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Ellen Ash Peters

*University of Connecticut School of Law*

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# Political Campaign Financing: Tax Incentives for Small Contributors

Ellen A. Peters\*

One of the most important responsibilities of a democratic society is to safeguard the integrity of its electoral system. The democratic blueprint must be implemented so as to assure free, equal, and meaningful access to the polls. The 85th Congress has made great strides in this direction by the enactment of the Civil Rights Act of 1957 to protect the right to vote of all our citizens.<sup>1</sup> But the ability to vote is no guarantee of its meaningful exercise, or, for that matter, of its exercise at all. It is to this end that our political campaigns are directed.<sup>2</sup> The proper conduct of such campaigns is a vital stimulant to the optimal functioning of the electoral process. Yet on this subject, congressional action does not seem to be forthcoming.

One major problem in political campaigning today concerns campaign financing.<sup>3</sup> This is a problem which has become more

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\*Assistant Professor of Law, Yale Law School. The author wishes to acknowledge her thanks for the generous assistance and advice of Professor Frank C. Newman, School of Law, University of California, and of the Study Group in Money and Elections which he conducted at Berkeley in the spring of 1950.

1. 71 STAT. 634 (1957). Title IV of the act is particularly aimed at protection of the right to vote. See H.R. REP. No. 291, 85th Cong., 1st Sess. (1957), reprinted in 1957 U.S. CODE CONG. & AD. NEWS 3502.

2. "Political campaigns . . . are the primary instrument through which public opinion exerts its influence on the men and measures of government. The purpose of an election is simple. It is to decide who our public officials are to be. The purpose of the campaign is equally simple. It is to help insure that this decision will be a wise one. A choice between candidates would be meaningless if we knew nothing about their qualifications, their records, and their ideals. In the campaign, the politician has a chance to present his ideas systematically and intensively, and the public has the opportunity to compare and to take account." Kelley, *Afterthoughts on Madison Avenue Politics*, 17 ANTIOCH REV. 173 (1957).

3. For general discussions of this subject, see FORD, *REGULATIONS OF CAMPAIGN FINANCE* (1955); HEARD, *MONEY AND POLITICS* (1956); OVERACKER, *PRESIDENTIAL CAMPAIGN FUNDS* (1956); Bicks & Friedman, *Regulation of Federal Election Finance: A Case of Misguided Morality*, 28 N.Y.U.L.Q. REV. 975 (1953); Bottomley, *Corrupt Practices in Political Campaigns*, 30 B.U.L. REV. 331 (1950); Lederle, *Political Committee Expenditure and the Hatch Act*, 44 MICH. L. REV. 294 (1945); Lucas, *The Strength of Ten: Three-Quarters of a Century of Purity in Election Finance*, 51 N.W.U.L. REV. 675 (1957); Mitau, *Selected Aspects of Centralized and Decentralized Control over Campaign Finance: A Commentary on S. 636*, 23 U. CHI. L. REV. 620 (1956); Neuberger, *Campaign Spending in the United States*, in ENGLISH SPEAKING WORLD 22 (January 1953); Note, *Statutory Regulation of Political Campaign Funds*, 66 HARV. L. REV. 1259 (1953); *Hearings Before the Subcommittee on Privileges and Elections of the*

acute with each passing election year. Campaign expenditures of tens of millions of dollars have become a commonplace in our presidential and congressional election years' contests.<sup>4</sup> Expenditures of this magnitude are neither surprising nor unjustified when we consider the number of potential voters and the degree of apathy with which many of them regard platforms and candidates.<sup>5</sup> To the extent that campaign expenditures succeed in arousing voter interest and in getting out the vote on election day, they are a worthwhile cost of democratic government, for they produce election results more truly representative of the wishes of the majority of the voting population than would otherwise be likely. Nonetheless, the very size of the sums involved invites scrutiny not only of their ultimate use but also of their origins. This raises the question of what campaign contributions are proper. It is axiomatic that campaign expenditures require

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*Senate Committee on Rules and Administration on S. 636, 84th Cong., 1st Sess. (1955); Hearings Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 84th Cong., 2d Sess. (1956) (hereafter Gore Hearings); Hearings before the Special Senate Committee to Investigate Political Activities, Lobbying, and Campaign Contributions, 84th Cong., 2d Sess., and 85th Cong., 1st Sess. (1956-1957) (hereafter, McClellan Hearings). Cf. Newman, Money and Elections Law in Britain—Guide for America?, 10 WEST. POL. SCI. Q. 582 (1957).*

4. In the most intensive study of election financing ever undertaken, a Senate committee headed by Senator Albert Gore of Tennessee found that \$33,185,725 had been spent in the 1956 general election campaigns. *Report of the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration, 85th Cong., 1st Sess. 2, 38 (1957) (hereafter Gore Report).* Official reports filed according to law showed expenditures of \$13,862,413 in 1954, 11 CONG. QUARTERLY ALMANAC 722 (1955) and \$23,064,367 in 1952, 9 CONG. QUARTERLY ALMANAC 51 (1953).

All commentators seem to agree that these figures are a substantial understatement of actual expenditures, and that at least \$100,000,000 is probably spent in presidential years. Professor Alexander Heard of the University of North Carolina estimates that the total cost of the 1952 campaign on national, state, and local levels was roughly \$140,000,000. *Gore Hearings*, at 234. See also Phillips, *Election Fund Inquiry*, N.Y. Times, Feb. 26, 1956, pt. IV, p. 6E, col. 1.

5. In 1956, according to the Bureau of the Census, there were 104,850,000 potential voters, of whom 80,168,364 were registered to vote, and 62,118,936 actually voted. Thus only 77.4% of those registered to vote and 60.4% of those eligible bothered to go to the polls on election day. See N.Y. Times, Oct. 6, 1956, p. 9, col. 2, Oct. 29, 1956, p. 24, col. 1, Dec. 16, 1956, p. 54, col. 3. For voting trends in other years, see WORLD ALMANAC AND BOOK OF FACTS 319 (1957). The highest percentage of voters throughout the country was in Idaho, where 77.3% of the eligible voting population cast their ballots. N.Y. Times, March 21, 1957, p. 32, col. 7.

The 1956 voting record is particularly unimpressive in light of the concerted effort made by diverse groups to get out the vote. The Advertising Council spent some \$10,000,000 for this purpose (N.Y. Times, June 22, 1956, p. 29, col. 7), and much publicity was also given the subject by the American Heritage Foundation and the AFL-CIO. Dawson, *Nation Urged to Get Out Vote*, Oakland (Calif.) Tribune, Nov. 5, 1956, p. 42; N.Y. Times, Sept. 28, 1956, p. 54, col. 8.

On voting apathy in general, see Commager, *Why Almost Half of Us Don't Vote*, N.Y. TIMES MAGAZINE, Oct. 28, 1956, p. 14; remarks of Daniel J. Flood, 102 CONG. REC. A 6562 (1956).

campaign contributions from someone, somewhere. Increasingly we have come to recognize how critical, and how capable of abuse, is the role of the financier of our political campaigns.

One alternative for the financing of campaigns we may discount from the outset. The sums involved in running a modern election campaign preclude financing by the candidate himself. Even if a few select multi-millionaires are capable of bearing this cost, restriction of candidacy to them would obviously be unthinkable.

This means that the candidate must secure financing from others. Who these others are and what influence they will have over the candidate should he be elected are questions of some significance. We may, for the sake of convenience, refer to these financial backers as the candidate's financial constituency, whom he represents as much as he represents his electoral constituency. In the ordinary course of events, the existence of this dual constituency may not unduly influence the political actions of the successful candidate. Financial supporters, as well as supporters at the polls, generally back those candidates with whose basic outlook they feel themselves to be in fundamental agreement.<sup>6</sup> Yet new issues constantly arise which were unanticipated at the time of the electoral campaign and on which the successful candidate may be genuinely uncommitted. It is at this point that the danger particularly arises that the financial constituency may be in a better position than the electoral constituency to persuade the candidate of the merits of its point of view.<sup>7</sup> Its ability to exercise such an overriding influence depends largely on its own internal cohesiveness. Hence the large campaign contrib-

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6. Candidates supported because of their ready response to any and all pressures are hardly likely to be too faithful, in the event of their election, either to their electoral constituency or to their financial constituency.

7. Ideally, of course, the statesman's first concern should go beyond either of his two constituencies to the good of the country as a whole. As Sir Winston Churchill put it, 8 *PARLIAMENTARY AFFAIRS* 302 (1955): "The first duty of a member of Parliament is to do what he thinks in his faithful and disinterested judgment is right and necessary for the honour and safety of Great Britain. His second duty is to his constituents, of whom he is the representative but not the delegate. Burke's famous declaration on this subject is well-known. It is only in the third place that his duty to the party organization or programme takes rank. All these three loyalties should be observed, but there is no doubt of the order in which they stand under any healthy manifestation of government."

But in fact the difficulty of discerning the common interest is often such that more concrete interests closer to home are likely to prevail. The financial constituency is at least assured of access to the candidate it supported so that its position may be most advantageously presented to him. See *HEARD, MONEY AND POLITICS* 14 (1956). This position may frequently fail to coincide with that of the electoral constituency, particularly since there need be no geographical coincidence of the two constituencies.

utor, the "big money" — big business, big union, or big oilman — constitutes a grave threat to independent political functioning by the successful candidate.

The potentially pernicious effect of some campaign contributions manifests itself in many ways through diverse pressures on elected officials in the executive and the legislative branches of the government. A striking example of the most primitive form of pressure on a legislator occurred early in 1956 in the now famous *Case* case. Senator Francis Case of South Dakota was offered, and indignantly rejected, a campaign contribution of \$2,500 as a reward for an affirmative vote on the natural gas bill, then pending before the Senate.<sup>8</sup> Although the gift was not explicitly predicated on a favorable vote, and although its tender eventually resulted in achieving exactly the opposite, it would be naive to ignore the inherently coercive intent of the donors.<sup>9</sup> In the words of the Select Committee which investigated the incident:

"Contributions are entirely within the bounds of propriety when the purpose for which they are given is the election of the Member and not for the purpose of influencing his vote. The circumstances here partake of a meaning making almost inexorable the conclusion that the paramount motivation for this contribution was interest in the natural gas bill as contrasted with aiding Senator Case's campaign."<sup>10</sup>

Further investigation of the lobbying activities of the gas and oil interests has disclosed that the Case offer was by no means unique;<sup>11</sup> this led eventually to veto of the natural gas bill by the President because of the "arrogant tactics" of some of its

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8. The Natural Gas Bureau Bill was H.R. 6645, 85th Cong., 2d Sess. (1957). It purported to exempt independent producers and gatherers of natural gas from rigid public utilities regulation under the Natural Gas Act.

9. The contribution was tendered to a South Dakota friend of Senator Case by one John M. Neff, a Nebraska lobbyist for the Superior Oil Company of California. Neff made the contribution only after he had inquired about Case's view on the gas bill, and after being reasonably sure that Case was going to vote for the bill. Neff's funds came from Elmer Patman, an attorney for the Superior Oil Company, who had received the funds from Howard Keck, President of the Superior Oil Company. Neff, Patman, and Keck all testified that the money was offered "without strings" and Case himself refused to categorize the offer as a bribe when he turned it down. For further details, see S. REP. No. 1724, 84th Cong., 2d Sess. (1956), reprinted at 102 CONG. REC. 14651 (1956).

10. *Id.* at 9.

11. Other similar offers were, for example, made to Senators Hickenlooper of Iowa and Goldwater of Arizona. For further details on the operation of the oil and gas lobby, see *McClellan Hearings*.

advocates.<sup>12</sup> It seems reasonable to suppose that these tactics have not been unique to the gas bill and that large donors to campaign coffers have not always intended to be entirely altruistic in their investments.

Existing legislative measures to limit the influence of "big money" in campaign finance concentrate on direct discouragement or even prohibition of such contributions. The present Federal Corrupt Practices Act is a typical example.<sup>13</sup> It prohibits contributions by labor unions and corporations,<sup>14</sup> and limits individual contributions to \$5,000.<sup>15</sup> Detailed reports of contributions and expenditures are required of congressional candidates<sup>16</sup> and national committees,<sup>17</sup> in order that publicity and unfavorable public comment may act as a deterrent to overly large donations. Ceilings on expenditures by candidate<sup>18</sup> and committee<sup>19</sup> provide an additional brake on campaign contributions by reducing the demand for them. The fact is, of course, that the federal regulatory scheme has been completely ineffectual in achieving its ends.<sup>20</sup> Tighter drafting and a more realistic framework of

12. The bill was vetoed by President Eisenhower on February 17, 1956. The veto message is printed at 102 CONG. REC. 2793 and 2897 (1956).

For the principals in the *Case* case, there were further consequences; Neff, Patman, and the Superior Oil Company were all indicted for violation of the Federal Lobbying Act. N.Y. Times, July 25, 1956, p. 1, col. 6. The defendants pleaded guilty and were fined \$2,500, \$2,500, and \$10,000 respectively. S. REP. No. 395, 85th Cong., 1st Sess. 10 (1957).

Overly enthusiastic financial sorties by supporters of the natural gas bill brought about another faux pas in 1958. Early in February, Republicans in Texas held a \$100-a-plate appreciation dinner for House Republican Leader Joseph W. Martin, Jr., of Massachusetts. Texans were openly asked to contribute to this dinner so that Martin would throw his power and influence behind the new natural gas bill (H.R. 8525) introduced by Representative Oren Harris in the First Session of the 85th Congress. Folliard, *Texans Fete Joe Martin in Hope He Can Ease Gas-Price Controls*, in Washington Post and Times Herald, Feb. 11, 1958, p. 1, col. 2; N.Y. Times, February 12, 1958, p. 1, col. 6, and p. 22, col. 3. In the ensuing storm of protest, both the Republican National Committee and the Republican Congressional Finance Committee turned down the funds collected, and the natural gas bill suffered another setback.

13. The basic act today is 43 STAT. 1070 (1925), 2 U.S.C. §§ 241-256 (1952). This act was partially based on 34 STAT. 864 (1907).

14. 18 U.S.C.A. § 610 (1952). The prohibition of union contributions originated in the War Labor Disputes Act of 1943 (the Smith-Connally Act), 57 STAT. 167 (1943). That provision was limited to the duration of the war and was not made permanent until the Taft-Hartley Act, 61 STAT. 159 (1947). When the Judicial Code was enacted in 1948, this provision and others were taken out of Title 2 and put into Title 18.

15. 18 U.S.C. § 608 (1952).

16. 43 STAT. 1072 (1925), 2 U.S.C. § 246 (1952).

17. 43 STAT. 1071 (1925), 2 U.S.C. §§ 242, 244 (1952).

18. 43 STAT. 1073 (1925), 2 U.S.C. § 248 (1952).

19. 18 U.S.C. § 609 (1952).

20. Statistics on large contributions from various sources were amassed by the Gore Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration. The Appendix of Part 2 of the *Hearings* of this Com-

ceilings on contributions and expenditures may achieve better results.<sup>21</sup> Such has been the main thrust of the various electoral reform acts introduced in recent years. Yet none of these proposals has ever reached the stage of floor discussion, not even the so-called Federal Elections Act of 1956 which, in the wake of the public outcry over the *Case* case, received the co-sponsorship of eighty-five senators.<sup>22</sup>

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mittee in 1956 contain the findings of Professor Alexander Heard of the University of North Carolina concerning the 1952 elections. The committee's own findings about the 1956 elections are to be found in the 1957 *Gore Report*. The 1952 and the 1956 findings are essentially similar. For example, in 1952, 110 contributors each gave \$10,000 or more, for a total of \$1,936,867.72 (*Hearings* at 526), while in 1956, 318 contributors gave \$5,000 or more, for a total of \$3,809,689 (*Gore Report* at 67-71).

For discussion of the numerous techniques that have been devised to avoid the statutory mandates, see testimony of Professor Heard, *Gore Hearings* at 242-243; Norton-Taylor, *How to Give Money to Politicians*, 53 *FORTUNE* 113 (May 1956); *Those Who Came to Dinner*, 102 *CONG. REC. A* 1080 (1956); sources cited in note 3 *supra*.

21. See, e.g., the favorable Florida experience under its new law — *FLA. STAT. ANN.* § 99.161 (Supp. 1956) — described in Roady, *Florida's New Campaign Expense Law and the 1952 Democratic Gubernatorial Primaries*, 48 *AM. POL. SCI. REV.* 465 (1954). The Florida statute was declared constitutional in *Smith v. Ervin*, 64 *So.2d* 166 (Fla. 1953), 67 *HARV. L. REV.* 887 (1954). Similar legislation exists also in Texas, 9 *TEX. CIV. STAT. ANN.* § 14.04 (Vernon 1952).

22. S. 3308, 84th Cong., 1st Sess. (1956), is set out, in one of its early versions, at 102 *CONG. REC.* 3441 (1956). This bill, and its House counterpart, H.R. 9668, were essentially similar to S. 636 and H.R. 3139, introduced in the first session of the 84th Congress by Senator Hennings and Representative Udall. It was originally planned to present S. 3308 as a substitute to S. 636, since the latter had already gone through committee hearings in 1955 and had been favorably reported out of committee. S. REP. No. 624, 84th Cong., 1st Sess. (1955). Despite an effort by Senator Mundt to work out a compromise on the controversial issue of coverage of primaries — S. 3331, 102 *CONG. REC.* 3647 (1956) — no further action of any kind was taken on this legislation. A number of factors undoubtedly contributed to this inaction, including the appointment of the McClellan Special Senate Committee to Investigate Political Activities, Lobbying and Campaign Contributions — see the remarks of Senator Langer at 102 *CONG. REC.* 2865 (1956) — and the raising of certain constitutional objections by the United Auto Workers.

New legislation of similar tenor was proposed in the First Session of the 85th Congress. S. 2150, introduced by Senators Hennings and Green, was favorably reported out of committee on August 2, 1957. S. REP. No. 792, 85th Cong., 1st Sess. (1957). The provisions of S. 2150 follow closely the proposals of the old S. 636 and S. 3308, as well as those of S. 1437, introduced in the current session by Senator Gore, as a result of his election study. See note 4 *supra*. A companion bill to S. 2150 was introduced by Representative Udall on July 9, 1957. H.R. 8608, 103 *CONG. REC.* 10061 (July 9, 1957).

All these proposed statutes provide for higher but stricter ceilings on expenditures and contributions, and for adequate reports of such expenditures and contributions. In addition, a new principle of authorization has been introduced to fix responsibility for expenditures made on behalf of any candidate. Most of the proposals, including S. 2150, would cover primaries as well as general elections.

Other related but less comprehensive legislation introduced on this subject in the First Session of the 85th Congress includes S. 2311, introduced by Senator Curtis (103 *CONG. REC.* 8280 (1957)), its companion bill H.R. 3629, introduced by Representative Hiestand (103 *CONG. REC.* 838 (1957)), H.R. 1068, introduced by Representative Boggs (103 *CONG. REC.* 197 (1957)), and H.R. 4763, introduced by Representative Clifford Davis (103 *CONG. REC.* 4763 (1957)).



Although improvements in the existing statutory pattern would certainly be welcome, one may entertain certain reservations as to their ultimate efficacy. Our tax laws have demonstrated that revisions rarely solve old problems without raising new ones, and that avoidance and evasion must be expected if the stakes are sufficiently high and involve sufficient numbers of people. Some testimony on this point before the Senate Subcommittee on Privileges and Elections in 1955 is illuminating. Discussing the then pending Senate Bill 636, a reform measure essentially similar to current proposals, Samuel Lubell said:

“Completely foolproof controls are impossible, if only because as soon as any law is passed, so many ingenious minds set about devising ways to circumvent the law. The problem you face in this regard calls to mind a true incident that happened during our occupation of Germany.

“So many GI’s were dabbling in the black market there that our occupation authorities asked Washington for financial experts to devise a really tight system of currency control. One day two of these experts happened to be talking over the plans they had made while riding in a jeep. The GI, who was driving, kept laughing as these experts talked. Finally one expert asked, ‘What’s so funny? Are these plans to keep GI’s out of the black market so bad?’

“‘Oh, no,’ replied the driver, ‘you fellows are smart enough, but just remember that there are only two of you and think how many there are of us.’”<sup>23</sup>

Perhaps the time has come to consider ways of handling campaign finance which do not require the sanctioning process of our criminal laws. If our aim is to provide the candidate with a financial constituency of sufficient breadth and diversity so as not to impair his political freedom should he be elected, there are at least two different ways of achieving this aim. One is the present system — the frontal attack limiting and discouraging the “big money” from entering the scene. Another is to encourage and bring out the “little money” — to canvass and solicit contributions for campaign funds from the average citizen. The latter alternative is one that has never been seriously attempted in the financing of national campaigns.<sup>24</sup> Yet, if it is feasible,

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23. *Hearings Before the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration*, 84th Cong., 1st Sess. 55 (1955).

24. It has been estimated that 20% of the total cost of all 1952 campaigns

it has everything to recommend it. It is entirely permissive, so that any candidate or political committee may use it or not as he or it sees fit. It has the positive merit of directly involving a greater percentage of the population in election campaigns than now participate, for it seems extremely probable that personal solicitation of contributions will be an effective political stimulant for the populace.

The experience of United Fund, Community Chest, and Red Cross drives suggests that large scale collection of small contributions from millions of contributors is in fact perfectly feasible. These organizations have learned to canvass sizable segments of the population with considerable financial success.<sup>25</sup> This success is not a matter of accident or a spontaneous result of general good will toward charitable organizations. It reflects, rather, a conscious and studied effort to educate the public to its social responsibilities, an effort facilitated and fortified by adaptation of the techniques of business organization and of mass advertising.<sup>26</sup> Why can we not do likewise in financing our election campaigns? Is the election of the best possible public servants any less the citizen's responsibility than his obligation to help provide for health, welfare, and education?

Widespread campaigns to collect political funds have sometimes been discussed, but have never been put to a realistic test. There was of course the 1952 Ruml plan (named for its originator, Beardsley Ruml), which used the device of selling books of \$5.00 certificates for wide resale.<sup>27</sup> Its very limited success — it netted about \$600,000 for the Democratic National Committee<sup>28</sup> — can be attributed to a number of different factors. For

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came in gifts of \$500 and larger. Testimony of Professor Alexander Heard, *Gore Hearings* 234 (1956). In 1956, this percentage, according to available statistics, was even higher. Exhibit 26 of the Gore Committee report shows that contributions of \$500 or more totalled \$11,037,514, approximately one-third, therefore, of the total reported expenditures of \$33,185,725. *Gore Report* 2, 26 (50), 26 (192), 26 (199).

25. United Community Funds and Councils of America, Inc., estimates that in 1956 volunteer workers solicited gifts from more than 26,000,000 contributors in some 2,000 communities. "Incomplete returns show that per capita giving to community chests was \$3.67; to united funds not including the Red Cross it was \$3.76; and to funds including the Red Cross it was \$4.83." *United Funds*, 31 SOCIAL SERVICE REV. 210 (1957).

26. See Lurie, *Private Philanthropy and Federated Fund-Raising*, 29 SOCIAL SERVICE REV. 64 (1955); Shaffer, *Joint Fund-Raising*, 11 EDITORIAL RESEARCH REPORT 691 (1955); *These Fund Raising Tips Pay Off*, 44 NATION'S BUSINESS 36 (March 1956).

27. See VAN DOREN, *BIG MONEY IN LITTLE SUMS* (1956).

28. *Id.* at 43. For an even lower estimate, see Hall, *How to Finance Political Campaigns Again*, in the St. Louis Post-Dispatch of March 11, 1956, reprinted at 102 CONG. REC. A2425 (1956).

one thing, the drive did not get under way until two months before the election, and thus did not have the careful organization and planning which the charitable campaigns have shown to be essential. Then, too, the book sale and certificate resale device may be unnecessarily cumbersome. And perhaps the completely partisan nature of this effort may have limited its appeal.

Many of these difficulties would have been overcome by the Graham plan. In an address before the School of Business of the University of Chicago on June 1, 1955, Philip L. Graham, publisher of the Washington Post and Times Herald, proposed broad solicitation of political contributions for all parties under the auspices of the non-profit non-partisan Advertising Council of America.<sup>29</sup> Each citizen was to be urged to contribute directly to the party of his choice, without commingling of funds.<sup>30</sup> Although this plan initially was enthusiastically received both by Democratic Party Chairman Paul M. Butler and Republican Party Chairman Leonard W. Hall,<sup>31</sup> it never came to fruition. Alleging premature disclosure by the Democrats, the Republicans failed to appoint their four members to the bipartisan sponsoring committee which the Advertising Council required before it would undertake its contemplated \$10,000,000 advertising campaign.<sup>32</sup> By January of 1956, both Butler and Graham conceded

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29. The speech is reprinted as Graham, *High Cost of Politics*, 44 NAT. MUNIC. REV. 346 (1955).

The Advertising Council subsequently announced its willingness to make available about \$10,000,000 of advertising time and space in all media, including radio, television, newspapers, magazines and outdoor advertising signs. These advertisements, beginning four weeks before the national convention, and continuing for about ten days after the candidates had been selected, would have urged every citizen to make some campaign fund contribution to help the parties do their job.

30. The Graham plan thus contemplated a bipartisan rather than a non-partisan method of collecting contributions. An experiment in nonpartisan political fund-raising was tried in Minnesota in 1955 under the leadership of Byron G. Allen, Minnesota Commissioner of Agriculture. Encouraged by the considerable success of that effort, Allen subsequently urged a similar program on a national level. The Allen plan called for congressional chartering of a national foundation, analogous to the American Red Cross, to be administered by a representative board of directors to see that the money was fairly distributed. Citizens were to be urged to contribute to the national foundation regardless of their own political affiliations, and the foundation was to distribute the funds collected, presumably on a share and share alike basis, at least as far as the major political parties were concerned. See *McClellan Hearings* at 827-44 and Albright, *Will Senate Stick with Angels or Lobby on Lobby Probe*, Washington Post & Times Herald, Feb. 26, 1956, reprinted at 102 CONG. REC. 3360 (1956).

31. N.Y. Times, June 3, 1955, p. 23, col. 2. The plan also received the support of influential segments of the press, notably the Washington Post and Times Herald.

32. See remarks by Senator Neuberger printed at 102 CONG. REC. A 769 (1956) and the accompanying reprint of Lawrence, *Butler Says GOP Upset Funds Plan — Democratic Leader Charges Foe Sabotaged Pact to Promote Contributions*, N.Y. Times, Jan. 25, 1956. The Democrats charged that Republican withdrawal from

that the project was dead,<sup>33</sup> despite the favorable prognostication of repeated Gallup Polls indicating popular willingness to make political contributions even without high powered advertising.<sup>34</sup>

The Graham plan aroused interest not only among the top brass of the national committees but also on Capitol Hill. The legislators were quick to spot the one remaining crucial difference between the proposed campaign to collect political contributions and the ordinary charity campaign. Charitable contributions are, within limits, tax deductible.<sup>35</sup> Every solicitation for Community Chest, Red Cross, school, and church prominently features this fact. For experienced fund-raisers have found the words "this donation is tax deductible" to be a magical key to donors' hearts and pocketbooks, a key paradoxically far more persuasive than the actual dollars and cents tax benefits to be anticipated.<sup>36</sup> Political contributions are not, however, tax deductible under existing law.<sup>37</sup> To remedy this situation, several

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the plan stemmed from the success of the nationwide Salute to Eisenhower dinners which were estimated to have netted the Republican Party some \$5,000,000. N.Y. Times, Jan. 24, 1956, p. 1, col. 16, and p. 16, col. 5. See also 102 CONG. REC. A1080 (1956).

Graham himself testified subsequently that the plan had probably been initiated too late for the 1956 campaign. *McClellan Hearings* at 940.

33. See subsequent confirming statements in the New York Times, March 12, 1956, p. 12, col. 3.

Efforts by each party individually to canvass potential campaign contributors continued. On the Democratic "Dollars for Democrats" campaign, see, e.g., statement by former President Truman at the Democratic National Convention, N.Y. Times, Aug. 18, 1956, p. 8, col. 1, and interview with Roger L. Stevens, Chairman of Finance Committee, Democratic National Committee, *The Talk of the Town*, 32 THE NEW YORKER 23 (Sept. 29, 1956). For a discussion of Republican financing, see testimony of Chairman Hall, *Gore Hearings* at 27.

34. See report of Gallup Poll in Washington Post and Times Herald of Jan. 11, 1956, reprinted at 102 CONG. REC. 2859 (1956). A 1955 poll suggested similar readiness to contribute. Graham, *High Cost of Politics*, 44 NAT. MUNIC. REV. 346, 350 (1955).

35. INT. REV. CODE of 1954, § 170(c).

36. Cf. STEINBECK, SWEET THURSDAY 184-85 (1954).

37. Political contributions do not fall within the charitable contribution deduction, INT. REV. CODE of 1954, §§ 170(c), 501(c)(3). The latter subsection explicitly limits tax exempt donees to organizations which do not "participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office." For a liberal interpretation of the 1939 antecedent of § 170(c), see *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955), 18 MONT. L. REV. 112 (1956), holding that exempt activities need only be substantially, and not exclusively, charitable.

Furthermore, neither political contributions nor lobbying expenses qualify for deduction as business expenses. INT. REV. CODE of 1954, § 212, U.S. Treas. Reg. 118, §§ 39.23(0)-1(f), 39.23(q)-1(a); *Textile Mills v. Commissioner*, 314 U.S. 326 (1941). The entrepreneur lobbying in connection with legislation directly affecting his own existence is covered by this interdiction. See, e.g., *Revere Racing Ass'n v. Scanlon*, 232 F.2d 816 (1st Cir. 1956). *But cf.* Rev. Ruling 55-265, 1955-1 CUM. BULL. 22. Even the candidate's own expenses in securing or defining his election are not deductible. *McDonald v. Commissioner*, 323 U.S. 57 (1944); *Mays v. Bowers*, 201 F.2d 401 (4th Cir. 1953); *Davis A. Reed*, 13 B.T.A. 513 (1928);

bills were immediately introduced, in June and July of 1955, to provide limited tax deductibility for contributions to candidates for federal elective office, and to committees acting in their behalf. Senator Hennings and Representative Udall proposed deductibility for such contributions up to \$100,<sup>38</sup> while Senator Wiley urged a \$50 ceiling.<sup>39</sup> Nothing more developed during the First Session of the 84th Congress, and the matter might well have rested there, but for the *Case* case in the spring of 1956. Title Two of the omnibus bill, S. 3308, introduced by the Senate leadership in response to public pressure generated by the case,<sup>40</sup> contained a tax deduction provision virtually identical to the earlier Hennings proposal.<sup>41</sup> Title Two was subsequently eliminated from the Senate Bill because of the constitutional requirement that fiscal legislation originate in the House; in the mean-

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Robert Edward Kleinschmidt, 12 T.C. 921 (1949). This result obtains despite the fact that any excess of contributions over expenditures is considered income to the candidate. Rev. Ruling 54-80, 1954-1 CUM. BULL. 11, modifying I.T. 3276, 1939-1 CUM. BULL. pt. 1, p. 108.

For general discussion and appraisal of these sections, see Bloom, *Tax Result of Political Contributions*, 36 B.U.L. REV. 170 (1956), 34 TAXES 765 (1956); Mann, *Taxation — The Charitable Deduction: How Much Legislative Activity Is Legal?*, 1956 WIS. L. REV. 165; Seasongood, *Contributions to a Tax-Exempt Local Good Government League*, 35 TAXES 103 (1957); Spiegel, *Deductibility of Lobbying, Initiative and Referendum Expenses: A Problem for Congressional Consideration*, 45 CALIF. L. REV. 1 (1957); Note, *Deductibility of Lobbying and Related Expenses*, 42 A.B.A.J. 175 (1956); Note, *Income Tax Disadvantages of Political Activity*, 57 COLUM. L. REV. 273 (1957); Note, *Tax Treatment of Lobbying Expenses and Contributions*, 67 HARV. L. REV. 1408 (1954).

38. The Hennings Bill, S. 2302 (and its House counterpart, H.R. 7001), proposed adding a new Section 218 to part VII of Sub-Chapter B of Chapter I of the Internal Revenue Code of 1954. The salient provisions of the proposed Section 218 are as follows:

"(a) Allowance of deduction: In the case of an individual, there shall be allowed as a deduction any political contribution (as defined in sub-section (c)) payment of which is made within the taxable year. A political contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary or his delegate.

"(b) Limitation: The deduction under sub-section (a) shall not exceed \$100 for any taxable year.

"(c) Definition of political contribution: For purposes of this section, the term 'political contribution' means a contribution or gift to —

"(1) An individual whose name is presented for election as President of the United States, Vice-President of the United States, an elector for President or Vice-President of the United States, a Member of the Senate, or a Member of the House of Representatives (including a Delegate to the House of Representatives) in a general or special election, in a primary election, or in a convention of a political party, for use by such individual to further his candidacy for such office; or

"(2) A committee acting in behalf of an individual described in paragraph (1) for use by such committee to further the candidacy of such individual." The bill is reproduced in full, accompanied by Senator Hennings' statement, at 101 CONG. REC. 9057 (1955).

The House Bill was H.R. 7001, 101 CONG. REC. 9139 (1955).

39. S. 2497. See 101 CONG. REC. 10277 (1955).

40. See note 22 *supra*.

41. See text at 102 CONG. REC. 3441 (1956).

time, however, a similar proposal had been reintroduced in the House by Representative Mills.<sup>42</sup> Despite this flurry of interest, the 84th Congress adjourned without taking any further affirmative action, and the same fate has befallen this last session's bills on the subject.<sup>43</sup>

At first glance, it is difficult to comprehend the lack of general enthusiasm for legislation to provide tax deductions for political contributions. A casual observer might have anticipated an eager response, for such legislation would appear to be in almost everyone's interest. For the legislator, it would facilitate financing his future campaigns; for the taxpayer, it would provide an always welcome means of reducing his annual contribution to the Commissioner of Internal Revenue. Yet federal reluctance to undertake such a scheme has been marked,<sup>44</sup> and, interestingly enough, is not confined to the present membership of the Congress. In response to a questionnaire circulated by the McClellan Special Investigating Committee last year, a number of former Senators expressed grave doubts about, and even direct opposition to, tax deductions.<sup>45</sup> In contrast, a polling of

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42. H.R. 9558, 102 CONG. REC. 3423 (1956).

43. Senators Hennings and Javits reintroduced a bill for a \$100 tax deduction, S. 920, 103 CONG. REC. 951-65 (Jan. 29, 1957), which was also introduced in the House as H.R. 1440 by Representative Udall, 103 CONG. REC. 1406 (Feb. 5, 1957), 103 CONG. REC. 1410 (Feb. 6, 1957). Senator Wiley again introduced his bill for a maximum deduction of \$50. S. 1406, 103 CONG. REC. 2352, 2353 (Feb. 27, 1957).

A \$100 tax deduction provision was also included in the original version of S. 2150, the proposed Federal Elections Act of 1957. See note 22 *supra*.

44. Two states have enacted legislation permitting deductions from the state income tax for contributions to political candidates. Minnesota pioneered in this regard. Minn. Sess. Laws 1955, c. 775, amending MINN. STAT. §§ 290.21, 290.09 (1953). This statute is discussed in Mitau, *The Status of Political Party Organization in Minnesota Law*, 40 MINN. L. REV. 561, 567 (1956) and Roberts, *Campaign Donations*, Washington Post & Times Herald, Feb. 9, 1956, reprinted at 102 CONG. REC. A1790 (1956). Similar legislation was passed at the 1957 session of the California State Legislature. Calif. Sess. Laws 1957, c. 255; CALIF. REV. & TAX CODE § 17210 (Supp. 1957).

In New York, \$100 deduction bills, sponsored by State Senator Williamson, have twice passed the state Senate, but have gotten no further. The 1957 bill was S.I. 75. See N.Y. Times, Jan. 30, 1957, p. 15, col. 1.

45. The McClellan Committee asked in question 9 of its questionnaire: "Should tax concessions in the form of tax credit or a tax deduction from gross income be allowed to encourage popular giving to campaigns?" Judge Ryan Duffy, former Senator from Wisconsin, replied: "I might be willing to support a carefully worked out program, but I think the proposal would be subject to many abuses." *McClellan Hearings* at 1296. Judge Carl A. Hatch, former Senator from New Mexico, asserted: "Decidedly not. . . . Abuses of campaign contributions will not be corrected until all private contributions are prohibited." *Id.* at 1298. Tom Stewart, former Senator from Tennessee, simply said: "No." *Id.* at 1298. So did C. Douglass Buck, former Senator from Delaware. *Id.* at 1304. Arthur R. Robinson, former Senator from Indiana, stated: "I doubt the advisability of allowing such deductions." *Id.* at 1305. Prentiss M. Brown, former Senator from Michigan, asserted: "I do not favor any form of tax exemption." *Id.* at 1308. Zales N. Ecton, former

political scientists produced a nearly unanimous verdict in favor of some form of tax concession for political contributions.<sup>46</sup> What is it that has led to this odd result?<sup>47</sup>

Tax benefits for political contributions would, of course, operate to deplete the internal revenue, and to that extent would represent a federal subsidy of political campaigns. It has been suggested in other contexts that the federal income tax base is already subject to too many eroding deductions, credits, and exemptions.<sup>48</sup> Yet the likelihood of repeal of the present structure seems slim indeed. Given the existence of tax concessions to eleemosynary institutions, the extension of similar benefits to our elective institutions is certainly warranted. Both sets of institutions can make persuasive claims on government support; but if a choice between them were to be required, would it not be more rational to award support to the elective institutions which are at the core of our democratic system of government?

It is true that governmental support of political campaigns need not necessarily be granted by the medium of tax benefits.<sup>49</sup>

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Senator from Montana, agreed that he "would not exempt any political contributions from the income tax." *Id.* at 1302. The most vehement rejection of the proposal came from Robert C. Hendrickson, former Senator from New Jersey, who wrote: "Such concessions would lead to tax evasion and should not even be considered. They would also make for corruption of the election processes." *Id.* at 1302.

The total sample of 22 former Senators produced 10 affirmative answers, 8 negative answers, and 4 blanks in response to this question. *Id.* at 1290-1308. See also the *McClellan Report*, S. REP. No. 395, 85th Cong., 1st Sess. 127-29 (1957).

46. The McClellan committee asked, in question 17 of the questionnaire to the political scientists: "Would you approve tax credit or deduction for political contributions? If so, what qualifications do you suggest? Have you given any thought to the problem of administering such tax concessions?" The only negative response came from Professor Neil A. McDonald of Rutgers University, who replied: "No. Would tend only to benefit large contributors." *McClellan Hearings* at 1287. For complete responses, see *id.* at 1267-90. For a short summary, see the *McClellan Report*, S. REP. No. 395, 85th Cong., 1st Sess. 135 (1957).

47. The oddity of the result is emphasized by the fact that the congressional leadership, at least in the Senate, has repeatedly expressed itself in favor of such legislation. It was Senators Johnson and Knowland, the majority and the minority leaders, who, for example, included a tax deduction provision in their bill of last year. See text at note 41 *supra*. And Senator Johnson expressly stated later that tax deductions are "an important step in encouraging average citizens to take part in the election of their public officials." *N.Y. Times*, March 18, 1956, p. 1, col. 4.

More recently, the influential members of the McClellan Special Committee to Investigate Political Activities, Lobbying and Campaign Contributions recommended that "persons who make political contributions should be entitled to deduct political contributions from gross income up to \$100." "The effect," said the Committee, "of such a deduction would be beneficial in that it will make it less necessary for candidates to rely on large individual contributions and broaden the base of contributors, a highly desirable goal." S. REP. No. 395, 85th Cong., 1st Sess. 143 (1957).

48. Pechman, *Erosion of the Individual Income Tax*, 10 NAT. TAX. J. 1 (1957).

49. Such a direct subsidy has been urged by Senator Richard Neuberger of

But a tax program has the important advantage of bypassing the knotty problem of allocation posed by a more direct subsidy. There is every reason to believe that the furnishing of tax incentives for political contributions should redound automatically to the appropriate benefit of all political parties, large or small.<sup>50</sup> The major parties and their candidates would naturally be the principal beneficiaries of the program. As between Republicans and Democrats, the total benefit should be approximately the same. While there are more registered Democrats across the country than there are Republicans,<sup>51</sup> Republicans are, on the whole, more willing and able to make political contributions than are Democrats.<sup>52</sup> A recent Gallup poll showed that, in reply to the question, "If you were asked, would you contribute \$5 to the campaign fund of the political party you prefer?," 39% of the Republicans said yes, while only 29% of the Democrats said yes.<sup>53</sup> The same poll indicated, furthermore, that substantial financial returns are to be anticipated from a widespread campaign for political contributions. Affirmative answers indicating a willingness to contribute \$5 were received from a sample representing 15,000,000 families, or 31% of the entire population.<sup>54</sup> The potential campaign fund of \$75,000,000 thus arrived at would certainly be considerably augmented by a well-organized collection campaign which could hold out tax as well as "good citizenship" incentives for contributions.

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Oregon, following a suggestion made by Theodore Roosevelt in a message to Congress on Dec. 3, 1907. S. 3242, 102 CONG. REC. 2831 (1956). The bill, often referred to as the Teddy Roosevelt Bill, is discussed in Neuberger, *Who Should Pay for Political Campaigns*, N.Y. Times Magazine p. 25, June 3, 1956, reprinted at 102 CONG. REC. 12514 (1956). This proposal was adopted in Puerto Rico on June 30, 1957. See remarks of Senator Neuberger, 103 CONG. REC. 11894 (July 31, 1957).

50. There is a possibility that such tax benefits may lend additional support to splinter parties. This danger seems to me to be a small one. Much greater dangers would inhere in any program of governmental support of campaign financing which discriminated against existing or potential minor parties.

51. Dr. Gallup reported in January 1956 that there were 34,500,000 Republicans and 49,800,000 Democrats, as well as 14,200,000 voters who were uncommitted. These statistics are, of course, not completely accurate since cross-filing is permitted in some states and since registration by party is not required in others.

52. The greater Republican willingness to make political contributions may be attributable, in part, to the efficiency and thoroughness with which the Republicans have long conducted their campaigns for campaign financing. See HEARD, MONEY AND POLITICS 13, 22-23 (1956). Cf. the proven importance of proper fund-raising techniques in charitable campaigns, text at note 26 *supra*.

53. This Gallup Poll was reported in the Washington Post & Times Herald of Jan. 11, 1956, reprinted at 102 CONG. REC. 2859 (1956). Essentially similar replies were received in a similar Gallup Poll conducted in 1955. See Graham, *High Cost of Politics*, 44 NAT. MUNIC. REV. 346, 350 (1955).

54. It is noteworthy that, according to these sources, only 2.7 million families contributed to a political organization and only one family in 20 made any political contribution in 1954.



Once the desirability of tax benefits for political contributions is established, the form which such benefits should take becomes crucial. Viewed from this perspective, the flaw inherent in most of the current tax proposals becomes apparent. To what extent, after all, does a \$100 tax deduction achieve the purpose of encouraging "average citizens to take part in the selection of their public officials?"<sup>55</sup> A deduction is meaningful only to that minority of the taxpaying population which itemizes its deductions, in lieu of taking the so-called standard deduction. In 1953, the latest year for which final statistics are available, only 25% of all returns filed showed itemized deductions;<sup>56</sup> and in the income group reporting an adjusted gross income of less than \$5,000 (75% of all returns filed),<sup>57</sup> this figure dropped to 19%.<sup>58</sup> Furthermore, even within the itemizing minority, a deduction discriminates against the small taxpayer, the potential small contributor. For the amount of tax saving to be derived from any deduction is a direct function of the taxpayer's net income bracket. A low bracket taxpayer who donates a deductible \$100 is contributing \$80 of his own money and \$20 of Uncle Sam's; these figures reverse in the high income brackets.<sup>59</sup> A tax deduction plan is faulty, therefore, because it provides the higher income groups with by far the greatest incentive for political contributions. Few small taxpayers would be able to afford contributions of sufficient size to give significant tax advantages, while large taxpayers would have everything to gain and virtually nothing to lose by their contributions. Some high income bracket people might thus be induced to make a political contribution who would not otherwise do so; but the tax benefit might well prove to be, in the main, a windfall for those who already contribute large sums, and who would not be deterred from giv-

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55. Statement by Senator Johnson about tax deductions on March 17, 1956. N.Y. Times, March 18, 1956, p. 1, col. 4.

56. "There are 43.4 million returns on which the standard deduction was elected by the taxpayer. This is 75 per cent of the total number of returns filed. However, it is the smallest proportion of returns to show use of the standard deduction since 1946 when nearly 83.5 per cent of all returns had the standard deduction." UNITED STATES INTERNAL REVENUE SERVICE, STATISTICS OF INCOME FOR 1953, Part 1, at 6 (1957). For statistics on the years 1944-1952, see *id.* at 53.

57. 42,827,409 returns showed an adjusted gross income of less than \$5,000, and 422,299 returns showed no adjusted gross income whatsoever. *Id.* at 23.

58. Of the 43,249,708 returns filed showing a gross income of less than \$5,000 (*id.* at 23), 34,855,675 made use of the standard deduction. *Id.* at 8. Thus only 8,394,033 of these returns were itemized.

59. A statistical breakdown of the benefit to the taxpayer of a \$100 deduction as a function of his gross income can be found in a speech by Senator Neuberger at 102 CONG. REC. 4018-20 (1956).

ing sizable amounts by any tax deduction ceiling. For these reasons, a tax deduction plan is unlikely to achieve its purpose.

There is, however, an alternative technique by which the tax laws can foster popular participation in campaign finance. The government can offer to the contributing citizen a tax credit, a deduction not from gross income but from the final tax computation itself. A tax credit avoids the vices of the tax deduction: it is available to all taxpayers,<sup>60</sup> not only to those who itemize their deductions; it is of equal benefit to all taxpayers, regardless of their income tax brackets; it can be placed at an amount — \$5, say, or \$10 — which the Gallup Polls indicate the average taxpayer would be willing to contribute. Such a credit need be no more of a government subsidy than is a deduction. In fact, its cost to the government is more readily calculable and can more easily be altered by adjustment in the amount of credit permitted.<sup>61</sup>

The merits of a tax credit plan have not gone completely unnoticed. From a variety of sources, both academic and political, a number of different plans have emerged since 1956. These proposals deserve serious and detailed scrutiny. For if the government is to bear part of the cost of campaign finance, it has a correlative obligation to prevent misuse of potential tax funds. More so even than in the area of charitable contributions,<sup>62</sup> the government must take careful precautions to prevent fraud and coercion. At the same time its intervention and supervision should interfere as little as possible with the citizen's political freedom and his political anonymity. It therefore becomes crucial to decide many questions besides the proper maximum amount of tax credit. Contributions by what donors to what donees should be accredited as valid political contributions entitling the donor to a credit? Should a tax credit be accompanied by a prohibition on individual contributions beyond the credit ceiling? How can the credit be administered so that the Treasury can satisfy itself that the taxpayer claiming the credit has in fact contributed, without forcing the taxpayer to reveal

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60. The category of taxpayers must of necessity be confined to those people who (1) file tax returns and (2) owe a net tax.

61. Similar questions have arisen with regard to proposals for tax relief to parents for the college education of their offspring. Here, too, many commentators have voiced their preference for a tax credit rather than a tax deduction plan. See Editorial, *Tax Relief Aid to Higher Education*, San Francisco Chronicle, May 21, 1957, p. 22.

62. Cf. McMillen, *Charitable Fraud: An Obstacle in Community Organization*, 29 SOCIAL SERVICE REV. 153 (1955).

his political affiliation? These problems are common to any tax incentive plan, but they have been carefully considered only in the context of tax credits, perhaps because the solutions suggested appear more workable in that context.

The first tax credit plan of any prominence was sponsored by three social scientists at the University of Chicago. In March of 1956, Professors Charles M. Hardin, Walter Johnson, and Jerome G. Kerwin proposed amendment of the federal income tax law "to permit individual taxpayers to subtract up to \$5 each from their income tax payments to the Treasury because of like contributions to the political parties of their choice."<sup>63</sup> Their plan did not purport to exclude other sources of campaign financing but it itself was restricted to donations to bona fide political parties, entities left undefined. An interesting administrative device for policing the credit was suggested. Bona fide political parties were to purchase political contribution stamps from the government at cost of production. These stamps were then to be resold to taxpayer at their face value of \$5. The stamp when attached to a tax return would substantiate the claim for credit without revealing the recipient of the political contribution. This stamp plan despite its pleasing simplicity has certain latent dangers. The availability of stamps bearing a \$5 face value at nominal cost may invite fraud and vote-buying. An unscrupulous individual or group might obtain a block of these stamps for resale at a substantial discount. There would in fact be no guarantee whatsoever that the taxpayer claiming the credit had made any contribution to anyone to secure the stamp.

A few days after the Chicago plan appeared in print, Senators Neuberger and Humphrey introduced a bill for a tax credit in the Senate. The bill was offered as an amendment to S. 3308, the proposed Federal Elections Act of 1956, and was a substitute for its Title Two which had provided for a tax deduction.<sup>64</sup> The Neuberger amendment called for a \$10 tax credit for individual taxpayers, 18 years or older, who made political contributions to a candidate for elective federal office or to a committee acting in behalf of such a candidate.<sup>65</sup> Verification of contributions was

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63. Letter to the Editor of the New York Times, dated Feb. 20, 1956, printed March 3, 1956, reprinted at 102 CONG. REC. A2275 (1956).

64. 102 CONG. REC. 4020 (1956). See also text at note 41 *supra*.

65. Subsection (a) of the Neuberger amendment read as follows:

"(a). General rule. — In the case of an individual over 18 years of age, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the political contributions made by such individual during

left without further direction in the hands of the Secretary of the Treasury, under such regulations as he might promulgate.<sup>66</sup> The wording of the bill left it unclear whether these regulations were also to encompass criteria for establishing when a committee was acting on behalf of an elective federal candidate. This bill, like the Chicago plan, did not purport to limit individual contributions to the credit ceiling.

Toward the end of June 1956, Walter P. Reuther, President of the United Auto Workers, proffered still another tax credit plan while testifying before the McClellan Special Committee to Investigate Political Activities, Lobbying, and Campaign Contributions. Reuther suggested that individuals be permitted and encouraged to contribute up to \$5 each to their presidential, senatorial, and congressional choices, *and* to one political organization or political action committee. He urged that the total of \$20 be a ceiling not only on the available tax credit but also on all individual political contributions, and that the ceiling should be lowered in any year in which there were no presidential or congressional contests.<sup>67</sup> Despite an earnest plea for strict enforcement of federal election controls as necessary to "transform any legislation into something more than paper documents," the U.A.W. plan contains no specific suggestions for administration of its tax credit suggestion.<sup>68</sup>

The latest proposal for a tax credit has come from the Senate Committee on Rules and Administration, in its favorable report,

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the taxable year to the extent that such political contributions do not exceed \$10." Subsection (c) goes on to provide:

"(c). Definition of political contribution. — For purposes of this section, the term 'political contribution' means a contribution or gift to —

"(1) An individual whose name is presented for election as President of the United States, Vice-President of the United States, an elector for President or Vice-President of the United States, a Member of the Senate, or a Member of the House of Representatives (including a Delegate to the House of Representatives) in a general or special election, in a primary election, or in a convention of a political party, for use by such individual to further his candidacy for any such office; or

"(2) A committee acting in behalf of an individual described in paragraph (1), for use by such committee to further the candidacy of such individual."

66. Subsection (b)(2) of the Neuberger Bill provided for: "(2) Verification. — The credit allowable under subsection (a) shall be allowed only if the political contribution or contributions with respect to which such credit is allowable are verified under regulations prescribed by the Secretary or his delegate."

67. I.e., a maximum of \$20.00 in presidential election years, of \$15.00 in congressional election years and \$5.00 in off years. The \$5.00 permissible contribution in any year could be given in connection with either a primary or a general election campaign.

68. Washington Post & Times Herald, June 29, 1956, p. 2, UAW press release of July 13, 1956, and *McClellan Hearings* 271-78.

in August of 1957, on S. 2150.<sup>69</sup> This bill, the so-called Federal Elections Act of 1957, introduced earlier in the year by Senators Hennings and Green, originally contained only a \$100 tax deduction for political contributions. In committee it was, however, amended to allow each taxpayer an option between such a deduction and a 50% tax credit (to a maximum of \$10).<sup>70</sup> In either case, verification of the legitimacy of contributions was again left to the good offices of the Secretary of the Treasury.

Each of these plans has made a definite contribution to the formulation of a realistic and workable tax credit for political donations. The variety of approaches which they represent has helped to bring into focus the important policy issues which must be resolved. Perhaps a further attempt at such a resolution will foster sufficient discussion and interest to produce some action

69. S. REP. No. 792, 85th Cong., 1st Sess. (1957). See note 22 *supra*.

70. The central provisions of §§ 501 and 502 of S. 2150 read as follows:

"Sec. 501. (a) Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits against tax) is amended by renumbering section 38 as 39, and by inserting after section 37 the following new section:

"SEC. 38. CONTRIBUTIONS TO CANDIDATES FOR ELECTIVE  
FEDERAL OFFICE.

"(a) GENERAL RULE. — There shall be allowed to an individual, as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of the political contributions (as defined in subsection (c)) payment of which is made by such individual within the taxable year.

"(b) LIMITATIONS. —

"(1) AMOUNT. — The credit allowed by subsection (a) shall not exceed \$10 for any taxable year.

"(3) VERIFICATION. — The credit allowed by subsection (a) shall be allowed, with respect to any political contribution, only if such political contribution is verified in such manner as the Secretary or his delegate shall prescribe by regulations.

"(c) DEFINITION OF POLITICAL CONTRIBUTION. — For purposes of this section, the term 'political contribution' means a contribution or gift to —

"(1) an individual whose name is presented for election as President of the United States, Vice President of the United States, an elector for President or Vice President of the United States, a Member of the Senate, or a Member of the House of Representatives (including a Delegate to the House of Representatives) in a general or special election, in a primary election, or in a convention of a political party, for use by such individual to further his candidacy for any such office; or

"(2) a committee acting in behalf of an individual or individuals described in paragraph (1), for use by such committee to further the candidacy of such individual or individuals.

"(d) ELECTION TO TAKE DEDUCTION IN LIEU OF CREDIT. — This section shall not apply in the case of any taxpayer who, for the taxable year, elects to take the deduction provided by section 217 (relating to deduction for contributions to candidates for elective Federal office). Such election shall be made in such manner and at such time as the Secretary or his delegate shall prescribe by regulations.

"SEC. 502. (a) Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1954 (relating to additional itemized deductions for individuals) is amended by renumbering section 217 as 218, and by inserting after section 216 the following new section:

on S. 2150 or similar legislation when the 85th Congress reconvenes in January.<sup>71</sup>

One important issue to be decided is who should be entitled to participate in a tax credit program. Senator Neuberger would have no taxpayers under the age of eighteen eligible for tax credits, and others have suggested a limitation to those of voting age. While we may have no great stake in encouraging political contributions from infants, it is doubtful whether the administrative burden of enforcing such a limitation is worthwhile, so long as their political contributions are not otherwise outlawed. A much more complex question concerns the qualifications of tax credit donees. There would seem to be no reason to exclude the candidates themselves from this source of campaign funds, when it is the candidates whom we want to free from undesirable influences, after their election. Eligibility of candidates for contributions is likely to encourage participation by the independent voter who is, rightly or wrongly, wary of party affiliation. For similar reasons, recognition of political organizations should depend on the candidate. With the exception of the national and state committees of the major political parties, no political organization should be permitted to accept contributions for tax credit without the written public authorization of a candidate for federal elective office. Placing the responsibility for accreditation directly and openly upon the candidate should make it difficult for undesirable fringe groups of either the left or the right to qualify. Furthermore, the candidate and his advisors are probably in a better position to make a spot decision about the perspective of a new political group as it emerges than an administrator in Washington would be; in the course of a heated campaign, a slow affirmative decision on such matters would often turn out to be equivalent to a negative one.

The writer's basic faith in the good judgment of the candidate and the electorate, when they are given a fair chance to

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"SEC. 217. CONTRIBUTIONS TO CANDIDATES FOR ELECTIVE  
FEDERAL OFFICE.

"(a) ALLOWANCE OF DEDUCTION. — In the case of an individual there shall be allowed as a deduction any political contribution (as defined in subsection (c)) payment of which is made by such individual within the taxable year.

"(b) LIMITATIONS. —

"(1) AMOUNT. — The deduction under subsection (a) shall not exceed \$100 for any taxable year."

71. See also statement by Professor Stanley S. Surrey of the Harvard Law School, in *McClellan Hearings*, at 1257.

exercise it, leads her also to doubt the advisability of correlating the idea of a tax credit with any absolute ceiling on political contributions. The wisdom and the administrative complexities of any kind of ceiling on contributions, or expenditures, have been sufficiently debated elsewhere.<sup>72</sup> Suffice it to say here that one of the major virtues of a tax credit plan should be its entirely permissive character. The thought is to provide, for the candidate who is interested, one avenue for obtaining campaign financing which will not prejudice his political freedom if he is elected. Any candidate who would prefer some other kind of financing should adopt whatever plan suits him, provided he keeps the electorate sufficiently informed so that it is free to make an intelligent appraisal of him.

The last major comments of this article concern the administration of the tax credit. The complexity of this problem arises out of the need to reconcile the political contributor's right to anonymity with the Treasury's obligation to verify the accuracy of tax returns. The ordinary regulatory processes of the Internal Revenue Bureau require full disclosure by the taxpayer; it is difficult to see how Treasury verification would operate without forcing the taxpayer to state the name of the candidate or political organization to which he had donated. All other things being equal, such information should not have to be divulged in a democracy.

Political contribution stamps, which obviate the need for disclosure of the donee, unfortunately raise serious verification and distribution difficulties of their own. As we have seen, the Chicago stamp plan invites trouble because it releases political contribution stamps at nominal value, thus imposing on the government the risk of improper resale. Alternatively, the government could make direct sales, at face value, to would-be contributors. The stamps could be so designed that one part would be retained for affixation to the donor's tax return, and the other delivered to the donee for subsequent redemption from the government.<sup>73</sup> Appropriate formalities could provide adequate safeguards against fraud;<sup>74</sup> there would be little incentive for cheating when

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72. See sources cited in note 3 *supra*.

73. Political scientists working with the Gore Subcommittee on Privileges and Elections have suggested use of the postal money order and receipt as an analogous method, familiar to the Post Office and to citizens at large.

74. The taxpayer could be required to attest when he was buying the stamp that he was purchasing it for his own use, and when he was claiming the credit, that he himself had purchased the stamp.

the government was not extending credit. If, for example, an organization bought stamps en masse to use as bribes, it would be no better — and perhaps worse<sup>75</sup> — off than if it were merely to distribute \$10 bills. But direct sales to contributors require a sales agency. The only agency which readily comes to mind is the Post Office, which already complains of overwork. Further, direct sales to individual taxpayers make solicitation of contributions eligible for tax credit difficult. The potential donor must be so firmly persuaded to make a contribution that he will make a special trip for that purpose to the government vending agency — long after the enthusiasm of the rally or of the door-to-door canvasser has worn off. All this suggests a second look at distribution through the political parties and other accredited donees. Purchase of stamps by “donee beneficiaries” *at face value* would certainly facilitate getting stamps to taxpayers while still minimizing incentives for fraud. But here the danger looms that not all parties and candidates will have equal liquid assets to invest in the acquisition of stamps. It is possible that the very candidate who most needs many small contributions would find himself too impecunious to make use of this plan. Whether short-term commercial loans could be floated to cover such a contingency, if the Treasury were to agree to refund monies paid for unused stamps, is not clear. What does appear, with some certainty, is that a feasible plan, combining some or all of the elements mentioned here, could be devised, and should be explored by the Congress, so that express directions about enforcing a tax credit could be given to the Treasury Department.

Finally, a word should be said about the amount of tax credit, the amount of subsidy, which should be allowed. Experimentation in such a complex field as campaign finance should perhaps begin on a modest scale. There is much to be said for the proposed limitation in S. 2150, allowing a maximum of a \$10 credit for a \$20 contribution. Only an actual test will tell us how great a drain on the resources of the Treasury this would be. In this context, the proposal to allow taxpayers to choose between deduction and credit should produce useful comparative statistics.<sup>76</sup>

The important thing is to get this new method of political financing organized in time to be effective for the 1960 elections,

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75. If, as has been suggested, the credit were to be for only 50% of the contribution, the organization would have had to pay \$20.00 for its \$10.00 “bribe.”

76. In other respects, a combination of tax deduction and credit does not obviate the criticisms of tax deductions discussed at page 426 *supra*.



at the latest, to stop theorizing, and to start doing. The Advertising Council has long stood ready to sell our citizens on their political responsibilities,<sup>77</sup> and the citizenry gives every indication in such a complex field as campaign finance should perhaps be the crucial one of favorable enabling legislation from the Congress.

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77. See note 5 *supra*.