards ceremony there rather than as usual in his reception room, where the public could attend. Aides said that he would hold a news conference tomorrow morning.

The five states in which Mr. Shapp raised $5,000 with the assistance of allegedly illegal contributions were Alabama, Georgia, Nevada, North Carolina and Texas. Altogether, the order adopted by the commission named 43 persons, 40 of whom allegedly made illegal contributions and three others who solicited them.

The commission voted 5 to 0 to require Mr. Shapp to repay the $100,000. The sixth member, Jan D. Aikens, abstained. A longtime Republican official in Pennsylvania, she disqualified herself from participating in the Shapp case from the beginning.

The commission also disclosed that it had designed conciliation agreement with 22 of the 43 persons named in its order, negotiated settlements under which some of them agreed to pay fines ranging from $25 to $750 and to provide further testimony before the commission when needed.

Generally, those let off with small fines or none at all were contributors who reportedly had no idea that they were violating the law by signing a contribution form or letter and then accepting reimbursement for any money they temporarily provided.

Governor Shapp is a millionaire several times over as a result of an electronics business he established after World War II and sold before he entered politics. Under the campaign law, he was barred from investing more than $50,000 of his own money in his campaign as long as he accepted subsidies.

Now that he has been ruled ineligible for subsidies, Mr. Shapp is free to settle the $20,000 of debts left from his abbreviated campaign—he dropped out of the competition in mid-March of 1976—with his own funds.

Among sworn statements made public by the commission was one by Stanley Siegel of Atlanta, co-owner of Nostran Industries, who said that he had made five $100 contributions to the Shapp campaign in the name of employees and had later been reimbursed $500 by Eleanor Elias, a fund-raiser for the Shapp campaign.

FIVE CONTRIBUTIONS DESCRIBED

In another deposition, Hugh Walker, a Winfield, Ala., plant manager, said that with his own money he had financed five Shapp contributions totaling $2,000, having been promised by Milton Weinstein, owner of the plant, that he would be reimbursed from company funds.

He received a company check for $2,000, Mr. Walker said, but Mr. Weinstein later subtracted the same amount from his annual bonus, saying "by law he couldn't furnish that money."

At the commission meeting, officials made it clear that they were holding open the possibility of civil enforcement proceedings against various figures in the Shapp case or recommending criminal prosecution by the Department of Justice.

Making or receiving a contribution in the name of another person is prohibited by the campaign law, and a willful violation carries penalties of a fine of up to $25,000 or a year in jail or both.

Thomas E. Harris, a former labor lawyer who had been elected chairman of the commission minutes earlier said that he was "puzzled and distressed at the casual and cavalier fashion in which many of these people entered into these schemes to extract from the Federal Treasury large amounts of money by misrepresentation."

Senator BYRD. The next witness is Prof. Roy Schotland of the Georgetown Law Center.

STATEMENT OF ROY SCHOTLAND, GEORGETOWN LAW CENTER

Mr. SCHOTLAND. Thank you, Mr. Chairman, Senator Packwood. I would like to depart, in the interest of brevity, from the prepared statement. I also would like to revise my testimony for publication.

I would like to respond to the last point that the chairman was making about our drawing on the experience abroad, and to other statements, two of them orally by Mr. Lubick and a point that Senator Long has been making.

I do not think we can look abroad too much for wisdom on these problems because our party structure and the relations between our candidates and our parties are so different. I, for one, am very skeptical about the ability to draw usefully from foreign experience.

It seems to me that the administration statement is really, if you simplify it, democracy does not work very well. I expect that everybody is going to agree with that 100 percent. The only reason we do not abandon it, we do not know where else to go. We are utterly convinced, as a great man told us, that a lot of things work less well.

The tax credit bill here will not work very well. The trouble is, the administration spokesman said the administration has not formulated the specifics of their alternative proposal. The tax credit will work admirably, I think on the merits, absolutely admirably in contrast with any alternative.

The fact is, the experience with the tax credit thus far, the experience with the checkoff, are also, like foreign experience, not really relevant to what we are dealing with now.

As Senator Long said—there is kind of a pathetic quality to it, if one can speak that way of Chairman Long—he has tried to get TV commercials to draw attention to the checkoff. There is no scheme working to get the incentive going. That is why Senator Packwood is so right when he says if you walk down the street of a small town and say, if you give me $100 now, $75, or whatever, it will come off your taxes. There is an incentive scheme working, an incentive to the fundraiser to go out and raise those funds and get them credited.

No incentive is ever going to pull the use of the tax credit to a really substantial proportion of all taxpayers. TV commercials cannot work as well as the free system that has always made things in this country go. I do not mean only the free market, but free politics too.

Mr. Lubick said that S. 926, one of the leading pending public financing bills that does not use the tax credit, is not complete public financing. With all due respect, Treasury has not done its homework.

If you look at how S. 926 is actually going to operate in the biggest States, you find it is all but complete public financing.

Take Florida. If S. 926 had been on the statute books in 1976, 93 percent of Senator Chiles' spending would have come out of the Federal Treasury. Of course Senator Chiles might have increased his spending if he had that much doled out from the Treasury. But the fact is, the minute you try to write formulas and spending limits for how the Government is going to dole out funds, between this race and that race, this candidate, that candidate, this State, that State—you get frightening inequities.

Candidates in smaller States like Oregon—indeed, there are 26 such States with under 2 million voting age population—will be severely impacted negatively. If a bill like S. 926 goes through without major amendment. On the other hand, candidates from the eight very biggest States would not be affected at all by the spending limits and would be greatly aided by the Treasury dole-out pursuant to rigid formulas.

Senator BYRD. At this point, you have mentioned Senator Chiles. Senator Chiles had a unique program for financing his campaign. He did not accept any contributions in excess of $10. It was a very interesting procedure, and I cannot remember the exact figures. I believe he told me that he had 33,000 individual contributors.

I would say, that is a very fine procedure. I do not go that low in putting a limit on contributions, but I did have a low limit. Most of mine, I would say the average was $53 to $55.

You mentioned the administration proposal.

Mr. SCHOTLAND. I am not sure S. 926 classifies technically as the administration proposal. It is the leading bill.

Senator BYRD. It is the same general principle.

Mr. SCHOTLAND. It appears to be. I was a little shaken when Mr. Lubick said the administration has not thought through the specifics. I do not know if they are or are not for S. 926.

Senator BYRD. You made a point I do not fully understand. How does S. 926 mitigate against smaller States in favor of larger States?

Mr. SCHOTLAND. Senator, on page 9 of my prepared statement, I go into an analysis of the experience in 1976, that is the FEC data on Senate campaign spending in the last election.

I compare that spending with the limits that would be imposed by S. 926, the ceilings that, according to the Supreme Court decisions, are constitutional only if married to some public funding scheme.

There were Senate seats up to 33 States in 1976. At least for these purposes, we have three classifications of States: those with under 2 million voting age population, those with over 5 million, of which there are eight States; and those in between, like Virginia, between 2 million and 5 million.

Senator BYRD. Virginia is right at 5 million.

Mr. SCHOTLAND. I am sorry, Senator, that is total population. The voting population would be somewhat down.

That is the figure used for these formulas. There are 16 middle States, 8 big ones and 26 smaller ones.

Now, in the big States, the formula works out that the spending ceilings are meaningless. They come out so high that all Senators except one in 1976 spent under 50 percent of the ceilings.

That is, the ceiling does not matter. Only one Senator has ever exceeded the big State limit. That was Senator Heinz, who so far ex-

ceeded all Senators and candidates by one and two multiples. Still, he was only 3 percent over the Pennsylvania ceiling, the ceiling that would be on the statute books if S. 926 sneaks through.

In the small States, on the contrary, our experience in 1976 finds five of the smaller State candidates overspending the limits, and as you see in my chart, six more spent between 75 and 100 percent and seven more spent between 50 and 75 percent.

Back in 1973, Senator Abourezk tried to get the Rules Committee to adjust their procustean simplistic formula of voting age population to take into account square mileage. The would improve the situation.

The fact is, and one that most of us applaud, the States of the union are quite different, not only in voting age population, not only in size, but also the such often-pointed-to phenomena as that the media in New Jersey are expensive because they have to go through Philadelphia and New York TV. If we discount the noncompetitive races, then the data are even going to get more dramatic.

You cannot raise enough money to get near the big State ceilings. Not even Senator Heinz could. He did not have to raise it.

On the other hand, the smaller States are going to have their politics changed. No one intends these kinds of discriminations among the States. I think if the administration does come around to thinking through the specifics of their proposal, they are going to run into quite a problem. I wonder why three of the Senators from smaller States are among the sponsors. I wonder if they look at the 1976 facts, they will not begin to rethink those positions.

The problem of spending limits is increased by the public dole-out pursuant to the formula. As you see in a table in my statement, more than half of Senator Moynihan's funding would have come by guaranteed Treasury payout. That does not even count the matching funds.

If he limited his contributions to $100, then the other 49 percent would be split between the private contributor and the taxpayer, the Treasury. So we have acute discrimination between the States if we go to any scheme of spending ceilings and funding by fixed formula. To me, the Treasury is saying democracy does not work. The tax credit is the most, I submit the only, democratic method of taking care of furthering our commitment to equalizing economic differences when it comes to politics, and trying to get more campaign funds available, as I think we need. That is, get more funds available other than individual private wealth. The tax credit system gets away from all the formula. We do not have to write any formula.

With the tax credit system, we do not have to worry about the primaries, which are an almost insuperable hurdle for the bills like 926 and the House bill, a hurdle politically and a hurdle on the merits. We have three different kinds of primaries: Those which do not matter at all; those where the only action occurs; and those which are as important as the general. Yet the rigid formulae bills inevitably treat the primary as if there is only one situation, and this is going to introduce distortions that I cannot predict, but I am sure it is going to be discriminatory. I am sure it is something that we have not intended.

I think, as the impacts of the distortions sink in, 926 and bills like it will sink out. I cannot believe that the Senators from 26 States will vote for a scheme which means that the Senators from the big States

can sit back and have virtual life tenure while the Senators from the smaller States are going to experience—I should say the seats from the smaller States—are going to experience a turnover that we have never seen before, meaning a loss of seniority, loss of chairmanships, to 26 States.

The last time I looked, 26 States constituted a majority, so I would think if this bill does not go through ignored or much amended, it will not go through at all.

We have other problems. We have other reasons for going to the tax credit route. I must submit that there is no justification for stopping public financing efforts. The only good argument against public financing is the one that Chief Justice Burger made in his separate opinion in *Buckley*, that it will get us into entanglements, strings, a bureaucratic and regulatory mess that will freeze and distort the free American political system.

Those arguments, I think, are totally taken care of by a tax credit scheme. They are exemplified in their full horror by any alternative scheme.

Thank you, Senator.

Senator BYRD. Senator Packwood?

Senator PACKWOOD. Professor, I want to touch upon an area that other witnesses referred to and Senator Dole asked previously; Independent groups and whether they constitutionally can be limited in the amount of money that they spend.

As you read the *Buckley-McCarthy* v. *Valeo* decision, is there any constitutional way that independent groups—the Right-to-Life, labor, National Education Association—can be constitutionally prohibited from spending any money on campaigns that they want?

Mr. SCHOTLAND. They can be limited from spending via contributions.

Senator PACKWOOD. Independent expenditures?

Mr. SCHOTLAND. No; those cannot be limited. That is an unlawyerlike answer, but I think it is so.

Senator PACKWOOD. Labor, of course, is the one that learned this first. They have been involved in separate political action committees for a longer period of time than most organizations. They are pointed to in the 1976 election as being disproportionate and influential.

Do you not think other groups will learn the same thing? Right-to-Life, with over 2 million members; National Rifle Association, over 1 million members, will learn very well. They can raise $2 to $3 million in a political action fund and zero in on the candidates that they want to defeat, because normally the money is against, rather than for—zero in.

You may be in a State that has a $325,000 limit but nothing prohibiting the Right-to-Life to spend $1 million against a candidate.

Mr. SCHOTLAND. That is right. Indeed, at the present time, the Federal Election Commission regulations, which do not need to be the way they are in this regard although there is a respectable argument that the statute presses them to this, do not even require a political action committee to disclose the amount that is spent by the sponsor of the political action committee on setting it up, administering it, and soliciting funds for it.

That is, you candidates have to disclose everything; the parties have to disclose everything. The only participant at the present time in our political system which does not have to disclose everything, since the 1974 law, is the rest of the scheme, the political action committee.

Senator PACKWOOD. What you have is this: a system now where private financing prevails, where the political campaign committees and candidates have to file with FEC, reveal the contributors, reveal all expenditures. The candidates themselves have to hold themselves out to the voters for approval or rejection.

We go to public financing. We transfer the power to organizations that do not have to list how much money it takes to set up, can spend any amount of money that they want, and are not in any way responsible to the voters.

Mr. SCHOTLAND. They do have to disclose who does contribute and how much is contributed. They do not have to disclose costs of soliciting—for example, they could spend $1 million sending out solicitations that only bring in $10,000. It is hard to send out a solicitation which is not, in itself, electioneering material.

Senator PACKWOOD. It is so long as it is clothed in the prospectus of a solicitation, they do not have to disclose that legally?

Mr. SCHOTLAND. I believe that is right. I do not believe any of us want to set up bars for this activity.

We ought to, however, get it disclosed. We ought also to consider why it is that such units can spend money to raise money and then the money raised is not reduced by the amount that was spent to raise it. That is not true of candidates and parties.

Senator PACKWOOD. I do not want to put barriers on it, either. The *Buckley* case was constitutionally and morally correct, that organizations should not be prohibited—when they very seriously believe something, they should not be prohibited from going to the public and carrying their cause to the public.

I just want everybody to understand, as we get into this argument about public financing, we are not eliminating big money from politics. We are transferring the control of the big money, transferring it to organizations who do not have to hold themselves up to the voters, do not have to run for election, can pick which elections they want to involve themselves in, give them immense amounts of money—in some cases, it may dwarf the amount that is allowed in public financing.

Mr. SCHOTLAND. I agree, Senator.

Senator PACKWOOD. I have no further questions.

Senator BYRD. Thank you.

Mr. SCHOTLAND. May I add one note?

Senator Long asked the Treasury representative whether he thought the impact of public financing might be to make members more liberal members of Congress. If I may respectfully submit, I think that is a wrong question. I do not think we know what it is going to do. More importantly, it seems to me what we are trying to do here is make American politics more open and to take out the impact of inevitable, reducible differences in economic wealth.

Therefore, it seems to me, wherever the chips fall, let them fall, but let us get a public funding system that furthers, rather than impoverishes, the free and open political system.

Thank you very much.

Senator BYRD. Thank you, sir.

[The prepared statement of Professor Schotland follows:]

STATEMENT OF ROY A. SCHOTLAND, PROFESSOR OF LAW, GEORGETOWN UNIVERSITY

SUMMARY

Public financing for congressional elections is essential to preserve effective checks and balances with a publicly-financed Presidency.

The tax credit method secures the benefits of public financing without the regulatory entanglement inevitable in other methods.

It is in place and easy to administer.

It preserves voters' freedom of choice.

Other methods use Treasury funding pursuant to Federal formulae, causing unintended but unavoidable kinds of discrimination and distortion.

In addition, the tax credit method preserves the links between voters and candidates, instead of weakening them.

And in addition, the tax credit method does not increase the advantage which affluent voters—and their candidates—have over the non-affluent and their candidates. Matching payment plans do increase that advantage. Consider the data on the 1976 Presidential primaries.

Public funding by other means, using Treasury dole-out pursuant to Federal formulae, presents seven acute problems:

Unintended discrimination among candidates depending upon the significance of the primary.

Unintended discrimination in favor of affluent supporters and their candidates, over the less affluent.

Unintended discrimination between major parties and their candidates, compared to all others.

Unintended changes in the relations between parties and their candidates.

Spending ceilings, avoidable but not avoided in the non-tax-credit bills, are an invitation to evasion by "independent" spending.

Unintended regulatory intricacy and bureaucratic burden, which were heavy for the 15 candidates in the 1976 Presidential primaries, will be massive to cope with 60–70 Senate candidates and 800–900 House candidates.

Unintended discriminatory impact of the spending ceilings, and of funds available by pre-set formulae, as between—

Twenty-six States with under 2,000,000 voting age population each, where Senate campaigns would be significantly affected, perhaps severely harmed;

Eight States with over 5,000,000 each, where Senate campaigns will be utterly unaffected by the spending limits, and aided by unduly high amounts of public funding;

Only 16 States of middle size, where Senate campaigning will be reasonably affected.

Three proposed amendments for the tax-credit proposal.

Two weeks ago in the Senate Rules Committee Hearings on public funding of congressional campaigns, I testified that the tax credit method is greatly superior to any approach of direct treasury funding, so it is a privilege to appear before your Committee on the same matter.

Today I will note one special reason why public funding is more needed for congressional races than was true before 1976. Then I will state briefly why the tax credit method is the best one, indeed the only good one, for public funding. To explain the superiority of the tax credit route, I will also set forth the disadvantages of the other routes.

I.

Before 1976, there was more room for difference of opinion on public funding for congressional elections. But in 1976 the Presidential campaign was publicly funded for the first time, 10 years after the original statutory authorization. The present scheme of publicly funding the President while leaving Congress dependent on private sources, is an invitation to making the Presidency more imperial than ever. I mean no reflection at all on President Carter (whom I supported) when I say that.

Congress cannot allow the Presidency to say to the voters, "Support us, only we are independent of private interests." Anyone who believes in a system of effective checks and balances, not merely paper-thin checks, must help redress

the current imbalance between Congress and the Presidency, both in sources of campaign finances and in terms of the claim to integrity.

I hope your Committee will go forward with the bill sponsored by Senators Packwood, Moynihan and others; I will later urge consideration of some amendments.

We now have a "billion dollar Congress." Yet some people are afraid to spend another $20 million every other year, to make sure that the $2 billion in congressional operations and the hundreds of other billions in total Federal spending, are handled wisely and pursuant to openly-arrived-at popular choices. Such fears are ridiculous, in terms of what is at stake and also in terms of what we spend otherwise.

One way or other, as taxpayers or as consumers, all of us are already paying to finance campaigns, so let's find the right way to do it. The only reasonable argument against public funding is the one suggested in Chief Justice Burger's separate opinion in *Buckley* v. *Valeo:* Governmental entanglement, with "strings" and reduction of free private choice, is too likely to flow along with the governmental funds. I believe that the bills pending before the Senate Rules Committee, which involve spending ceilings, matching payments, and other problems I note below, exactly exemplify undesirable entanglement and reduction of free choice. In contrast, the method of public funding by means of tax credits is what in constitutional law would be called "the least intrusive alternative". It so well meets the needs, with so little if any intrusion on protected values, that I believe it would meet the concerns so reasonably held by the Chief Justice and many others.

We want to increase both citizen participation in politics and also the sums available for stirring the electorate about candidates and issues. But we want to reach both of those goals, not just a better-funded, otherwise impoverished, politics.

II.

The tax credit method is the best system for public financing, for at least four reasons. First, it is already in place. Some amendments are needed, but we have here an already-tried, familiar scheme which is simple to administer and imposes almost zero bureaucratic costs or regulatory complexity.

Second, the tax credit is the only method of public funding which preserves the individual voter's free choice in supporting candidates. Other methods rely upon formulae by which funds flow from the Federal Treasury. Those formulae, as I will demonstrate more fully when I set forth the weaknesses in those other methods, cause demonstrable unintended, undesirable and unavoidable impacts.

Third, because the tax credit method preserves individual voters' free choice, it preserves the links between candidates and voters. The tax credit facilitates the individual voter's response to candidates' search for funds. But it keeps the voters in charge of who gets how much, and so it encourages and strengthens the candidates' and elected office-holders' linkage to, their dependence upon, the voters.

In short, the tax credit method strengthens democracy, other methods weaken it. You people know better than anyone that Members of Congress are closer to their constituents than any President can possibly be. Fund raising may not be pleasant for candidates, but no one can justify passing law to change campaign financing on the basis that life should be made easier or more pleasant for candidates. Rather, we want to preserve the contact and closeness with the voters which fund-raising involves, especially now that we have established contribution limits so that fund-raising is no longer a matter of catering (or worse) to small numbers of wealthy or improperly motivated contributors.

Fund-raising, now that we have appropriate contribution limits, is simply part of going to the people. We must preserve this method—and measure—of building popular support. We should facilitate fund raising, but must not displace it for a select few, favored by pre-set formulae.

Fourth, the tax credit method—even now, although some amendments are needed to improve it on this score—does not increase the advantage that the minority of affluent contributors have as compared to the great majority who are less affluent. The more tax credit, the more the poorer person and the wealthy ones are rendered equal in terms of their political giving. (Even a 100 percent tax credit does not bring total equality, since some current use of dollars is lost if a contribution is given to a candidate earlier than the tax dollars would be sent to the IRS; such loss of current use means something to the less affluent, but nothing to the wealthy. Of course to the extent that the credit is below 100 percent,

as at present, then the portion not credited, say $50, means far more to a poor person than a rich one, and there is that much less equalization.)

Under the tax credit method, a voter's relative affluence matters little or not at all to the candidate, so we don't get either distortion in the sources to whom the candidate turns for support, or discrimination between the candidate of the affluent and the candidate of the less affluent. In contrast, consider what happens under the main alternative to a tax credit, the matching payment plan: If candidate A received 1,000 contributions of $100 each, and candidate B received 1,000 contributions of $10 each, then candidate A gets from the U.S. Treasury $100,000, while candidate B gets $10,000. The poorer voters' candidate ends up with a total of $20,000, the richer ones', a total of $200,000. Without matching payments there would have been a $90,000 margin in campaign resources between those two candidates. With matching payments, the margin is $180,000. And candidate C, whose 1,000 supporters may be able to give little or nothing, will get little or nothing in matching funds from the U.S. Treasury. Perhaps such matching payments impacts are acceptable at the Presidential level, but certainly they are not at the congressional level, where candidates are competing so much more directly in constituencies which are so much more concentrated.

Consider the distortions already experienced in the 1976 Presidential primaries. (FEC release of Feb. 20, 1977). Reagan, with twice as many contributions as Ford, received only 9 percent more than Ford from the Treasury, because Reagan's average contribution was so much smaller. Udall, with more contributions than Carter, received only 55 percent as much Treasury funds. Jackson, with only 4 percent more contributions than Harris, received over 3 times as much Treasury funds.

In order of number of contributors:	
Reagan	238,266
Ford	114,661
Udall	97,764
Carter	94,410
Jackson	58,372
Harris	56,021
In order of average size of contributions:	
Ford	$43.06
Carter	41.09
Jackson	35.45
Reagan	23.11
Udall	21.84
Harris	11.74
In order of Treasury matching grant:	
Reagan	$5,088,910
Ford	4,657,007
Carter	3,465,584
Jackson	1,980,554
Udall	1,898,686
Harris	633,099

May I submit that this is a scheme crying for amendment, not for adaptation and spread to congressional races.

Clearing then, a matching payment scheme increases economic differences between voters. How can the sponsors of bills which rely on matching payments like S. 926, amongst whom are such great supporters of the poor people of America, support a proposal to give the affluent minority even more voice and access to power than the non-affluent majority? They should at least amend their bills to use a sliding scale. But it would be far cheaper and easier to give negative tax rebates to voters who are too poor to pay taxes but who want to exercise not merely a right to vote but also a right to help the campaign of their chosen candidate, than it would be to administer the matching payment plan, with its intensive regulatory requirements.

Campaign finance laws cannot wholly remove inequalities of wealth, but it is the American commitment to go as far as we can in equalizing political rights regardless of economic differences. The tax credit method furthers that commitment; the alternatives now being urged in both Houses undercut that commitment.

III.

The undesirable features of the alternative scheme for public financing, exemplified in the bills on which Senate rules just held hearings, are so severe that such bills are bound to fail unless they are ignored and then, because of the good intentions of their sponsors, slide through unstudied.

There are seven acute problems. (1) There will be discrimination between candidates who face no primary competition, those who face competition only in the primary, and those who face competition in both the primary and the general. The pending bills which try to avoid the tax-credit route differ on how to treat primaries. They differ not only because of the considerable political hurdles that such provisions face, especially in the House; but also because how to treat the primaries is a tough nut indeed—for any approach other than the tax credit. (2) There will be discrimination, as already noted fully, favoring affluent supporters and their candidates over the less affluent and their candidates. (3) There will be discriminatory impacts on nonmajor parties and candidates. It is one thing to believe in our two-party system and support one of those two, as I always have (I have worked in four Democratic campaigns, the most successful being Dick Newberger's election as the first Democratic Senator from Oregon in 40 years). But it is a very different thing to try to freeze those two parties into prefered positions. Such freezing would stultify and rigidify those two parties: minor parties and independents, although occasionally kooky, are often invaluable to the vigor and openness of our politics. In addition, Treasury funding by preset formulae inevitably freezes in unwarrantedly high levels of funding for minor parties or groups whose support faded since the last election, while at the same time freezing out emerging groups that reflect new concerns and so have only just begun or are enjoying rising support. (4) Treasury funding via Federal formulae would introduce unintended changes in the relationship between candidates and their own parties. There would likely be acute disagreement among Members about whether it is good or bad to reduce the role of parties—but since no one intends any such change as a result of campaign financing bills, such an impact at very least needs attention.

The fifth acute problem is that the public funding bills using Treasury dole-out via Federal formulae, for some odd reason, include spending ceilings. That renders such bills certain to become more loophole than law, if they do become law. If spending ceilings are not deleted, "independent" spending by persons or groups who would normally contribute to the candidate directly, will render the spending ceilings farcical. If spending ceilings are deleted, the public funding becomes a "floor", which I think may be a fine thing but is a wholly different approach from the one underlying those bills.

The sixth acute problem in any approach other than the tax credit is that it would lead to far more regulatory intricacy and regulatory machinery than anyone wants. If in 1976 it took close to 200 FEC employees to handle the funding, audits, etc., for 15 Presidential candidates, what will happen when the FEC must deal with the more diverse, far less sophisticated campaign committees of 60–70 Senate candidates and 800–900 House candidates? You Senators know well that the FEC requirements in 1976 were not only a burden and substantial cost for congressional campaigns, but were tending to become a stifling straight-jacket for campaign decisions. But the problem you faced was modest compared to what Presidential campaigns faced. Imagine what you will face if the FEC must write regulations to meet the variety of problems presented by almost 1,000 candidates running every two years!

Senator Metcalf said in 1975, after Congress received 22 pages—in Congressional Record print—of FEC policies and guidelines:

"The complexities of the Federal Election Campaign Act suggest that the least of the worries of those seeking office should be defeated at the polls. Where the greater risk lies today is in winning—and then having to devote the bulk of one's time for the next 2 to 6 years to continuing analysis of campaign laws and regulations . . . particularly if the office holder is to avoid serving time rather than constituents. . . ."[1]

Does all the fuss about over-regulation apply only to OSHA, ERISA and the CAB? I am confident Members will see, before smothering themselves in one of the most over-regulating meshes ever enacted, that regulation has its limits; that

[1] Congressional Record, S15547, Sept. 9, 1977.

changes in the name of reform are too often changes which haven't been thought through and so create greater harms than they solve; and that there is a better method, the tax credit.

The last acute problem in the pending bills which avoid the tax credit route is that, to take the main example, S. 926, they will impact discriminatorily among States of different size voting population.

Last November, Senate seats were up in 33 States—7 of the 8 biggest States, 11 of the 16 middle-sized, and 14 of the 26 smaller States. Seven candidates out of 64 (data are not available and not significant on anyone but the top two candidates in each 1976 race), spent over the ceilings that S. 926 would impose: 5 of those 7 were from smaller States, the other two being Brock from middle-sized Tennessee, and Heinz from big Pennsylvania. Heinz was a very special situation: Heinz spent far more than twice as much as any Senate candidate in 1976 or 1974 or 1972, except that he spent a mere 50 percent more than Buckley (1976) and Tunney (1976), a mere 30 percent more than Tower (1972). And even Heinz's incredibly high spending exceeded the proposed unduly high Pennsylvania limit, by only 3 percent!

The other 13 candidates in the biggest States' races spent under 50 percent of the proposed ceiling. The scene in the 15 smaller-State races is dramatically, troublesomely, different: As already noted, five of the 30 candidates in these races were over the proposed ceilings. Of the 25 remaining candidates, 6 spent over 75 percent and another 7 spent between 50–75 percent of the proposed ceilings. Since many of the "tiny" spenders in any election are not running for much more than exercise or the future, i.e., those races are not competitive, the facts on the 1976 races are telling us that in the smaller States, the proposed ceiling will severely change, or substantially cramp, most Senatorial campaigning. On the other hand, even competitive races in big States do not come remotely near the proposed ceilings.

An excellent case can be made for changing politics in America. . . . But no one will try, and no one could succeed, in arguing that Federal law ought to change the politics of 26 smaller States while having zero impact in the 8 biggest States and having only in the remaining 16 medium-size States a modest, reasonable impact.

1976 SENATE ELECTION SPENDING, COMPARED TO SPENDING LIMITS PROPOSED IN S. 926 (PRIMARY AND GENERAL COMBINED, AS PER FEC RELEASE OF MAY 3, 1977: DISCLOSURE SERIES No. 6.)

		Candidates who—				
	Number of 1976 races	Spent over proposed limit	Spent 75 to 100 percent	Spent 50 to 75 percent	Spent 33 to 50 percent	Spent 0 to 33 percent
In 26 States with voting age population under 2,000,000	15	5	6	7	3	9
In 16 States 2,000,000 to 5,000,000, voting age population	11	1	2	9	3	7
In 8 States over 5,000,000 voting age population	7	1			8	5

The full data on which this chart is based are set forth at the end of this testimony, in Appendix A.

So much for the spending ceilings. Since the same formula determines the minimal amounts of public funding which would be given to candidates, the discriminatory impacts of the spending limits would be exacerbated by the Treasury dole-out. Relatively huge amounts would flow to candidates in the biggest States, relatively inadequate amounts to smaller State candidates.

Taking only States which may particularly interest Members of this Committee, and which had 1976 races, how much would a 1978 or 1980 major-party Senate candidate get automatically from the Treasury, without doing any private fund-raising, if S. 926 were to pass and if that candidate chose to spend at the same level as did the 1976 winner in his State?

Guaranteed minimum campaign fund, from Treasury to Senate candidates, as percentage of 1976 winner's spending in named States (not counting any matching payments)

Big States:	
New York, 51 percent	$614,000
Texas, 33 percent	413,000
Florida, 86 percent	303,000
Michigan, 40 percent	308,000
Middle-size State: Virginia, 22 percent	175,000
Small States:	
Delaware, 23 percent	75,000
Hawaii, 17 percent	75,000
Maine, 23 percent	75,000
Nevada, 18 percent	75,000
Arizona, 13 percent	76,000
Rhode Island, 18 percent	75,000

Added to the above guaranteed dole-outs from the Treasury would be matching payments for the first $100 of each private contribution. Thus, if S. 926 had been law in 1976 and Senator Chiles had neither increased his total spending nor changed his self-imposed $10 ceiling on contributions, 93 percent (!) of his campaign fund would have come from the Treasury. Or, Senator Moynihan would have had to raise only about 25 percent as much from private contributions as he did raise in 1976.

These contrasts are even more disturbing when one notes how much more easily a big-State candidate can raise dollars. In short, the Treasury dole-out by Federal formula will all but guarantee life tenure, and at least an easy life, for big-State Senators, but Senators from the 26 small States will face more competition than they have known.

I know that no one intends for public funding of campaigns, or any other aspect of Federal campaign finance regulation, to impact different States significantly differently just because of their differences in population. But although I am for public financing of Congressional campaigns, I stress that these facts establish two critical points:

First, any proposed spending limit or funding formula must be amended. (Only three of S. 926's 14 sponsors are from the 26 smaller States whose Senate elections would be so changed; I wonder how they will react to the 1976 facts.) Any such difference in impacts as among different-size States is not only intolerable in terms of fairness. It also would introduce significant, although unpredictable, distortions in turnover and composition in the United States Senate. That is, incumbent Senators from the smaller States will be more likely to fail to be re-elected than would Senators from the biggest or middlesize States. This will happen because incumbents are almost always able to out-raise and out-spend challengers: if the spending limits are too low in some States and too high in others, as is true of S. 926, then the States with unduly high limits will be far more likely to keep Senators in office for longer periods, the States with unduly low limits will be far more likely to turn Senators out of office relatively frequently. Among other distortions that would result from this situation, will be a shift in the distribution of chairmanships.

The second point these facts make is that the unintended impact of S. 926's spending limit and funding formula is not the result of sloppy drafting. Similar unintended inequity and distortion would have resulted from the spending limits enacted in 1974, if the Supreme Court had not saved us from those unwise, as well as unconstitutional, provisions. I did a little study of the 1974 Senate spending ceilings, on the basis of reported spending in 1972 and 1974 Senate races, a study which showed—also with dramatic clarity—how discriminatory were those ceilings as between the different size States. That study was reported in a column by David Broder, which Congressman Steiger of Wisconsin inserted into the Congressional Record; the full study was inserted by Senator Metcalf. With the Chair's permission, I should like to add that study and that Broder report to the printed record of this Hearing.

In short, it is extraordinarily difficult to enact campaign spending ceilings and funding formulae for Congressional races, for three reasons. The first reason is that the States are very different, population size being only one of those differences. The simplistic formulae in S. 926, like the 1974 ceilings the Supreme

Court struck down, are intolerable and doomed to fail unless 52 Senators are willing to have their States' campaigns changed greatly, while 16 Senators enjoy entire freedom from such change. In 1973, Senator Abourezk proposed to add square miles to the per-person formula. (See the end of my 1975 study, being inserted into this Hearing record.) Such a step would improve the situation, but would not solve it. I submit that finding a formula which will have equitable impacts on all or even almost all States, may be impossible or unfeasible, but at very least requires far more imagination and recognition of reality that is shown in S. 926.

The second reason it is so hard to legislate Congressional campaign ceilings and funding formulae is that, depending on what levels they are set at, they are likely, perhaps even bound, to help either incumbents or challengers. If ceilings, are two low, they help incumbents, because most winning challengers need substantial sums to defeat incumbents, and such strong challengers are able to be relatively successful at fund-raising (though rarely more successful than even losing incumbents) and would be blocked by low ceilings. If the ceilings are too high, they also help incumbents, because almost no challenger can get near the ceiling, while high ceiling leaves incumbents free to reap the fund-raising benefits that incumbency almost always guarantees. Finding just the right level, where the ceilings are likely to be neutral as between incumbent and challenger, is not easy even for a neutral judgment. When so difficult a task is put in the hands of a group of incumbents, what likelihood is there—if they pay a bit of attention to the numbers, as they did not do in 1974 and have not yet done this time around but are bound to learn—that Congress will refrain from picking an incumbent-protective figure. I hope judicial review of any spending limits will get the strict scrutiny that is required, and cases have held to be appropriate, for a situation so fraught with danger to our open, free polititcal system.

The third reason it is so difficult to set spending ceilings and funding formulae is that not only are there great differences among States—and even greater ones in the case of some House Districts—but also there are great differences among candidates and campaigns. Are we so sure we want to ride roughshod over the variety, the free emergence of new people and new styles, the flexibility, which has been such a strength and pride of American politics?

IV

Hoping your Committee will go forward with the Packwood-Moynihan bill, may I suggest amendments needing consideration:

(1) Of course the credit should be available for House as well as Senate races. At present, the 50 percent credit is available for non-Federal elections as well, and I hope that will not be reduced to make up for revenue losses resulting from the increased credit for congressional races. Any such reduction would have a negative impact on state and local government far outweighing the tiny saving in Federal revenues, and would be contrary to all the Federal programs seeking to strengthen state and local government.

Instead of giving 75 percent (or more) credit for congressional campaign contributions and only the current 50 percent credit for state and local campaign contributions, I urge you to consider separating all Federal election credits from the other credits. For example, up to $X could be given to state and local candidates and receive a Y percent credit; and a separate $Z could be given to Federal candidates, for the same credit. Such treatment would encourage and strengthen state and local political vigor, an accomplishment no one could fail to applaud, instead of the present system which has the more visible and often more exciting Federal candidates competing for funds against local politicians.

(2) I would prefer a credit higher than 75 percent for small contributions, and lower than 75 percent for large ones. In the interest of increasing citizen participation and facilitating giving by the less affluent, I suggest a 100 percent credit for, say, the first $10 ($20 for a joint return). The Joint Committee on Taxation estimates that such a step, for Senate races only, would involve a revenue loss of $14–$15 million. (I would like to see 100 percent credit for the first $25, or $50 for a joint return. I think the revenue losses, as I said earlier, are so tiny in light of the purposes at stake that it is virtually beneath dignity for a democracy to worry about approximately 0.01 percent of Federal spending.) The 75 percent credit might apply to contributed amounts between $10 and $50, with the 50 percent credit retained for amounts between $50 and the dollar

ceiling, which might stay at the present level (though one might raise the ceiling and further scale down the credit, e.g. 20 percent for $100–$200, and no credit for contributions between $200 and the contribution limit).

(3) It may be advisable, if the credit is raised to 100 percent for any portion of a contribution, to have the IRS distribute simple 1-page form receipts which candidates would give contributors for attachment to tax returns claiming credits.

APPENDIX A: 1976 SENATE CAMPAIGN SPENDING

[C: Challenger; I: Incumbent]

State	Proposed limit, primary and general combined	Winner	Spent over the limit	Loser	Spent over the limit
Arizona	$529,200	$597,405	Yes	$679,384	Yes.
California	5,031,600	C:1,184,624		I:1,940,988	
Connecticut	749,350	I:480,709		C:306,104	
Delaware	525,000	I:322,080		C:211,258	
Florida	2,117,200	I:362,235		C:394,574	
Hawaii	525,000	435,130		415,138	
Indiana	1,247,600	C:727,720		I:654,279	
Maine	525,000	I:320,427		C:598,490	Yes.
Maryland	987,700	C:891,533		I:572,016	
Massachusetts	1,415,400	I:896,196		C:168,854	
Michigan	2,158,400	795,821		809,564	
Minnesota	946,750	I:618,878		C:43,912	
Mississippi	539,350	(?)I:19,852		(?)C:119,852	
Missouri	1,165,850	I:741,465		660,953	
Montana	525,000	311,101		563,543	Yes.
Nebraska	525,000	237,613		391,287	
Nevada	525,000	I:405,380		54,842	
New Jersey	1,744,400	I:610,090		73,499	
New Mexico	525,000	C:441,309		I:451,111	
New York	4,298,350	C:1,210,796		I:2,101,424	
North Dakota	525,000	I:117,514		C:136,748	
Ohio	2,587,900	C:1,092,053		I:1,304,207	
Pennsylvania	2,926,700	3,004,814	Yes	1,269,409	
Rhode Island	525,000	415,651		782,931	Yes.
Tennessee	1,032,500	C:839,379		I:1,301,133	Yes.
Texas	2,888,900	I:1,237,910		C:665,058	
Utah	525,000	C:370,517		I:343,598	
Vermont	525,000	I:157,927		C:169,296	
Virginia	1,223,600	I:802,928		C:443,107	
Washington	870,100	I:198,375		C:10,841	
West Virginia	525,000	(?)I:94,335		(?)C:94,335	
Wisconsin	1,115,800	I:697		C:62,210	
Wyoming	525,000	C:301,595		I:181,028	

[1] It's true.

Senator BYRD. The next witness is Mr. John Bolton. While he is coming to the witness stand, let me quote one paragraph from the statement which has been submitted for the record by Congressman Frenzel. That is this:

> The most important distinction between the so-called check-off and the tax credit is that the latter leaves the decision about who the public will subsidize to individual taxpaying contributors, while the public financing and tax credits involve the Federal subsidy for political campaigns.
>
> Under the tax credit proposal, however, the Federal government plays no part in determining which candidates are to receive public funds or to whom they will be received. It is the citizen and the citizen alone who makes this determination.

That is why those in Government would prefer the direct financing to the tax credit.

Mr. Bolton, you may proceed.

STATEMENT OF JOHN BOLTON, ESQ.

Mr. BOLTON. Thank you, Senator. I appreciate the opportunity to testify this morning.

I was one of the attorneys who had the privilege of representing former Senators Buckley and McCarthy in their challenge to the constitutionality of many of the Federal election campaign finance laws. I have a statement, with your permission, that I would like to put into the record and then summarize.

It seems to me that Senator Packwood's bill provides an excellent opportunity, should the Congress decide to act in this area, to experiment with an alternative to public financing, an alternative to that embodied in subtitle H of the Internal Revenue Code. It is important that whenever Congress legislates in this area, it must do so with the greatest circumspection. This is an area protected by the first amendment, an area quite valuable to the survival of our form of government.

It would be a mistake to rush pellmell into direct Federal subsidies for congressional candidates without a proper evaluation of what actually happened in the Presidential elections of 1976 and without trying the alternative that Senator Packwood's bill provides.

There are three reasons why S. 1471 is better than S. 926 and similar bills that have been introduced on the House side. In the first place, many of the people who have been advocating S. 926 and similar proposals, in my view, have misread the Supreme Court's opinion in the *Buckley* case. They have assumed, I think, too readily that the Supreme Court approved the imposition of spending limits when coupled with direct, Federal subsidies. The opinion is silent on this question.

I may say the issue was not briefed or argued orally to the Supreme Court, but I would infer that the Supreme Court's reasoning in upholding the expenditure limits with respect to Presidential campaigns, was a view that we may not have a plaintiff with standing to challenge those provisions.

Senator McCarthy, of course, was an independent candidate for the Presidency. It is clear that he did have standing to challenge the concept of subtitle H and its discriminatory features regarding independent candidates. Since, however, he had announced that he did not intend to accept public subsidies in any event, it may be that the Court felt that he did not have standing to challenge the linkage of expenditure limits with the direct subsidies.

As I point out in my statement, there is a quite old and well-respected constitutional doctrine known as the unconstitutional condition doctrine. That says what the Government may not constitutionally do directly, it may not do indirectly by attaching that proposal as a condition on the grant of some Federal subsidy or other valuable right.

To say, as many did who testified before the Senate Rules Committee a few weeks ago, that the unconstitutional condition doctrine has somehow been swept aside without any comment at all by the Supreme Court in *Buckley* is a serious misreading of the case.

It seems to me only a matter of time, should S. 926 or a similar bill be enacted, that a constitutional challenge to the expenditure limit would be made and, in my view, would be successful. It seems to me, at that point, you have a very different system when you have public financing via direct subsidies without expenditure limits than you do with expenditure limits.

For the reasons we argued in the *Buckley* case, we think the expenditure limits in general tend to benefit incumbents to the detri-

ment of challengers. I think that such an argument would succeed in a subsequent case.

I mentioned some other constitutional difficulties with S. 926 in my statement. I would like to conclude that point by saying, I have not heard any arguments, let alone convincing ones, that S. 1471 suffers from a constitutional defect.

Second, are the practical problems inherent in S. 926 which are not present with S. 1471. I would refer you to a considerable amount of testimony before the Senate Rules Committee on some of the practical problems involved in direct Federal subsidies. In my statement, I tried to draw some conclusions from the unfortunate experiences that have been reported in the press about Governor Shapp.

It seems to me that should the Federal Election Commission arrive at similar decisions with respect to any significant number of candidates, if the subtitle II concept is expanded to cover congressional elections, it will have a severe deterrent effect on the participation in the political process by candidates for Congress.

Senator PACKWOOD. Where you are going to hold every candidate individually responsible for the legality of every donation.

Mr. BOLTON. Yes; I think that is true. It would be true even if the Commission were to say that his principal campaign committee were responsible rather than his own personal assets. It seems to me that the vast majority——

Senator PACKWOOD. You would have a very hard time putting together a campaign committee with these obligations, I think.

Mr. BOLTON. That is quite correct.

Having dealt with several campaign committee treasurers over the past couple of years, I know they must be among the most nervous group of people in the country.

Senator PACKWOOD. As a rule of thumb, I have advised all of my friends, seriously, not to be campaign treasurers of anybody's committee. The obligation they are undertaking, they do not know. They can be sent to prison for things they knew nothing about, which were not their fault. It is not worth the risk.

Mr. BOLTON. I think that is very prudent advice.

I will not go into all of the reasons why I think the Shapp experience demonstrates the problems inherent in the S. 926 proposal. They are in my statement.

The third aspect that I think merits some discussion, and, that some of the other witnesses and Senators have commented on earlier, is S. 1471 provides a much more substantial measure, freedom to the individual citizen than the tax check-off because the citizen who checks off now has no idea, say, in 1977, who the candidates for President would be in 1980, let alone whether or not the taxpayer may want to support any of the people who are running.

You sort of check off in blind faith that the money will go to deserving people. Under a tax-credit approach, the individual taxpayer maintains control over the funds. He decides to whom the contributions will be made. He decides in what manner.

In reading over the legislative history in 1974 of debate on the present tax credit section of the Internal Revenue Code, I was struck by

a statement of Senator Kennedy's quite similar to the one that you just read from Representative Frenzel. Senator Kennedy said:

> The Federal Government plays no role in determining which candidates or committees are to receive public funds or the amount of such funds that are to be made available to particular candidates. It is the citizen and the citizen alone who makes these determinations.

In short, I think S. 1471 is a desirable and workable alternative to direct Federal subsidies. As I say in the statement, I would hope that in the debate on the proposal it might well be extended, that the concept may well be extended, to all candidates for Federal office, the House and Senate as well. It is a substantially better way to approach this problem than extending the subtitle H concept.

Thank you.

Senator BYRD. Senator Packwood?

Senator PACKWOOD. Do you agree with the witness before you that under the *Buckley* case there is no constitutional way you can limit the right—I think the correct right—of independent expenditures by organizations?

Mr. BOLTON. I think that is absolutely correct.

Senator BYRD. Under public financing, we do not stop big money from politics. We are transferring control of it outside the normal electoral process.

Mr. BOLTON. I think that is right.

One aspect of that, if I may dwell on it for a second, if the independent expenditure route becomes much more popular—and I think it will as people become familiar with it, you may be faced with a situation where control of the campaign gets outside of the candidate and his immediate supporters.

What we are seeking to do in an election is nominate or elect specific people and they have things they want to say to the voters. With very well-financed independent groups you may find the candidate's position completely obscured in the debate that the independents have, in effect, created for them.

Senator PACKWOOD. It is absolutely going to happen, absolutely no doubt about it. These independent groups, most of them, are single-minded zealous groups, are going to spend a great deal of time propounding their opinion and their issue is going to be the issue in the campaign. The fact that both the candidates may want to talk about other issues is going to be obscured. I do not know how you are going to stop it.

Mr. BOLTON. I do not believe you can. Faced with that prospect, rather than look to bills like S. 926, it seems your proposal is a far more desirable way to prevent that.

Senator PACKWOOD. Let me ask you something about independent financing. It seems to me that public financing is a built-in savior for Republicans, Democrats, and incumbents. One, under public finance, you have to go one or two ways: Either you are going to discriminate against those independent candidates who do not have primaries or those who do want to come along who are not a part of the establishment. They are going to be discriminated under any form of public

financing unless you are willing to adopt the theory that anybody who wants to run for office, no matter what kind of ne'er-do-well, no matter how unqualified, has an equal access to the same amount of public financing.

Mr. BOLTON. I think that is correct. I would add one thing about the *Buckley* decision that also has been ignored in some of the debate that I have heard.

When we challenged subtitle H in that case, we challenged it on its face. That is to say, we sought a decision on whether or not it was unconstitutional per se. The Supreme Court, in its opinion, clearly left open the possibility of future constitutional litigation against subtitle H based upon experience under it. If it could be shown by appropriate factual demonstration that the system discriminated, the Court would be prepared in such a case to hold it unconstitutional.

In several respects, the discriminatory aspects of subtitle H that we now have seen since it has been in operation may well be the subject of future litigation.

Senator PACKWOOD. It just seems to me that public financing is the embodiment of the slogan, them who has, gets. It is going to return incumbents overwhelmingly. It is going to make it easier for incumbents to get money, harder for challengers. The wealthy contributors will give more to incumbents, freeze the independents, and the independent movements have really been the yeast which have provided a great deal of thought in the history of American politics. Public financing is simply going to eliminate it.

Mr. BOLTON. I certainly agree with that.

Senator PACKWOOD. I have no other questions.

Senator BYRD. First, I congratulate you and your associates on winning that case. Philosophically, I agree with Senator Buckley and Senator McCarthy and you in regard to the fact that there would not be a limitation on what an individual can do with his own finances. But as a practical matter, I think it is wrong where a very wealthy candidate can spend unlimited sums of his own money in order to get himself elected to office. I think that is an undesirable aspect of political campaigning and an undesirable course of action in a democracy. How do we reconcile the practical with the philosophical?

Mr. BOLTON. When we argued the case to the Supreme Court, Senator, what we tried to accomplish was the total elimination of the expenditure and contribution limits in the 1974 FECA Amendments. We were, unfortunately, in my view, unsuccessful in doing that.

The result was, when you looked at what the Supreme Court upheld and what it struck down, you were left with a kind of a patchwork, a patchwork which, in my view, does discriminate now against the nonwealthy candidate. The Court has clearly said that a wealthy person has a constitutional right to spend as much as he or she wants to out of their own pockets on their own campaigns. A nonwealthy person who does not have that money is now restricted to relatively low contribution limits.

If I could make a suggestion, not applicable to this bill, I would hope that the contribution limits would be raised, but if that is not going to happen, it seems to me that here again is a way that S. 1471

benefits the political process because it does complement somewhat the low contribution limits by encouraging small contributions, so some of the funds that would otherwise come to candidates in contributions over $1,000 and $5,000 might now be made up by a number of small contributions, helping in part, at least, to overcome this disparity between the wealthy and the nonwealthy candidates.

Senator BYRD. Was it not the result of your argument that the Supreme Court declared that there was no limit on the amount an individual could contribute to his own campaign?

Mr. BOLTON. That is correct.

Senator BYRD. You feel that there should be a limit?

Mr. BOLTON. No; I do not feel that there should be a limit, nor do I feel that there should be a limit on what someone else contributes to one's campaign. That, to me, would be the best way to equalize.

Senator BYRD. You feel there should not be a limit on the amount of expenditure that could be made?

Mr. BOLTON. Yes; that is correct. The Supreme Court did strike expenditure limits down.

Senator BYRD. It seems to me that what we should try to do is determine a way to put a ceiling on the amount of money that can be spent. I gather you do not feel that way?

Mr. BOLTON. I can understand your feelings. I think the Supreme Court in *Buckley* precluded that possibility by saying expenditure limits, as with the independent expenditure limits were, per se, unconstitutional.

Senator BYRD. I never understood why one would want to spend such huge sums of money to get elected to the U.S. Senate or any other public office. I put a limit on spending in my own campaign of $5,000 of my own funds. I do not know why anybody would want to spend huge sums; even if one wants to spend it, there must be some way in the future to make it impossible to expend unlimited funds. A few individuals may have unlimited funds, but most individuals do not. I admit my view on this does run contrary to my, and your, philosophical views.

Mr. BOLTON. One possible alternative which we do have is the reporting and disclosure provisions of the FECA if a candidate is electing to spend large sums of his own money; because of the possible adverse political effects, the disclosure provisions do give the voters a way of knowing if someone is spending extraordinary sums.

Based on that information, they can make a decision on whether they approve of that or disapprove of that.

Senator BYRD. That is a good point, an excellent one.

Senator Long?

Senator LONG. Let me see if I can be brought up by you to the current state of law in this area.

The Court has held in this litigation that you were involved in that you cannot limit the amount that a candidate can spend on his own candidacy?

Mr. BOLTON. That is correct.

Senator LONG. When someone else seeks to help that candidate, is it correct to say that he can be limited by law in the amount that he can contribute to, say $1,000 or $2,000?

Mr. BOLTON. That is how the Supreme Court decided the contribution limit.

Senator LONG. If he wants to independently advocate that Candidate Jones be elected rather than Candidate Smith and say vote against Smith, he is a no-account so-and-so, Jones is a decent guy, that kind of activity, is there any limit on the amounts he can spend on that type of activity?

Mr. BOLTON. No. It would be constitutionally impermissible to limit those kinds of expenditures.

Senator LONG. The Court has ruled if a man feels that Smith is a dangerous Socialist and ought to be defeated, that Smith is leading us down the road to end all of our freedom by his view, if a man wants to go out and tell the public that, and buy some billboards and buy some newspaper advertising and get some time on the radio and television to tell the people that he thinks Smith is a very dangerous man, it is the current state of the law that there is no limit on what he can do because he does not involve himself with Mr. Jones, he is not under his control or supervision?

Mr. BOLTON. That is correct.

Senator LONG. There is a great deal that people can do that is not subject to limitation, then. They can only be limited in what they are contributing to or when they are under the supervision of the candidate or his committee?

Mr. BOLTON. Yes; that is right.

Senator LONG. Thank you very much for your statement here today.

Senator PACKWOOD. I do not know about you, Mr. Chairman, but every election I have ever been in, including my races for the State legislature, someone has spent money for me and against me that I did not know about. Usually there were ads in newspapers, sometimes direct mail. Sometimes I wish the people who had spent it for me had not. I wish I could have stopped them because of their method of expression.

In every case, they were independent. You never knew about them until they come out.

Senator LONG. My recollection is the last campaign I ran, that some fellow in good conscience, trying to be helpful, who was on the side I was on, bought himself an ad in the newspaper and told people they ought to vote for me. The way I construed that law, and the way my lawyer construed it at the time, we were afraid that we were going to be held in violation of the campaign law because some fellow did this without us knowing about it, went out there and spent some money urging people to vote for me.

In fact, we tried to get hold of the man and stop it and tell him we just did not know how to handle that.

Is it correct, though, if that happens, where a man without any candidate asking him to do it, just goes out on his own and puts an ad in the newspaper urging people to vote for candidate X, there is no way the Constitution or the law can prevent him from doing that?

Mr. BOLTON. Yes; that is right.

Senator LONG. You cannot hold a candidate responsible if he did not know about it?

Mr. BOLTON. It does not count against his campaign at all.

Senator LONG. Those decisions, is it not true, when added to the decision related to Freedom of the Press and Freedom of Speech in other respects add up to the fact that there is no way that you can, under constitutional law, assure that when two candidates are running, they are both going to have the same opportunity to be heard and express themselves unless you are going to try to do it by giving them Federal money and saying in return for this Federal money, you have to agree you will not do more than a certain amount?

Mr. BOLTON. That was the effect of the decision with respect to subtitle H in *Buckley* v. *Valeo*. As I said in my statement, it seems to me that that decision inadvertently, for whatever reason, flies in the face of the unconstitutional condition doctrine.

If a particular restraint is unconstitutional when it is applied directly, if it is attempted to be applied indirectly it is found to be equally unconstitutional. You cannot condition a Federal grant or subsidy on an unconstitutional condition.

Senator LONG. Would we not be doing that with the campaign check-off law, since in accepting this Federal aid to make a campaign, candidates would be agreeing not to spend more than the amount of money made available?

Mr. BOLTON. That is the way it is now. I may have said before that in our view, the Supreme Court left the system the way it was because in the *Buckley* case we did not have a candidate with standing to challenge that particular provision, and the Court upheld that on its face. If another piece of litigation were brought that raised that one issue of the constitutionality of coupling the expenditure limit with direct Federal subsidies, it seems to me, based on the long standing precedent under the unconstitutional condition doctrine, the expenditure limit would be struck down. If the Court was to find direct subsidies were not separable from the expenditure limits, the subsidies would fall as well as the limit.

Senator LONG. If I understand your argument, and to put it in other terms, to see if I can say it back to you, you feel that in providing the money it is unconstitutional to tell the candidate that he cannot spend other money to advance his candidacy. Is that correct?

Mr. BOLTON. That is correct.

Senator LONG. On the theory that he has the right to spend money, whatever amount he wants to, to try to seek the office. That being the case, it would be an unconstitutional limitation on a right that was his to place a limitation on the Federal funds made available?

Mr. BOLTON. That is correct.

Senator LONG. Do you think that the whole campaign check-off law would fall if that point were made by a proper party?

Mr. BOLTON. I believe so.

Senator LONG. In other words, you feel that if one of the major party candidates were to make that case at that point, that he has a right to spend more money and was doing so, or denied the right to spend more money, that the campaign financing would be denied to both parties?

Mr. BOLTON. I think it would depend on how the Court separated out the various parts of the Statute. It may well be they would simply strike down the expenditure limit and leave the subsidies.

I might say that the only reason I have heard in support of expenditure limits, apart from reasons that were found impermissible in *Buckley*, was to prevent the Federal Treasury from being drained without any limit at all. I believe there is an alternative to an expenditure limit that the Anderson-Udall bill has in part, but the Clark bill does not; to put a limit on the total amount of Federal dollars that can go to any one campaign and yet leave the campaigns free to spend as many private dollars as they can get.

My own feeling is the reason we keep seeing expenditure limits is that they are politically palatable ways of selling the direct subsidies. I have always found that a simple, direct subsidy system without expenditure limits would be far more desirable than one with them. There would be some candidates that would be made viable in the political sense because the seed money that they are now denied by the low contributions limits would be made up by Federal dollars.

Even so, the direct Federal subsidy schemes have so many other problems with them, particularly when they are not going to be applied to a vastly larger number of candidates in congressional elections that the proposal of Senator Packwood seems significantly more desirable.

Senator LONG. How many dissents were there in that case?

Mr. BOLTON. Justice Blackmun dissented on the contribution limits. He would have judged them unconstitutional.

Justice Renquist dissented on the constitutionality of chapter 95 of the Internal Revenue Code, the subsidy payments in general election Presidential campaigns.

Justice Marshall dissented on the Court's holding that former 18 U.S.C. section 608(a), the limit of what a candidate could spend from his own pocket, was unconstitutional. He would have upheld it.

Justice White dissented and concurred on a variety of subjects. He would have everything except the Federal Election Commission. Even he would have struck that down.

The Chief Justice wrote an opinion concurring and dissenting. He was our favorite Justice on the case. He would have struck down everything in the case, as we would have.

The majority opinion was per curiam. No one Justice signed it. That leaves, by the process of elimination, Justices Powell, Brennan, and Stewart, who did not write separately in the case.

Whether or not all of the justices who joined in all parts of the per curiam opinion necessarily went along with all of its reasoning we do not know. That is one reason that per curiam opinions are sometimes written, when there is a very complex case, as the *Buckley* case was. In order to get some decision out that makes sense there are internal adjustments made among the justices.

I think when new litigation occurs, as it already has begun to occur, single issue litigation, you may see a further substantial alteration in the campaign finance laws.

Senator LONG. Thank you very much.

Senator BYRD. Let me ask you one question in regard to the Packwood bill.

Do you see the possibility that the Commissioner of the Internal Revenue would, in writing the regulations, pursuant to the bill define

a senatorial candidate in such a way as to discriminate against third-party candidates?--

If so, how would you structure the bill to guard against that?

Mr. BOLTON. I would hope, based upon the language of the bill, as I have read it, he does not have any opportunity to write regulations that would so discriminate. I think the appropriate way to handle that would not be to complicate the bill, because it is an almost impossible kind of thing to write, but in the legislative history to make it clear that the tax credit in S. 1471 applies across the board as to whether or not the candidate is a major party candidate, major party or a third party.

There may be some language that could make it clear in the bill. I would suspect that it would be very difficult to draft. Handling it through the legislative history, making some very clear statements in the record to that effect in order to preclude the possibility that the Commissioner would try to write the regulations in the way that you describe would be the best way.

Senator BYRD. As you visualize it, this would be available to all candidates of any party, or without party, minor party or whatever it may be?

Mr. BOLTON. Yes.

Senator BYRD. Anyone who became a candidate would be subject to the provisions of the Packwood amendment?

Mr. BOLTON. So long as the contribution was actually made and the taxpayer could verify it, as need be.

Senator BYRD. Thank you.

Senator PACKWOOD. Let me add a point on regulations. If there is a problem with regulations, it is no worse in my bill than we have now. We already have check-off deductions and if the IRS has the power to make regulations, they make them now. The argument should not be used against it. It is going to cause all kinds of IRS regulations. This bill will not cause them.

Mr. BOLTON. I think that is correct.

Senator PACKWOOD. You were an excellent witness. It is a pleasure to have somebody who obviously knows the *Buckley* case so thoroughly to come here and precisely answer these constitutional questions.

Mr. BOLTON. Thank you, sir.

[The prepared statement of Mr. Bolton follows:]

STATEMENT OF JOHN R. BOLTON

Mr. Chairman and Members of the Subcommittee, I wish to thank you for the opportunity to testify on S. 1471, a bill that would considerably enlarge the federal income tax credit for political contributions by individuals to candidates for the United States Senate.

I was one of the attorneys who represented former Senators Buckley and McCarthy and the other ten plaintiffs in their suit challenging the constitutionality of numerous provisions of the Federal Election Campaign Act (FECA) and Subtitle H of the Internal Revenue Code of 1954 (Subtitle H). I have also written on the subject of campaign financing, most recently in the *Vanderbilt Law Review* with Brice M. Clagett, senior counsel for the plaintiffs in *Buckley* v. *Valeo*, 424 U.S. 1 (1976).[1]

I support S. 1471 because I believe it to be a desirable method of encouraging small contributions to political campaigns. The tax-credit approach is substantially better, for many reasons, than extending the concept of Subtitle H to

[1] Clagett and Bolton, *"Buckley* v. *Valeo*. Its Aftermath, and Its Prospects: The Constitutionality of Government Restraints on Political Campaign Financing," 29 *Vanderbilt L. Rev.* 1327 (1966).

provide federal subsidies to candidates for the Senate and/or House of Representatives. I would like to discuss briefly some of these reasons.

In addition, I would urge that S. 1471 be expanded to encompass all elections for all Federal offices. If the reach of S. 1471 were expanded, I think it would be appropriate to raise the maximum allowable credit to $250 or $300. It might be desirable in the future, based on experience under the bill as enacted, to raise this figure even higher, or to adjust the percentage allowable as a credit to a greater figure. It may well be, for instance, that a 100 percent tax credit with a lower ceiling would be a much greater incentive to small contributors.

I would also stress that S. 1471 should not be treated as a complement to direct Federal subsidies but as an alternative. If Congress enacts any legislation in this area in the near future, it should make a clear choice between these two options. This is particularly true if Subtitle H remains in effect as to presidential elections. It would be a valuable experiment for at least two congressional-election cycles to test the impact of S. 1471 as compared to Subtitle H. As I explain in more detail in the following paragraphs, I believe that having both systems in place would demonstrate the inadequacies of Subtitle H, and the inadvisability of extending its concept to congressional elections.

I. *S. 1471 avoids the constitutional problems inherent in proposals for granting federal subsidies in congressional elections.*

It is a mistake to assume that the concept of direct Federal subsidies to candidates for Federal office has been given blanket approval by the Supreme Court. Although the Court rejected the challenge made by the Buckley plaintiffs, that challnge was only a "facial" attack. That is, we argued that Subtitle H was unconstitutional *per se*, no matter how it might work in actual practice. The Court was quite explicit in leaving open the possibility of a challenge to Subtitle H "as applied," or, in the words of the Court, "upon an appropriate factual demonstration," 424 U.S. at 97 n. 131.

Moreover, it has also been incorrectly assumed that the Supreme Court approved the imposition of expenditure limits when undertaken in connection with a system of subsidies. Proposals for extending federal subsidies to congressional elections, such as S. 926, 95th Cong., 1st Sess. (1977), introduced by Senator Clark and others, adopt this approach of coupling subsidies with expenditure limits. The rationale is that since the Supreme Court in *Buckley* v. *Valeo* upheld expenditure limits in connection with Subtitle H, the Court must have been expounding the governing constitutional doctrine.

Such an approach is far too simplistic. First, the issue of upholding expenditure limits only as to subsidized candidates was never briefed or argued orally to the Court. Second, the Court's opinion did not provide any elaboration on the result it reached. Even so strong an opponent of the *Buckley* plaintiffs' position as Judge J. Skelly Wright conceded that the Court had upheld expenditure limits for candidates who accepted subsidies "[w]ithout even discussing possible problems under the doctrine of unconstitutional conditions."[2]

The unconstitutional-condition doctrine is not hard to understand or apply. It was cogently stated in an opinion by Mr. Justice Sutherland over half a century ago:

"It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state otherwise threatens to withhold. . . . *If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guarantees embedded in the Constitution of the United States may thus be manipulated out of existence,*" *Frost & Frost Trucking Co.* v. *Railroad*[3] *Comm'n*, 271 U.S. 583, 593-94 (1962) (emphasis added).

I believe that in an appropriate case the expenditure limits contained in virtually every proposal for providing Federal subsidies to Federal candidates would

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[2] Wright, "Politics and the Constitution: Is Money Speech", 85 Yale L. J. 1001, 1003 n. 11 (1976). Judge Wright sat on the United States Court of Appeals for the District of Columbia Circuit and voted to reject all of the Buckley plaintiffs' claims when that Court decided the case. *Buckley* v. *Valeo*, 519 F. 2d 821 (D.C. Cir. 1975).

[3] See also, Van Alstyne, "The Demise of the Right-Privilege Distinction in Constitutional Law," 81 Harv. L. Rev. 1439, 1445-49 (1968).

be declared unconstitutional. There is simply no compelling governmental interest that justifies the existence of such limits, and the Supreme Court so held in Buckley. Yet their repeated appearance in connection with subsidy proposals could become law without expenditure limits. If this is correct, then the validity of these pieces of legislation, should any of them be enacted, would be clouded until resolved by litigation.

In addition, S. 926 unconstitutionally discriminates against independent candidates for the Senate. While S. 926 provides subsidies for primary-election candidates of political parties (proposed § 502(c) (1) and (2) of the FECA), it restricts the use of subsidies by independent candidates to their general-election campaigns (proposed § 503(b)(2)). Thus the independent candidate's effort to get his or her name on the ballot will not be subsidized at all. The Supreme Court warned in *Buckley* that "[s]erious questions might arise as to the unconstitutionality of excluding from free annual assistance candidates not affiliated with a 'political party' solely because they lack such affiliation," *Buckley* v. *Valeo*, 424 U.S. at 87 n. 18 and 105 n. 142.

We argued on behalf of the plaintiffs in *Buckley* that direct Federal subsidies tied to expenditure limits were necessarily protective of incumbents. Numerous dispassionate political commentators, indeed virtually all informed observers other than the leaders of Common Cause, agree that this analysis is correct. Public confidence in our political leaders is already dangerously low. Were even more statutes passed that had the effect of freezing the political status quo, that confidence could only drop further. Particularly if extensive court challenges exposed the inhibiting and discriminatory features of these proposals, the effects on our political system could be devastating.

In several ways, therefore, S. 926 and similar bills court further constitutional litigation. S. 1471 suffers from none of the foregoing defects. To date, I have heard no arguments at all, let alone convincing ones, that the tax-credit approach is subject to constitutional challenge.

II. *S. 1471 avoids the practical problems inherent in proposals for granting Federal subsidies in congressional elections.*

In testimony before the Senate Rules Committee recently, several witnesses commenting on direct Federal subsidies to candidates stressed the possible bureaucratic nightmares entailed by extending such subsidies to congressional elections. They predicted a vast increase in the budget and personnel necessary at the Federal Election Commission (FEC) and the interminable problems that might arise in deciding the proper amounts of subsidies that should be paid. In addition, recent projections indicate that taxpayer interest in Federal subsidies is so small that the funds available will almost certainly be inadequate if the subsidies are offered to congressional candidates.

I do not wish to elaborate further on these statements, but to explore other practical difficulties with Federal subsidies that have recently come to the public attention. Specifically, the recent accounts concerning Governor Milton Shapp's presidential campaign demonstrate how fraught with difficulties is the Subtitle H scheme. I want to stress that my comments are based on press reports, and that of course I do not know whether the alleged irregularities did in fact occur. Nonetheless, as a hypothetical example at least, recent events are quite instructive.

First, the remedy proposed by the FEC in the Shapp case—that all of the subsidies paid to Governor Shapp's presidential campaign be returned to the government—is obviously quite burdensome. While the Governor apparently will assume the nearly $300,000 debt personally, many (and probably most) other candidates will not have this option. They will face instead the difficult if not impossible task of raising money to repay to the government while they and perhaps their closest aides labor under a cloud of suspicion and mistrust. Such a consequence must have a tremendous deterrent effect on people attempting to decide whether to become candidates for Federal office and whether or not to accept Federal subsidies.

Second, there may well be civil litigation seeking large fines against the individuals charged with violating Subtitle H. Moreover, and far more seriously, there is always the possibility of criminal enforcement resulting in prison sentences and criminal records. Legal fees—already substantial for many campaigns simply attempting to comply with the present law—would be crushing. The deterrent effect of such costs and sanctions is obvious on its face.

Third, those who do decide to seek office and accept the subsidies will bear a tremendous burden of policing their campaign workers. We already know from

recent experience the difficulties faced by many campaigns merely in complying with the FECA's reporting and disclosure requirements and in avoiding unlawful contributions. The additional time and expense required to monitor the small contributions necessary to qualify for governmental subsidies might well be crushing, particularly for struggling campaigns. How any of this benefits a free, open political process is impossible for me to understand.

Fourth, fifteen candidates for President qualified for Federal matching grants in 1976. Only one of these campaigns has, to date, been accused of improprieties. We do not know, of course, if these improprieties are the most serious yet uncovered, or if they are only the first of a long series. We do know for certain that should Federal subsidies be extended to House and Senate races, hundreds and perhaps thousands of would-be recipients will attempt to qualify. With so many potential applicants, enforcement by the FEC can, at best, only be sporadic. The FEC already has vast discretion, too vast in my view. There is no question that its discretion will be significantly increased if a proposal like S. 926 is adopted.

In short, we are now at the point where discussions about direct Federal subsidies to candidates for national office no longer take place in a vacuum. The abstract has now become concrete, and, quite frankly, the implications are disturbing. The Sharp case may only be an aberration, but the risk that we take if it is not is immense. Rather than assuming that risk without pause, we should at least consider the consequences of direct governmental subsidizations of the political system. No matter how well intentioned, the subsidies, with their complex legal requirements and possible sanctions, may very likely inhibit political discourse rather than promote it.

Fortunately, however, alternatives are available, and it is not too late to consider them. The tax-credit proposal contained in S. 1471 is such an alternative. It will not require the establishment of a new bureaucracy. Its operation will not deter the activity of candidates and their supporters. Its enforcement by the Internal Revenue Service, while admittedly not without possible problems, will be far superior to enforcement under S. 926.

III. *S. 1471 allows greater freedom of individual choice than do proposals for granting Federal subsidies in congressional elections.*

The dollar checkoff mechanism provided in § 6096 of the Internal Revenue Code allows virtually no choice for the individual taxpayer. The only alternative is whether or not to allocate $1 (or $2 on a joint return) to the subsidy fund. The amounts designated to the fund are then distributed to candidates under a matching system at the discretion of others (those who make matchable contributions to the eligible candidates).

Numerous problems arise because of the operation of this system, even when it is confined to presidential elections. The taxpayers asked to designate their dollars to the fund have no way of knowing who the candidates will be up to 4 years hence, much less whether or not they desire to support any of those candidates. Under a matching system for congressional candidates, the taxpayer is in an even greater quandary. He or she has no hint of whether the dollars checked off will be spent in his or her State or congressional district.

By contrast, S. 1471 allows total control by the individual over the choice of which candidate or candidates receive his contributions. As Senator Kennedy said in 1974, under a tax-incentive system

". . . the Federal Government plays no part in determining which candidates or committees are to receive public funds or the amount of such funds that are to be made available to particular candidates. It is the citizen, and the citizen alone, who makes these determinations," 120 *Cong. Rec.* S. 21769 (daily ed. December 17, 1974).

In addition, the taxpayer's contribution may be considerably greater under S. 1471 than under § 6096 of the Internal Revenue Code. Finally, the taxpayer receives a direct benefit in the form of tax relief.

All of these factors would, I think, encourage small contributions to a significantly greater extent than the § 6096 mechanism or the present limited tax-credit provision. There would be a substantially greater incentive to participate by making relatively small political contributions, a consequence that virtually everyone finds desirable.

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S. 1471 is thus a workable and efficient substitute for subtitle H and proposals such as S. 926. I strongly urge its adoption.

Senator BYRD. The next witness is Mr. George Agree, chairman of the Committee for the Democratic Process.

STATEMENT OF GEORGE E. AGREE, CHAIRMAN, COMMITTEE FOR THE DEMOCRATIC PROCESS

Mr. AGREE. Thank you, Mr. Chairman, Senator Long, and Senator Packwood. I will not read my full statement, but I would appreciate it being put into the record. And, sir, I have two charts referring to the use of tax incentives in past elections and the potential use of tax incentives. They are referred to in my statement, but are not part of it, and I would like to make them available to the Senators and hope they will get into the record.

Before addressing the material in my statement, I would like to comment on a question raised by Senator Long with the Treasury representative. It seems to me that we have to make a distinction between the checkoff, which is a device for getting money into an election fund, and the 1974 amendments that are prescriptions as to how that money should be paid out of the fund.

Senator Long said that the failure of more than a quarter of the number of taxpayers to checkoff looks like a three to one vote against public financing. I do not think that is necessarily the case for the following reason.

Some people, such as myself, have not checked off, because we did not like the way that the money was paid out. We thought it was unfair. Other people might not have checked off, because in combination with the FEC 1974 amendments, it seems that the best political strategy is to keep one's own money out of the fund so it does not go to candidates one does not support while at the same time raising as much money as one can for the candidate one does support so he can get the other people's money.

I flew down to Washington yesterday with Stewart Mott, who is referred to in my statement, and who is a very large contributor. He pointed out that had S. 926 been in effect in the 1976 elections, he would have been matched in gifts to candidates by $75.50, even though he only put $4 into the fund over 4 years.

It seems to me that the problem is how the money goes out, not how it goes in.

In my statement, I refer to a situation in the Democratic primaries with respect to Congressman Udall and Governor Carter. Udall had 97,000-plus contributors, Carter had 94,000-plus contributors; but Carter got twice as much money as Udall because his contributors could afford larger contributions.

On the reasonable assumption that the same percentage of Udall and Carter contributors had checked off dollars on their income tax returns, the Udall people put more money into the fund. But what was the "one man-one dollar" going in, clearly was not the "one man-one dollar" coming out of the fund.

The effect of this disparity on the political outcome was probably decisive for the two candidates and for the nomination itself. Recall the Democratic primaries in Wisconsin and Michigan last year. Both were critical engagements which dashed Udall's hopes and fueled the

Carter bandwagon. Yet Carter defeated Udall in each by only a hairsbreadth margin—so narrow that for a short time after each it was thought he had lost. It is doubtful whether he could have prevailed without that extra $1,566,989 from the common pool of taxpayer money.

One wonders with what frustration a candidate would grit his teeth if he perceived that such a system was doing him in, yet felt bound by his past advocacy not to oppose it. Also, one wonders how long it will be under such a system—perhaps only until the next election—before other candidates, supported by editorial writers and a large part of the public, raise effective hell about it. And who will be their targets.

This brings us to the meaning of the 1976 experience. The plain fact is that, while Germany, Norway, Sweden, and other countries base public financing of politics on the number of citizens who support the recipients, the United States of America has instituted a means test in its elections—with moral as well as practical effects which vitiate the potential of Senator Long's initiative.

This point is fundamental. Beyond considerations of relative advantage to one or another candidate, there is the broader question of what is fair to taxpayers and voters. The majority of Americans who favor public financing as a means of curbing corruption are bound to come to realize that it is now conducted so as to deploy their tax dollars most heavily on the side of the candidates of the rich.

There are many inequalities in the real world which make for differences in the amount of political influence people have. But our history proves that the average American would rather be financially unequal to another person in any marketplace, including the marketplace of ideas—by 100 percent, 1,000 percent, or 10,000 percent—than to be politically unequal by even one-half of a percent in the eyes and actions of his Government.

What it boils down to is that, though he may not be able to give his candidate as many dollars as Clement Stone or Stewart Mott, he will insist on being the equal of Clement Stone and Stewart Mott in determining any governmental influence on the outcome of elections. And he will be right to insist.

It would be politically prudent as well as statesmanlike to anticipate such insistence in devising any future method of Government participation in election financing.

For this reason, S. 1471, with its proposed 75-percent tax credit for contributions up to $100, offers an interesting, and in some respects attractive alternative to the matching plan. It makes a significant gesture in the direction of citizen equality—but because of the magnitude of the anticipated Government participation rather than how it would work in practice.

In thinking about tax credits, it is important to recognize that, to the extent that they might work, they are as much a method of public financing as direct payments to candidates. In each case, the Government forfeits money for the benefit of candidates; and the burden of this loss is borne by the public either in additional taxes to finance other activities of Government or in the curtailment of those activities. The fact that tax incentives are also based on prior voluntary action by individual citizens, which distinguishes them from flat

grants, makes these incentives comparable to matching grants. Indeed, a tax credit might well be defined as an indirect matching grant.

If, as under S. 1471, a taxpayer makes a contribution of $100 of which $75 is subtracted from his tax obligation, the Government, in effect, is giving a three for one match for a $25 contribution. With such a ceiling, to the extent that it works—and I will soon get to the reason for this repeated caveat—the potential for inequality would be substantially reduced.

The difference between a $1 giver and a $25 giver simply is not as great as between a $1 giver and a $100 or $250 giver. Disparities between the proportions of Government subsidy and the relative numbers of candidates' supporters, though not eliminated, would be greatly reduced.

Unfortunately, such evidence as exists indicates that tax incentives will not work. Very few people have used them when available to them in the past. We just do not have any evidence to suggest that significant numbers of people would use them in the future. The percentage of people who have used tax incentives in the past is much smaller than the percentage who have made contributions.

Nevertheless, the outlook concerning the efficacy of a well-designed tax credit may not, in fact, be relatively as gloomy as this passage would indicate. First, because there is yet no evidence that the matching plan caused any appreciable changes in the size or economic profile of the contributor corps.

Second, because a tax credit sufficiently large to make a significant difference to candidates might receive more detailed and repeated promotion than is likely to be lavished on matching funds. Fundraisers may fear that knowledge that a contribution will be matched may tend to reduce the moral pressure on the giver to make it as large as he can afford, but they will go all out to encourage the use of tax credits if these are large enough.

Senator Packwood referred to going down the street and telling everybody about the credit. If the tax credit is 50 percent on a $10 contribution, that may not make much difference. It may not be worth taking time to go down the street to do it.

If the tax credit is substantially larger than that, I suspect that time will be taken and the people who are reached by those who take the time will respond.

Senator Packwood. I am intrigued by the supplement to your statement about some kind of voucher for immediate rebate so he would not have to wait until he files his tax return.

Mr. Agree. The problem I see with your proposal is that some people could not put up $100 and wait 6, 8 or 9 months to get their $75 back. They simply could not afford it. The result of that could be that the generous tax credit you offered would, in fact, not be available to people of lower income.

If a way could be found to make it immediately available, then obviously everybody could do it. And so I offer for your consideration a tax credit that would function similarly to a voucher plan. Offer the tax credit, make it a 100-percent tax credit for contributions of a lesser amount—say 10 or 25. Motivated contributors would continue to give additional cash—$10, $25 or $100, depending on their means. But many new people might be drawn into political participation which

would be valuable to them and to society if they are enabled to do so at no out-of-pocket cost.

Second, eliminate the waiting time by giving the credit on the preceding year's taxes instead of those of the current year. This should not make any difference to the Treasury; and it would eliminate the need for a cash disbursement by the donor. It could be accomplished by issuing a standard form or voucher which candidates could distribute to eligible supporters for them to fill out. The form would state the maximum credit to which taxpayers are entitled. Each donor would fill in the name of the candidate's committee, his own signature, his social security number, the address from which he filed the relevant tax return, and the amount of his credit he wishes to allocate to the named committee. The candidate would present this voucher to the IRS which would run a computer check of the validity of the donation and give the indicated amount to the candidate.

Such a system would eliminate the complicated work presently required of the Federal Election Commission to process submissions for matching grants, and enable it to reduce its staff. It would allow speedier delivery of funds to candidates. It would avoid a repetition of the Governor Shapp fiasco—just imagine the problems if a less wealthy man, or an already elected official, were found to have been ineligible for the Government money he had campaigned with.

It would permit deletion of the check-off and tax credit lines on the 1040 forms. It would be administratively simpler for the IRS than the voucher distributions envisioned in earlier proposals. It would put substantial amounts of new and clean money into the political process. And it would assure opportunity for equal participation by all taxpayers in the allocation of public funds for elections.

Thank you very much, Mr. Chairman.

Senator LONG. That is an interesting thought. We are thinking along somewhat the same lines. I was thinking of the suggestion that if you wanted to pursue this approach, Senator Packwood, you might fix it so when people go out and seek campaign contributions that those campaign workers would simply get the forms available from the Government and just fill them out. If they wanted to, they could even have a voucher form from the Government, for a Government check, so the Government could just put a stamp on it and mail it out to people when the application appeared to be in order, so people would not have to be separated from their money very long.

A man might put up $100 and get $75 back in a week. The people operating the committee could have the list of their donors and provide their names, addresses, and social security numbers, and could just mail them right out so as to certify that the people made contributions and to present whatever evidence is needed, such as personal checks. Prior to the time when the campaign people deposited their checks, there could be a procedure where they could go down to the bank, the same bank officer who accepts the deposit could certify that their checks had been deposited and they get their money immediately.

That has an appeal beyond the idea of the 75 percent tax credit.

Mr. AGREE. Senator, I think that would really solve the most important part of the problem and truly make it available to vast

numbers of people who would not be able to do it otherwise. I would look forward to contributing $100 to Senator Packwood on that basis.

An alternative, although I think it would be more awkward and cumbersome than yours, would have the contributor give his receipt, an officially prescribed form, and so on, to his employer to send in lieu of withholding. That, too, could be processed rather quickly. However, I do not think you would want all of the employers of the country knowing about these contributions.

Senator LONG. It seems to me that the simplest way for the person out collecting money to get the pertinent information—and I think it could be worked out—would be to simply copy the names and addresses from the receipt showing that people donated.

I know in our case, in the last campaign, we had to ask everybody to sign some sort of form that was furnished by the Election Commission to elect to place ourselves, really, under the new disclosure laws and conflict laws. Among other things, we asked people to certify that they were not going to seek to be reimbursed by anybody after they made the contribution. This was to guard against someone making a contribution and then going and getting reimbursed by his corporation, or something of that sort. The candidate would not know anything about it, and then he would be embarrassed when he found out that someone made an illegal donation. It was not illegal when the person made it, it was illegal when the person got himself reimbursed from his corporation. So to protect ourselves against that sort of thing, we asked people to sign a statement certifying that that was their money they were contributing, that they were not going to seek to be reimbursed, and whatever we could think of to protect ourselves. A lot of times contributors said, if I have to go through all of that, the heck with you. I am not going to make the donation. Forget about it. But usually you can persuade a person to sign such a statement.

Then you have the information that the campaign law requires for reporting purposes—at least, you have the address. All you would have to do is mail him his check; and it is so much simpler for the person collecting it to fill out forms or one form for all the donors rather than for each individual person to go to the trouble to get a form and go down to the Post Office and find somebody. It is easier to just have one person on behalf of the Senatorial campaign to go down there and take a whole bunch of applications with him, perhaps even make out the addresses, the envelope in which the check would be stuffed, and just mail them out.

Thank you very much.

Mr. AGREE. If I may, Senator, I want to point out the one possible development in the event that you have deferred credits without some provision for fast credit, I have been thinking about this. I have been involved in campaigns and fund raisings.

It occurs to me, if I were running for office and were asking people to make a $100 contribution for which they would have to wait half a year or more for their $75 credit, I might find some millionaire friend of mine—I know of many campaigns in which this would have been easy to do, and not illegal, as I read the current law—to make loans to the people who give the money, that they would get credit for later on.

Senator LONG. Those things, of course, have to be carefully considered. One approach that might have merit, which would treat all candidates equally, would be to simply provide a tax credit for a successful candidate and for a candidate who ran a good race, for whatever amount you wanted to provide. You could provide $20,000 to the winner and $10,000 to the person who was the serious runner up. Or you could provide twice that much, if you wanted to. On that basis you would be providing a benefit for the man that the public chose and some sort of consolation prize for someone who really made the effort and ran a decent race.

I have oftentimes thought that what we are trying to do in large measure is to protect people from improper influence. I do not have much interest in the guy who also-ran. It is the man who is elected—he is the one I am concerned about. He is the one who is going to be there representing us.

Every time I raise that possible approach, someone invariably says, how about the poor fellow that gets 49 percent of the vote. Is it fair to leave him out completely? If you had that type of thing—let us say the candidate would get $20,000—then you would also have the Republican or Democratic Committee raising money. Most Democratic candidates for the Senate are given $17,000. Add the two together, and that gives the candidate a pretty nice amount to make his campaign—not the whole campaign, but it relieves some of the pressure. And he still can go out and make contributions. Does that approach appeal to you?

Mr. AGREE. Adjust further amounts after the election?

Senator LONG. Suppose a candidate had a tax credit, assuming he had either spent the money or had borrowed the money for any given figure, perhaps $20,000 or even $40,000, to help him defer the cost of his campaign, with whatever pro rata amount that seemed fair going to the runner-up who received a substantial amount of votes. You would have to look at the facts after the race and see how many votes the candidates got.

Mr. AGREE. If I understand you, that is very similar to the German system. They give candidates about 60 percent of what they think they are going to be entitled to before the election, the remaining 40 percent after the election, adjusted upwards or downwards, according to how well they actually did.

In their case, they do it to parties. I think it would be much more difficult to do it fairly to individual candidates.

How well Senator Javits ran 2 years ago is not going to be any indication as to how well I ran. It would be difficult to anticipate.

Senator LONG. If I might say, I do not worry too much about the kind of fellow who has no business being in government who goes out and has one fling at it and finds out that that is not his calling. People have a right to do it. When they do, they are not doing themselves or anybody else any favors. It is just not their call.

When you get ready to run for the U.S. Senate, you really have no business being in there unless you know something about what you are trying to do.

I would think, if a candidate runs for the U.S. Senate, he should be pretty good at what he is doing, or have been involved in political

campaigns and knows what it is all about. He should have been a man who is elected to something and has a record to run on that people can look to.

You and I know, you can take polls nowadays and learn what the prospects are. You can predict the winner before it starts.

Mr. AGREE. On the elections side, I completely agree with you; on the side of using tax money, I must disagree. I might like that screwball candidate who is not going to get more than 5 percent of the vote. I would not want my tax money used for the other people. I would want some share of that money to go to him.

If he only gets 5 percent of the vote and only gets 5 percent of the public money, the public is not out very much money. Let him have it. It is not going to change the situation.

Senator LONG. I was not suggesting this as a substitute for what we have. This should be something additional. I think I cut you off. You were going to add an additional point?

Mr. AGREE. No, sir. I think I have made all the points I want to make.

Senator LONG. Thank you.

Senator Packwood?

Senator PACKWOOD. I have one question. I am curious about these charts that you have provided. Table 773, Contributors and Potential Contributors Under a Tax Incentive Plan, 1972. Under the column percentage of classes of potential contributors, 1972, noncontributors responding that they would contribute if they could obtain a tax-break for doing so, am I reading the table correctly that the highest percentage of those who said that they would give if they were given an incentive were the income class $0 to $5,000?

Mr. AGREE. That is correct.

Senator PACKWOOD. The next highest was $5,000 to $10,000?

Mr. AGREE. That is correct. This is a clear indication——

Senator PACKWOOD. A very clear indication, even though these income classes cannot give now because they do not feel they can afford to, but would be the most likely to give.

Mr. AGREE. Indeed, they had the tax incentive at the time, but were not aware of it.

Senator PACKWOOD. Thank you very much.

[The prepared statement of Mr. Agree follows:]

STATEMENT OF GEORGE E. AGREE

Mr. Chairman and members of the Subcommittee, my name is George Agree. I have been a fund raiser for Senate and House candidates for many years, am Director of the Committee for the Democratic Process which is concerned with election reform, was co-author with David Adamany of "Political Money," published in 1975 by the Johns Hopkins University Press, and have written articles on the subject for the New York Times and several scholarly journals.

Since Senator Long's initiative and energy put this important subject on the national agenda in 1966, I have testified concerning it before various Congressional committees. I am particularly grateful for your invitation to be here today because now we are dealing not only with theories and speculations, but with facts.

We have a public financing law. It operated during one election. It included the matching fund system which is the leading alternative to S. 1471 now being considered by Congress for application to its own elections.

What did the matching fund system do? What is the meaning of what it did?

Millions of Americans checked off millions of dollars for the Presidential Election Fund. They were told that its purpose was to clean up elections and make them fairer. They were told that it was a "one man-one dollar" system, and that nothing could be more in the American tradition.

But something happened on the way to distributing that money. Federal Election Commission figures released on February 20, 1977 show that tax money in the presidential primaries did not flow to candidates according to the number of Americans supporting them, but in proportion to the wealth of their contributors.

Representative Morris Udall, who had more contributions than Governor Carter (97,764 to 94,419), received only about half as much checked off money ($1,898,686 to $3,465,584) because his average donor could only afford half as much as the average Carter giver ($21.84 to $41.09).

(The difference was even greater between two other candidates with roughly equal numbers of contributors. Senator Jackson received $1,980,554 for 58,372 contributions, while Fred Harris, with 56,021 contributors, received less than one-third as much—$633,099.)

On the reasonable assumption that the same percentage of Udall and Carter contributors had checked off dollars on their income tax returns, the Udall people put more money into the Fund. But what was "one man-one dollar" going in clearly was not "one man-one dollar" coming out of the Fund.

The effect of this disparity on the political outcome was probably decisive for the two candidates and for the nomination itself. Recall the Democratic primaries in Wisconsin and Michigan last year. Both were critical engagements which dashed Udall's hopes and fueled the Carter bandwagon. Yet Carter defeated Udall in each by only a hairsbreadth margin—so narrow that for a short time after each it was thought he had lost. It is doubtful whether he could have prevailed without that extra $1,566,989 from the common pool of taxpayer money.

One wonders with what frustration a candidate would grit his teeth if he preceived that such a system was doing him in, yet felt bound by his past advocacy not to oppose it. Also, one wonders how long it will be under such a system—perhaps only until the next election—before other candidates, supported by editorial writers and a large part of the public, raise effective hell about it. And who will be their targets.

It might be argued that since Carter's supporters were richer anyway, Udall could have been better off with this system than he might have been without it—that he could have derived more incremental benefit from his less than $2 million in taxpayer funds than Carter did from his nearly $8.5 million. But it is a doubtful proposition, and not likely to commend itself to many taxpayers. Doubling the dollar gap between closely running opponents, even if helpful in a rare case, would be damaging to most financially poorer candidates. And it surely is true that Udall himself would have done much better under a system which, like those in other democracies, gave him and his opponents public money in direct proportion to the number of citizens supporting them.

This brings us to the meaning of the 1976 experience. The plain fact is that, while Germany, Norway, Sweden and other countries base public financing of politics on the number of citizens who support the recipients, the United States of America has instituted a means test in its elections—with moral as well as practical effects which vitiate the potential of Senator Long's initiative.

This point is fundamental. Beyond considerations of relative advantage to one or another candidate, there is the broader question of what is fair to taxpayers and voters. The majority of Americans who favor public financing as a means of curbing corruption are bound to come to realize that it is now conducted so as to deploy their tax dollars most heavily on the side of the candidates of the rich.

There are many inequalities in the real world which make for differences in the amount of political influence people have. But our history proves that the average American would rather be financially unequal to another person in any marketplace, including the marketplace of ideas— by 100%, 1,000%, or 10,000%— than to be politically unequal by even one-half of a percent in the eyes and actions of his government.

What it boils down to is that, thought he may not be able to give his candidate as many dollars as Clement Stone or Stewart Mott, he will insist on being the equal of Clement Stone and Stewart Mott in determining any governmental influence on the outcome of elections. And he will be right to insist.

It would be politically prudent as well as statesmanlike to anticipate such insistence in devising any future method of government participation in election financing.

For this reason, S. 1471, with its proposed 75 percent tax credit for contributions up to $100, offers an interesting, and in some respects attractive alternative to the matching plan. It makes a significant gesture in the direction of citizen equality—but because of the magnitude of the anticipated government participation rather than how it would work in practice.

In thinking about tax credits, it is important to recognize that, to the extent that they might work, they are as much a method of public financing as direct payments to candidates. In each case, the government forfeits money for the benefit of candidates; and the burden of this loss is borne by the public either in additional taxes to finance other activities of government or in the curtailment of those activities. The fact that tax incentives are also based on prior voluntary action by individual citizens, which distinguishes them from flat grants, makes these incentives comparable to matching grants. Indeed, a tax credit might well be defined as an indirect matching grant.

If, as under S. 1471, a taxpayer makes a contribution of $100 of which $75 is subtracted from his tax obligation, the government, in effect, is giving a three for one match for a $25 contribution. With such a ceiling, to the extent that it works (and I will soon get to the reason for this repeated caveat), the potential for inequity would be substantially reduced. The difference between a $1 giver and a $25 giver simply is not as great as between a $1 giver and a $100 or $250 giver. Disparities between the proportions of government subsidy and the relative numbers of candidates' supporters, though not eliminated, would be greatly reduced.

Unfortunately, such evidence as exists indicates that tax incentives will not work. In research for *Political Money*, Adamany and I found that (see pages 126–128):

"In fact, the vastly widened participation in financing campaigns predicted by tax incentive advocates has failed to materialize. Despite the federal credit-or-deduction option available in 1972, the percentage of voting-age Americans making campaign contributions was the same 12 percent as in 1960 and 1964.

"The insignificant impact of tax incentives for political contributions is confirmed by the small number of taxpayers using them. Only 2.5 percent of individual taxpayers took the federal credit in 1972 and only 1.3 percent took the deduction. The total of 3.8 percent is not only far less than the 12.4 percent who gave, it is probably exaggerated because many taxpayers tend to falsely claim hard-to-trace tax breaks . . .

"Moreover, tax incentives do not reduce the disproportionate representation of high income groups among campaign givers by encouraging low income people to participate. In 1972, those with adjusted gross incomes of $20,000 or more were 27 times as likely to claim a political tax incentive as those with incomes under $5,000. Yet these high income people were only 9 times as likely to give as their lower income neighbors . . ."

Our survey found that, ". . . Americans generally did not know of the tax incentives. To test the possibility that if Americans knew of tax incentives they would use them, a further question was asked . . . Those who said they would give if a tax incentive was available were only 5.7 percent of the sample. Taking their answers at face value, they would have added only marginally to the American contributor base, increasing it from 12.4 percent to 18.8 percent. And while these self professed tax-inspired givers are somewhat more representative by income of the general population than is the actual contributor corps, the highest income classes are still almost three times as likely to give as the poorest group."

(Mr. Chairman, I have appended two relevant tables from *Political Money* which I will not read but would appreciate having appear in the record.)

TABLE 7-2.—POLITICAL TAX INCENTIVE USERS AND CAMPAIGN CONTRIBUTORS BY INCOME CLASS

Income group [1]	Percentage of returns in each income class using tax incentives			Percentage of U.S. population contributing		
	California 1972 [2]	Oregon 1970 [3]	United States 1972 [4]	1968 [5]	1972 [6]	Change
	(1)	(2)	(3)	(4)	(5)	(6)
0 to $4,999	0.2	0.2	0.4	3.0	3.7	0.
$5,000 to $9,999	.7	.1	2.2	7.3	11.5	4.2
$10,000 to $14,999	1.7	.4	4.1	8.4	11.7	3.3
$15,000 to $19,999	3.3	1.2	[7] 6.2	14.3	19.8	5.5
$20,000 and more	9.2	5.9	[7] 10.8	24.1	32.0	7.9
Total	2.1	.5	3.0	7.6	12.4	4.8

[1] Adjusted gross income in cols. 1–3; total family income in cols. 4–6. These figures are roughly comparable in most cases.
[2] Information provided by California Franchise Tax Board.
[3] Information provided by Oregon Department of Revenue.
[4] Information provided by U.S. Internal Revenue Service; includes both credits and deductions.
[5] Source: Survey Research Center of the University of Michigan.
[6] Source: Twentieth Century Fund Survey (see ch. 3, n. 1, above).
[7] Estimated. Includes proportionate distribution between the 2 income classes of IRS information provided for the2 combined.

TABLE 7-3.—CONTRIBUTORS AND POTENTIAL CONTRIBUTORS UNDER A TAX INCENTIVE PLAN, 1972

Income class	Percentage of income class contributing in 1972	Percentage of class' potential contributors in 1972 [1]	Total
0 to $4,999	3.7	8.2	11.9
$5,000 to $9,999	11.5	8.0	19.5
$10,000 to $14,999	11.7	4.4	16.1
$15,000 to $19,999	19.8	2.5	22.3
$20,000 and more	32.0	0.8	32.8
Total by income [2]	12.4	5.9	18.3
Total [3]	12.4	5.7	18.1

[1] Noncontributors responding that they would contribute if they could obtain a tax break for doing so.
[2] Totals of those respondents who reported family income (N=1332).
[3] Totals of full sample, including respondents who did not report family income (N=1481).

Source: Twentieth Century Fund Survey (see ch. 3, n. 1).

Nevertheless, the outlook concerning the efficacy of a well designed tax credit may not in fact be relatively as gloomy as this passage would indicate. First, because there is yet no evidence that the matching plan caused any appreciable changes in the size or economic profile of the contributor corps. Second, because a tax credit sufficiently large to make a significant difference to candidates might receive more detailed and repeated promotion than is likely to be lavished on matching funds. Fund raisers may fear that knowledge that a contribution will be matched may tend to reduce the moral pressure on the giver to make it as large as he can afford, but they will go all out to encourage the use of tax credits if these are large enough.

More troubling is the fact that the most attractive feature of the tax credit in this bill—the effective three to one match for a relatively small $25 contribution—is one which few $25 givers are likely to feel they can afford. They may be tempted by the prospect of putting $100 into the coffers of a candidate they favor, but unable to tie up the additional $75 for the six to twelve months they would have to wait to get the benefit of the credit. In practice, therefore, the effect of the credit may not be very different from the pre-subsidy situation, except that people who give what they would have contributed in any event would now be eligible for a windfall rebate at a cost to the Treasury that yields no additional benefit to candidates.

This quandary suggests a completely new approach your committee may wish to consider. It is a tax credit that would function similarly to a voucher plan.

First, offer a 100% tax credit for contributions up to some lesser figure—say $10 or $25. Motivated contributors would continue to give additional cash—$10,

$25 or $100, depending on their means. But many new people might be drawn into political participation which would be valuable to them and to society if they are enabled to do so at no out-of-pocket cost.

Second, eliminate the waiting time by giving the credit on the preceding year's taxes instead of those of the current year. This should not make any difference to the Treasury; and it would eliminate the need for a cash disbursement by the donor. It could be accomplished by issuing a standard form or voucher which candidates could distribute to eligible supporters for them to fill out. The form would state the maximum credit to which taxpayers are entitled. Each donor would fill in the name of the candidate's committee, his own signature, his social security number, the address from which he filed the relevant tax return, and the amount of his credit he wishes to allocate to the named committee. The candidate would present this voucher to the IRS, which would run a computer check of the validity of the donation and give the indicated amount to the candidate.

Such a system would eliminate the complicated work presently required of the Federal Election Commission to process submissions for matching grants, and enable it to reduce its staff. It would allow speedier delivery of funds to candidates. It would avoid a repetition of the Governor Shapp fiasco (just imagine the problems if a less wealthy man, or an already elected official, were found to have been ineligible for the government money he had campaigned with). It would permit deletion of the checkoff and tax credit lines on 1040 forms. It would be administratively simpler for the IRS than the voucher distributions envisioned in earlier proposals. It would put substantial amounts of new and clean money into the political process. And it would assure opportunity for equal participation by all taxpayers in the allocation of public funds for elections.

Thank you very much, Mr. Chairman.

Senator LONG. Now let me call Mr. Richard P. Lorber. We are very pleased to have you before the committee and pleased to hear your views.

STATEMENT OF RICHARD P. LORBER

Mr. LORBER. Thank you, Mr. Chairman. I am one of the dead bodies that you talked about before.

I have a very short statement. I would like to add to the point of comparison of S. 926.

S. 926, Senator, has a tendency to create the situation where the most inept incumbent is guaranteed his seat. The reverse of that is probably borne out best in Wisconsin where Senator Proxmire spent $693. His record, his performance, were the basis of the election.

In other States—I do not want to go into personalities—in other States where the performance was not considered that good where an incumbent spent twice as much as the challenger, and there are examples of that, the incumbent lost.

I think each U.S. Senator should be judged on performance and does not need a Federal subsidy as such to guarantee life tenure. If, indeed, they were entitled to life tenure, it would not have been a 6-year term in the Constitution.

In regard to S. 926. I happen to agree with all of the President's objectives, but I do not think that that bill meets any of them. He wants more people in the political process. That is what it is all about. This would drive them out of it. It would be impossible to have a meaningful challenge in S. 926 in the primaries, especially the primaries. The identification costs would eat up in the small States more than the total amount available, just on identification, without getting into a campaign of any kind.

An incumbent does have some advantages. I ran against an incumbent Governor in the primary. We won, but we had certain expenses he just did not have. I could not take people out of the State payroll

to run my campaign on a gratis basis; he could. Of course, after the campaign was over, they were returned to the State payroll at nice increases in pay. I think that was very fine, but a challenger does not have that benefit.

A challenger does not have the benefit in a primary of having the entire party organization out fund raising for him. He has to pay to do that. He has another cost—every one of costs are magnified—the get-out-the-vote drive. He pays for it. The incumbent does not pay for it. That is gratis.

S. 926 says you get equal treatment unless someone should dare go beyond the spending limit. The one who is going to have to go beyond the limit, that would have to be the challenger. Then the incumbent gets the Federal money, the challenger gets nothing.

I do not think we need laws to protect those Senators who do not do their jobs. I think we do need laws to involve people in the political process.

I think that your Presidential checkoff law is exceptionally good. It is exceptionally good because of the perception of the people toward the Presidency. On balance, I think that if you went into a survey, if that were possible, of those people who did check off, they feel that there is a two-party system and both candidates should get an equal amount. It should be a pretty fair race financially. They are not too involved in who the candidate is, because they are checking this off in advance. They do not even know, necessarily.

When you are talking about a Senate race, it becomes a very personal thing and you are the Senator from Louisiana. I know that, not because you are sitting here, but because when I go down to Gretna, to that famous eating place, and say I just talked to your Senator—Johnston that day—he says, "You mean Russell Long. He is my Senator." It is a very personal relationship that they have and they identify very directly and they want that money to go very directly when they make that contribution.

A checkoff system, fund matching by the Government, that is not a thing for a congressional, Senate, or any kind of race like that. A President is looked at in an entirely different way.

You want people involved in the political process. You talked about making a horserace out of it, more or less. You know, in a horserace they say, you put your money where your mouth is. When a man puts his money where his mouth is politically and he contributes $100 to you, he is going to be out there working for your campaign. He is going to tell every one of his friends, because he has something riding on you.

What rides on you is his pride. His pride. And I think that there should be incentives for that pride.

The way tax law is currently written, we cannot involve more people in it unless we make it possible for them to participate on a fair basis. If it comes off as a deduction on unearned, if it was on my income, it would be 70 percent. Yet the poor fellow comes out at 10, 12, 14, almost nothing. It cost him six times more to give the same dollar.

I do not think that is right. If he participates, he should have more incentive than ever and he should be involved in the process. Let's get the people involved in the process. There are two ways of getting them involved. One is money and the other is a heck of a hot race. We set a record in Rhode Island. They had never had as many people turn out for a primary, but it was a hot race. There was a contest.

I could equalize that contest because I earned my money. That first dollar I ever made, I threw rocks at guys unloading coal. They threw the coal at me and I sold it. Nobody complained when I shed my blood for my country in World War II. They did not say, you are limited.

I have earned my money and I can spend it in a campaign. I am not limited. I earned it and I can spend it. I cannot portray somebody whom I am not and still appear before an audience. It does get people to know who in the devil you are. The more they know about the candidate, the better informed they will be, the more likely they will be to vote, the more real the contest becomes.

And I want the people involved. I think they should be involved. The more involvement on the part of the electorate, the better the country will be. I do not like to see 52 percent voting. In Rhode Island we had something like 80 percent. I think that is fine. I would like to see it 90 percent. I wouldn't expect 95 percent because we will never get there, but a realistic goal is 90 percent.

I do find one technical problem in Senator Packwood's bill, that is, how do you stop the scoundrels from doing one thing. Let us take a scoundrel who is going to go out and raise some funds, so he says look, I will give you $30, give me a check for $100. You will get back $75. My $30 is just a gift to you for your damned good looks. That is what I am giving everybody as a fundraising gimmick.

If he does that, for every $30, the candidate now will get $100 and the donor gets $105. You have to have a safeguard. There can be no transactions of any kind through any agent or anybody else connected with the campaign with cash payments because I know some people—we have a fantastic State. Many of its politicians are an anachronism in many ways. We have some people who could do that. They are very good at it, and I do not think that the law should overlook that possibility.

I would like to see every person participate. I have never seen people work harder in a campaign than the ones who donate. If they put their money there, you do not have to call them. They will call you, what can I do for you. They are telling their friends. There is nothing you can do on television that is half as good as 1,000 people saying vote for him, he is a heck of a guy.

I will stop there.

Senator LONG. Well, you made a fine statement. I think that you have highlighted something which we ought to recognize and that is if a person wants to make a career out of serving in the Government, especially high levels of government, we ought to expect him to make some sacrifice to do it. It is a sacrifice of a great deal of time, effort, money. The kind of people who seek this kind of office are people who are dedicated and who fully expect to make a substantial sacrifice in order to serve the public.

I sort of share your view. There is no point in trying to make it easy. This thing of running for public office at taxpayers' expense is something we do not want. If someone has a real interest in service, he should run for the job. We want to ease the burden for him. However, I do not think that most people who make a major contribution to government think of it as something that should be available to anybody who is not willing to make a real effort and a personal sacrifice.

Mr. LORBER. Senator, one thing was brought up before that does trouble me, because S. 926 gets involved in it. This bill does not. It allows enough leeway should the contingency arise, so that you can defend yourself. This is what I am speaking to.

Should a special interest group, the World Ends Tomorrow Group—we will form it—the World Ends Tomorrow Group decides that you are a target. They can spend any amount of money in Louisiana in the primary campaign against you and under S. 926 you cannot defend yourself. You asked about long-term effects before, if I recall. In that case, if S. 926 goes through, I do not know what the makeup of the U.S. Senate will be. I will tell you what it will not be.

It will not be anyone who resists any major money group. That is what it will not be.

Senator PACKWOOD. Not only money group. Many groups who do not have money, in the sense of wealth groups, but a lot of members with a single-minded view.

Mr. LORBER. I was amazed. By the way, if they want to set up a political committee under that particular law that is being proposed, it is interesting. All they have to do is get 100 people to put up $100 and they get matching funds.

If you cannot think—I can think of so many groups that can raise $100 from 100 people in any State, that you would have a proliferation of not necessarily Nazis or hate candidates or whatever you may want to call those pseudo candidates who were confused over the whole darned process.

Senator LONG. Yes; and it would not be very hard for people with that kind of impact to have one of these character assassinations placed in the race. In Louisiana, we have had that happen. People have gotten somebody to go into a race to attack the leading candidate. We recently had a fellow who ran for office down there who ended up in court. He was a character assassin. He was prosecuted for criminal libel.

Really, some of the things that he said were very out of place. If you do not watch out, you will find yourself subsidizing a political character assassin—if you only have to have 100 people sign up and contribute $100. It might lead to some results that nobody ever intended.

Senator PACKWOOD. I am curious. I do not know who it was, but under the Spreme Court decision in *Sullivan*, where you can say anything about anybody in politics, this fellow must have really gone through any conceivable bounds to be convicted.

Senator LONG. He went pretty far, no doubt about that. He was quite a performer. A lot of people did not take him seriously. They would turn out to see him just because of the show.

Thank you very much.

[The prepared statement of Mr. Lorber follows:]

TESTIMONY OF RICHARD P. LORBER

GENTLEMEN: As the former Democratic candidate for the U.S. Senate from R.I. I feel qualified to speak on behalf of the concept behind S. 1471.

As I understand this bill it would make small contributions to U.S. Senate campaigns eigible for a larger tax credit, a concept with which I wholeheartedly agree.

"Give to the college of your choice", "help fight disease"—your contribution is deductible. This is as it should be. But if you support individually a candidate-

for the U.S. Congress that contribution currently must come from "after tax" dollars, except for the current, limited credit and deduction.

I feel that a contribution made to insure free and unfettered government is certainly a worthwhile matter and within reasonable limits should be treated as a tax credit. It would be equally fair to all contestants and would broaden the economic base of financial support diminishing reliance on special interest groups.

There has been legislation submitted for direct public financing which is a tailor made protection plan for incumbents and in effect a raid on the U.S. Treasury which would inure to the benefit of the most inept of incumbents. I do not believe that any candidate should have easy access to the U.S. Treasury in a congressional race.

More people should be encouraged to vote and to support and participate in elections. I believe that in U.S. Congressional elections—both in primaries and General Elections—any contribution of up to $200.00 should be treated as a tax credit for the donor on the donors income tax return. For some 40 million taxpayers who use the standard deductions this would enable them to participate in a universal system of campaign financing for a better government. It would also in some measure tend to create a more informative level of campaigning which in some measure could have the effect of stimulating voter interest and more even handed financing.

[Whereupon, at 12:20 p.m., the hearing in the above-entitled matter was recessed, to reconvene at the call of the Chair.]

[By direction of the Chairman, the following communication was made a part of the record:]

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., May 20, 1977.

Hon. HARRY F. BYRD, Jr.,
Chairman, Subcommittee on Taxation and Debt Management, U.S. Senate Finance Committee, Washington, D.C.

DEAR MR. CHAIRMAN: The Chamber of Commerce of the United States supports legislation which would increase the tax credit for contributions made to political candidates.

Under current law, a taxpayer can elect either an itemized deduction for political contributions up to $100 for single returns or $200 for joint returns or a credit of 50 percent of a contribution, up to $25 for a single return and $50 for a joint return. S. 1471 would increase the tax credit for contributions to Senate candidates to 75 percent, up to $100 for a single return and $200 for a joint return. We support an increase in the tax credit for campaign contributions but believe that the increase should not be restricted to Senate candidates.

An increase in the tax credit for political contributions would motivate more people across the land to make larger voluntary contributions to candidates of their choice, thus spreading the cost of political campaigns over a larger portion of the electorate and promoting greater interest and participation in the election process.

Of equal importance, an increase in the tax credit for political contributions would reduce, if not eliminate entirely, the mounting sentiment in the Congress favoring federally subsidized campaigns. Such subsidies would divert resources from more important needs in the national and public interest. Further, the encouragement of voluntary contributions through reasonable tax credits would keep greater control of the candidates' campaign financing and spending in the hands of the candidates' constituents. Otherwise, the Congress would have free rein to appropriate from tax revenues whatever amounts Senate and House incumbents believe necessary to conduct their own campaigns and perpetuate themselves in office.

Furthermore, since our democratic process is based on popular choice, increasing the tax credit for political contributions would encourage the residents of a state or congressional district to contribute voluntarily, and to otherwise give support to those candidates they believe best qualified for public office.

We appreciate your consideration of the views of the National Chamber and we request that this letter be made a part of the hearings record.

Sincerely,

HILTON DAVIS,
Vice President, Legislative Action.

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