

"Who could believe that Koupals, in their funny little house, could help shape the destiny of this state?"

SENATOR BYRD OF VIRGINIA

Mr. McCLURE. Mr. President, these have been turbulent times recently and many Americans might be surprised to learn that the work of the Congress has gone on in spite of each day's new events. In this regard, it is somewhat reassuring to find that not all of what has taken place in Congress has gone unnoticed.

I am thinking of the senior Senator from Virginia (Mr. HARRY F. BYRD, JR.) and the impressive speech he delivered on fiscal policy in this Chamber on August 5, 1974. Anthony Harrigan wrote a column about the Senator's remarks, noting in particular how desperately President Ford is going to need men like Senator BYRD to work with if we are going to bring inflation under control. Certainly, no other family in America has a greater history of promoting sound economic policies than the Byrds of Virginia. I ask unanimous consent that the Harrigan column be printed in the RECORD.

There being no objection, the column was ordered to be printed in the RECORD, as follows:

MR. FORD AND INFLATION (By Anthony Harrigan)

President Gerald Ford's primary and greatest concern necessarily will be with inflation. He made this clear within minutes of taking the oath as President. He, like most Americans, realizes that inflation is tearing at the fabric of our national life.

Fortunately, the new President is on record as describing himself as "a conservative on fiscal policy." If ever there were need for a conservative fiscal policy, it is now. But one can be sure that the President will face formidable opposition if he insists on the measures which are necessary for the survival of the American economy.

The union-liberal alliance in the Congress wants to add more fuel to the fires of inflation. The unions are pressing hard for inflationary contract settlements. They are seeking to unionize public employees—at higher cost to the taxpayers. They want an expansion of expensive federal programs. All this spells more inflation.

President Ford has said he will consult with congressional leaders and listen to their advice. If he is looking for an expert on the inflation threat, he need look no farther than the U.S. Senate and to U.S. Sen. Harry F. Byrd Jr. of Virginia. Like his late father before him, Sen. Byrd is the Senate's watchdog over government spending.

In a tremendously impressive speech delivered Aug. 5, Sen. Byrd spelled out the causes of inflation and the way to deal with it. "Massive deficits in the federal budget," he said, "are the chief cause of inflation. . . . The huge deficits which the government has been running have pushed the national debt up to \$475 billion. It will pass the half-trillion mark in less than a year."

Sen. Byrd cited the great frequency and soaring cost of federal borrowing. "Certainly," he noted, "it made \$71 billion unavailable to most of the private sector, and it played a major role in forcing the prime interest rate up to 12 per cent." Government borrowing, he made plain, makes it extremely difficult for the average citizen to get funds to buy a house or a company to acquire money for expansion.

One of the roads out of the inflationary morass is expansion of manufacturing facili-

ties which can turn out more goods at lower prices. But business finds money for expansion expensive and hard to get. With government spending on the rise, prices go up. And up. And up.

Yet the liberal-union coalition in power in Congress continues to urge more federal spending. Sen. Byrd pointed out that the Senate has just "raised spending for agriculture, consumer protection and the environment by 29 per cent."

He also observed that the bill included "an increase of one billion dollars (from \$3 billion to \$4 billion) for food stamps, a program which has increased a hundredfold in cost since its inception in 1966."

Is it any wonder, therefore, that food prices are going up and that American families find themselves in a severe bind?

Despite America's grave fiscal problems, the U.S. government continues to give billions of dollars to handout hungry foreign countries. Sen. Byrd insisted in his talk that "One prime area for reduction in the budget is foreign aid." This now totals about \$10 billion a year. The giveaways are scattered through a variety of money bills.

At a time of rampant inflation and massive deficits, it is outrageous that the Congress should approve huge outlays for foreign nations. For example, this year the Congress approved a new contribution of \$1.5 billion by the United States for the International Development Assn. The next time Mr. Average Citizen attempts to borrow money for a home improvement loan, he should think about that handout to foreign countries that already have squandered \$135 billion in U.S. funds since the end of World War II.

One can be sure that the advocates of domestic giveaways and the internationalist share-the-wealth types will attempt to bring pressure on President Ford. It is very important, therefore, that ordinary citizens let the new President and their Congressmen know that fiscal conservatism must be the order of the day. And, of course, it is vital that the voters help President Ford fight inflation by electing more fiscal conservatives in the Fall elections.



CAMPAIGN REFORM

Mr. CHURCH. Mr. President, as we all know, Congress is still considering legislation to reform our campaign procedures. Both the Senate and the House of Representatives have passed campaign reform bills, and we will be considering a conference report soon.

Earlier this year, our colleague from Delaware (Mr. BIDEN) wrote a major article on the question of public financing of elections for the Northwestern University Law Review.

In this article, Senator BIDEN makes an argument in favor of public financing of political campaigns which bears directly on the legislation now pending in Congress. It is a provocative article, and one which should be read by both proponents and opponents of public financing.

I ask unanimous consent, Mr. President, that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Northwestern University Law Review, March-April 1974]

PUBLIC FINANCING OF ELECTIONS: LEGISLATIVE PROPOSALS AND CONSTITUTIONAL QUESTIONS (By Joseph R. Biden, Jr.)

During my campaign for the United States Senate in 1972, I paid a visit to certain lead-

ers of a labor union whose members worked in the aircraft industry, and who intended to contribute \$5,000 to the campaigns of various Senate candidates. It was an honest and open procedure, and payment was by check. They asked what my chances of winning were, and I explained for perhaps the hundredth time of the campaign why I thought I would win. I want to emphasize that no one asked me to promise my vote on any particular issue, but they did ask, "Well, Joe, had you been in the ninety-second Congress, how would you have voted on the SST? And while you are at it, how would you have voted on bailing out Lockheed?" A candidate does not have to be very sophisticated to know the correct answers to such questions posed by labor leaders.

Later in the campaign, when I began to show strength in the polls and it looked as though I might win, thirteen multimillionaire Republicans from my state invited me to cocktails. The spokesman for the group said, "Well, Joe, let us get right to it. You are a young man, and it looks as if you may win this damn thing, and it appears that we underestimated you. Now, Joe, we would like to ask you a few questions. We know that everybody running for public office feels compelled to talk about tax reform, and we know that you have been talking tax reform, particularly capital gains and gains for millionaires by consequence of unearned income." Then one man leaned over, patted me on the knee in a fatherly fashion, and said—as if to say it was just among us—"Joe, you really don't mean what you say about capital gains, do you?" Again, I knew what the right answer to that question was worth \$20,000 in contributions.

I did not give the "correct" answers in either instance, and accordingly, I received no money. But it is no secret that, in similar situations, other candidates have not hesitated to answer "correctly," feeling that it is better to win their elections even while compromising certain principles, than to lose with all their principles remaining intact. Certainly few politicians would choose to be included in a second edition of *Profiles in Courage* at the expense of a long and productive political life. To say the least, a political system which requires such a choice deserves serious re-examination. On the basis of such an inquiry, I have concluded that the present system of campaign financing should be reformed, and a system of public financing of elections consistent with constitutional mandates adopted.⁴

POLITICAL DARWINISM: THE POOR GET POORER AND THE RICH GET ELECTED

There are three principal reasons why existing campaign financing practices should be reformed. First, an electoral system supported solely by private contributions affords certain wealthy individuals or special interest groups the potential for exerting a disproportionate influence over both the electoral mechanism and the policy-making processes of the government. Second, the concept of American democracy presumes that all citizens, regardless of personal wealth, have equal access to the political process.⁵ Under the present system of financing, however, the individual of moderate means lacks the financial resources necessary to mount an effective campaign and, therefore, is precluded from attaining elective public office. Third, our current method of financing campaigns tends to "lock-in" incumbents by making it extremely difficult for a challenger to mount a successful campaign.⁶

The source of most of our present problems is the high cost of running for election. In 1972, for example, the average reported expenses for candidates winning closely contested elections⁷ to the House of Representatives was more than \$100,000.⁸ In elections

⁴Footnotes at end of article.

discussed. At issue was who would make the initial announcement.

Smith remembers:

"We wanted Martin Stone (state chairman of Common Cause) and the Koupals wanted John Gardner (national chairman of Common Cause)—apparently to assure our commitment.

"We said no to Gardner and the Koupals stood up and said, 'That's it, we're out.' Lowenstein kept saying, 'Wait...'"

Both sides finally agreed that Brown, Stone and Mrs. Koupal would jointly make the initial announcement.

That problem solved, the pace of the campaign remained an issue of contention.

"The Koupals kept wanting to move, we wanted it slowed down," Smith said. "Our strategy was to push out the meetings to assure drafting time. A good document was the issue to us.

"We felt that if Brown ran off with it, he'd at least run off with a good document."

"The reason Common Cause was delaying," Mrs. Koupal insists, "was they were trying to put together a legislative package. They were making deals behind our back to get out of the initiative and get their stuff moving through the Legislature."

Lowenstein agrees that Common Cause may have been using the initiative to jam its own bills through the Legislature.

"But," he added, "we weren't worried they would pull out of the coalition because we knew they wouldn't get their stuff through."

Meanwhile, another problem had developed when a new Common Cause board took over and, according to Lowenstein, "wanted to reject every People's Lobby item in the initiative. You're going along and, boom, that happens."

Stern, of Brown's office, tried to address the board but, even though he is a member of Common Cause, was denied permission.

Brown intervened and stressed the necessity for moving forward.

"We are all dedicated to the substance of the proposal," he told them. "We have our differences but they are minor to the importance of this initiative."

"There was a great feeling of Common Cause that they wanted to lead this thing," Lowenstein said. "Jerry (Brown) knew they were worried about his presence so he agreed not to be a proponent on the measure, even though he had been assured he would be."

Smith recalls it this way:

"When our full board organized they worried about Common Cause being in bed with Jerry Brown. They got very tense. We tried to tell them that yes, Brown was going to run for governor, but he was still interested in reform.

"Also, several of our board members were concerned the Koupals might muddy up the initiative with nonsense. They respected the Koupals' ability to qualify an initiative but didn't like them shooting off their mouths."

This problem, too, finally was resolved. The board went along with its staff recommendation to stay with the coalition.

Then another difficulty arose. Lowenstein talks about it:

"Ed (Koupal) telephoned me one day and said he wanted an incumbency section in the initiative. I said no. He said, 'OK, we're out of the coalition.'

Ten minutes later I called him back and said all right, it's in—but don't use up all your chips."

"Ed is a horse trader. When he threatens to walk out he's just bargaining. It was irritating but effective. Usually Ed walked out of the room but Joyce was still there."

Lowenstein thought that People's Lobby was vital to the success of the initiative:

"Common Cause had the least role in the substance of Proposition 9. But even now Common Cause gets most of the credit. It isn't fair."

Meanwhile, at the drafting sessions, Lowenstein, Stern and Girard hammered the document together. Lowenstein did the lion's share of the work.

"We were always at loggerheads," he said. "We'd argue over this and argue over that—mostly on technical points. An 'and' or a 'but' could make a sweeping difference in what the law was.

"Girard could raise points and stick to them. It made it unpleasant because we were both stubborn, but it was vitally important."

People's Lobby had no representation in drafting of the initiative.

"We stood out of the way," Mrs. Koupal said, "to allow the thing to get written. With our attorneys involved, there might have been more delay. Our concern was getting it together. We didn't want it obstructed."

"As it turned out, Lowenstein and Stern wrote the initiative and Girard nitpicked."

Lowenstein stresses, however, that the input of People's Lobby into the document was of utmost importance.

Mrs. Koupal agrees: "We got everything we wanted, a document that was bigger than Common Cause wanted, stronger than Brown wanted and just perfect for People's Lobby."

The final document was circulated. Changes were made and improvements added. The next step was for three proponents to file the measure with the attorney general's office.

Again the coalition was placed in jeopardy—but this time by a comedy of mistrust.

Everyone had a next-to-last draft of the document. The final draft was being re-typed in Brown's office. As it was being re-typed, Dick Gregory, the lobbyist for People's Lobby, and Rob Smith, legislative director for Common Cause, were waiting outside.

"At this point," Lowenstein said, "No one trusted anyone else. Gregory and Rob Smith were hanging around but wouldn't say why. I told Jerry something funny was going on and he said not to give the final draft to anyone until we found out what."

Lowenstein was right. People's Lobby feared Common Cause would file first and alone, thereby gaining a measure of control over the initiative's final wording, the right to select other legal proponents and the right to file the subsequent petitions necessary to qualify the initiative for the ballot.

Common Cause was afraid People's Lobby had the same thing in mind.

Says Ken Smith: "We began to feel we had to turn the damned thing in or the Koupals would, and they might turn in anything. Anyone with \$200 could file."

"We wanted to control the document and bring in the Koupals later as proponents. Rob Smith had a check in his pocket and was ready to go."

"We argued about it and finally agreed to trust the Koupals. The same day we were talking about it, Gregory filed."

What Gregory filed for People's Lobby was an incomplete document, with the knowledge that there was time to amend later.

When Rob Smith heard of the filing—too late—he considered a foot race with Gregory to beat him to the door," Ken Smith said.

"My first reaction," Smith added, "was I knew it! Now the Koupals could do anything and there was no way of telling what the hell they'd do. I was ———."

"None of us trusted Common Cause by that time," Mrs. Koupal said. "They are naive and inexperienced. I could visualize horrendous negotiations after the filing."

"It was our job to gather the petitions later, and it was important to have control of it. It had nothing to do with credit."

The Koupals were in Philadelphia to appear on a television show the day of the filing.

✓ In a telephone conversation with Gregory,

Mrs. Koupal said she was afraid People's Lobby was about to be double-crossed by Common Cause.

"I told Dick if it looked as though they were going to file, he should file first. He decided Rob Smith was about to file, so he took the necessary action."

That night, Mrs. Koupal recalls, Mike Walsh—who had become chief negotiator for Common Cause—telephoned to charge that People's Lobby had double-crossed them.

"I told him not to worry about it, it wasn't that serious. If they hadn't been playing so many games, Dick never would have filed."

Lowenstein thinks the main concern of the Koupals was to retain the right to file the petitions later—that if Common Cause had preempted the right they might not have filed because they were still working on a legislative program.

He adds:

"Both People's Lobby and Common Cause felt silly about it later. They knew it was foolish. The proper proponents were added and it all worked out."

"Jerry talked to Walsh and the Koupals and utilized their guilt feelings to put it all together. He's the only one who could have saved it at the time. The whole thing might have fallen apart right then."

For a while, Common Cause considered a second initiative and discussed a lawsuit against the Koupals "for their capture of the document."

But, then, Ken Smith said, "we decided that even if we had to eat crow we'd try to repair things. That was the only thing that made sense."

The Koupals, for their part, accepted Walsh as a proponent ("They disliked him least," Smith sourly said) along with Richard Spohn, a Nader's Raider, and Roger Diamond, a People's Lobby attorney.

"Common Cause really thought, 'Here it is, it's all over, everything's ruined,' but we knew better," Mrs. Koupal said. "Had we wanted to mess anyone up we had our chance then. We could have told them to go to hell."

"Actually, the coalition operated as a fantastic team. Fighting makes you learn your subject and made the document so viable and beautiful. They can crab all they want about our nonexpertise but we knew what we were doing."

"At the time," Ken Smith said, "everything seemed so serious. Now it seems funny. But we knew we were playing for high stakes and we had to be tough."

"I've got to say, all things aside, that it was one of the best grass-roots campaigns ever run."

"People's Lobby is really not an organization but two people with a lot of true believers who follow. We felt from the start that we could not work with them, but that we had to—because they could qualify the initiative."

"We also believed that aside from their rhetoric, the Koupals had an honest belief in political reform. They are a monument to what can be done with a low budget and a lot of work."

"At the beginning," Lowenstein said, "we wanted People's Lobby for their knowledge of the initiative process and Common Cause for respectability."

"We went into this thing wondering if People's Lobby were a bunch of kooks. But as time went on we swung from being close to Common Cause to becoming closer to the Koupals. Ed and Joyce are much more sophisticated than the Common Cause staff."

Tom Quinn, then a deputy secretary of state and now Brown's campaign manager in the race for governor, adds:

"The success of Proposition 9 was a microcosm of how our system works. It began in the streets and emerged as a classic document."

with no incumbent running, the House candidates spent an average of \$89,000⁹ while their counterparts in Senate elections spent an average of over \$450,000.¹⁰ On the other hand, candidates running against incumbents were generally outspent by a margin of two-to-one.¹¹ These averages, however, tell only part of the story. Certain individual campaigns cost as much as \$320,000 for the House of Representatives and \$2,300,000 for the Senate.¹² Furthermore, the most expensive House campaigns were run by those candidates who managed to unseat an incumbent. The ten victors over incumbents in 1972 spent an average of \$125,000, compared to \$86,000 for their opponents.¹³ Because of a deficiency in the reporting requirements of the Federal Election Campaign Act of 1971,¹⁴ the exact amount spent in the presidential campaign of 1972 is not known. It has been reliably estimated, however, that President Richard M. Nixon's campaign cost approximately \$46 million and Senator George McGovern's \$36 million.¹⁵

Not only are campaign expenses high, but they are increasing at an alarming rate.¹⁶ To the general public this trend may seem disturbing; to a potential candidate, it poses an often insurmountable financial barrier. Without great personal wealth,¹⁷ there is only one way for a candidate to be able to run a competitive race, and that is through donations. Although other reasons motivate an individual to donate money to a political campaign,¹⁸ all too often a contribution is made with the hope of gaining influence with the candidate should he win the election.¹⁹ As Representative John Anderson, an Illinois Republican, has said:²⁰

"[T]he cliches and the nice rationalizations of the defenders of the status quo aside, the fact is that the wealthy and the special interests do not simply contribute to campaigns; they invest in candidates and in officeholders."

Such donations are necessarily tainted: minimally they succeed in gaining access to the office holder;²¹ at worst, they "buy" his vote.²² Even if funds are donated without a suspect motivation, the public perceives these transactions, especially the very large ones,²³ as constituting a sale rather than a gift.²⁴ Whether such a view is justified or not, the resulting lack of confidence that arises concerning public officials is, to say the least, distressing,²⁵ and reason enough to reform the law in this area.

Special interest group contributions also cause problems for elected candidates. An office holder is frequently forced to choose between the suspicion which results from voting in accord with the position of his major contributors and the prospect of losing financial support from those contributors by failing to do so.²⁶ The legislator's dilemma may be particularly acute when to vote his convictions would appear to generate a conflict of interest because of certain campaign donations.²⁷ Furthermore, an interest group tends to have selfish concerns about government; its interest is not necessarily consistent with the public welfare. Frequently, various interest groups contributing funds to campaigns of public officials have conflicting interests among themselves, and some type of "balance of power" is struck. Rarely, however, do any of these groups represent the ordinary citizen,²⁸ who all too often is ignored in the councils of government. Even if every segment of the public could be represented by its own interest group contributing funds to various candidates, I hardly think it desirable to have a "government by auction."

A second reason for reform is to allow a wider range of individuals to participate as effective candidates. Under our current system of private financing, candidates, typically, are wealthy individuals.²⁹ The explanation for this fact is simple: generally only

the wealthy are able to amass, either through personal resources or contributions from friends, the vast sums of money needed to finance an effective campaign for public office. Many a candidate has had to mortgage his house to finance his campaign,³⁰ or at least to keep his campaign going until private donations were received.³¹ Moreover, all too often money flows to those who have it; in other words, unless a candidate is able to finance his campaign himself, nobody else will be willing to finance it for him. For example, Representative Bertram Podell has said:³²

"When I ran for Congress the first question asked me was whether I could finance my own campaign. If I had said, 'No, I cannot,' I would not have been a candidate. When you mention candidates for public office, you are only mentioning men of affluence."

The existing system of campaign financing discriminates not only against the person of modest means, but also against other classes of people such as non-whites³³ and women.³⁴ In part, this is explained by the fact that these two groups have little access to wealth.

A third reason for reforming our system of campaign financing is that in our time incumbent members of Congress are virtually assured of re-election. Since 1954, well over ninety percent of all incumbents seeking re-election to the Congress has been victorious.³⁵ Furthermore, those who have gained re-election generally do so without a great struggle. Typically, only about fifty of the four hundred thirty-five elections for the House of Representatives are seriously contested,³⁶ while in the remainder, the race is a rather one-sided affair.

Of course, it is to be emphasized that many reasons unrelated to the financing of campaigns help explain why incumbents are so successful in gaining re-election.³⁷ For example, incumbents are generally better known than their opponents and during their terms of office can usually gain the attention of the news media through press conferences, announcements and other official ceremonies. In addition, they have the benefit of their office and large staffs, paid for at government expense, and the ability to create goodwill through such tasks as cutting government red tape on behalf of constituents. Also most legislators quite properly avail themselves of the "franking" privilege by sending constituents news letters which during an election campaign serve as a free source of name identification and thereby accentuate the disparity in power between an incumbent and his opponent. In re-election campaigns, these benefits have been estimated to give each incumbent a minimum financial advantage of \$16,000 over his challenger.³⁸

Moreover, one of the incumbent's foremost advantages over his opponent is his ability to raise funds. During the 1972 congressional campaigns, incumbents generally out-raised and out-spent their opponents by a margin of two-to-one.³⁹ The reasons for this disturbing statistic are not difficult to discern. In the eyes of many contributors a campaign contribution is effective only if made to a winner and, judging from prior performance, an incumbent is the most likely to win—again. In the words of Democratic Senator William Proxmire of Wisconsin:⁴⁰

"The point is that the incumbent gets the big contribution because the people who are making contributions want to make them to the winners and not to the losers."

The effect of this resulting financial imbalance is devastating on the challenger, who generally must spend at least as much money as the incumbent, if not more, to have any hope of victory. To gain at least a chance of winning, a challenger is obliged to raise a sizable amount of money early in a campaign, but he often cannot raise the money because he has such a slim chance of winning a competitive race.⁴¹ The result

under the current system is a vicious and often fatal circle. Furthermore, the challenger must spend valuable time even late in the campaign to solicit contributions, time that could be better spent seeking votes. On the other hand, the incumbent, being virtually assured sufficient funds, can devote his full attention to the hustings. The importance of this factor was acknowledged in a joint statement issued by a bipartisan group of fifty-five unsuccessful candidates for the House of Representatives in 1972, released through the Center for Public Financing of Elections:⁴²

"We found that incumbents uniformly out-raised and outspent us by substantial margins. We found that while we were putting our own savings on the line, and begging and borrowing from family and friends, many incumbents had easy access to large pools of special interest money from Washington and elsewhere. . . ."

"Some people have expressed concern that public funding would unfairly help the incumbents. As recent candidates, we know that simply is not true. The challenger could never be at a greater disadvantage than he or she now is."

This financial imbalance and the resulting competitive disadvantage has prompted an official of Common Cause to remark that the United States no longer has a two-party system under the Republicans and Democrats; it has a one-party system under the Incumbents.⁴³

Thus, the problems inherent in our current system of private campaign financing are clear. It provides a selected few individuals—generally distinguished by their wealth—a disproportionate say in the workings of government. It excludes all but those with great wealth or access to it from any hope of achieving elective office. Furthermore, by giving incumbents virtual life terms, it destroys the competitive political system upon which our government is supposedly based. Finally, the present system places what amounts to an often intolerable burden on the candidate. As Democratic Senator Hubert Humphrey of Minnesota has said:⁴⁴

"I have been in a number of campaigns, and I enjoy the campaigns. I like them. But the most demeaning, disgusting, depressing and disenchanting part of politics is related to campaign financing."

Put rather simply, there must be a better way.

WHAT KIND OF REFORM WILL WORK?

Although the need to change the present system is apparent, the formula for doing so is not so obvious. Many preliminary questions must be considered before deciding upon what type of campaign financing reform should be enacted.⁴⁵ The difficulties involved in adopting a fair and workable system are reflected in the large numbers of bills which have been introduced in Congress. Recently, the Senate passed the Federal Election Campaign Act Amendments of 1974,⁴⁶ a bill that provided for the public financing of federal elections. Prior to passage of this bill numerous others dealing with election reform had been introduced in both the Senate⁴⁷ and the House of Representatives.⁴⁸ In addition, President Nixon has put forward his own proposals for campaign financing reform.⁴⁹ Before discussing the specific provisions of these proposals, it will be useful to outline the existing laws regulating campaign financing.

Disclosure, Check-Offs, and Media Limitations

The two most recent major enactments dealing with campaign financing are the Presidential Election Campaign Fund Act,⁵⁰ also known as the Dollar Check-Off Act, and the Federal Election Campaign Act of 1971.⁵¹ The main provisions of the Campaign Act of 1971 concern media spending, funding of

Footnotes at end of article.

one's own campaign, and disclosure of political contributions.

Under the Act, candidates in the general election for a federal office are limited to media expenditures of ten cents for every person of voting age in the district, or \$50,000, whichever is greater.⁵² No more than sixty percent of this money may be used for advertising through the electronic media.⁵³ The Act also limits the amount which a broadcasting station may charge a candidate for a political advertisement to the lowest unit charge of the station for a commercial advertisement of the same class and amount of time broadcast during the same period of the day.⁵⁴ Candidates in a presidential primary have a ceiling on expenditures for radio or television time similar to that of an individual running for the Senate from that state.⁵⁵ These limitations had the effect in 1972 of limiting candidates for the Senate from, for example, Wyoming to the minimum of \$50,000 in total media expenditures, while candidates from California would have been limited to \$1,394,000.⁵⁶ In addition, the Act limits the amount which a candidate or a member of his immediate family⁵⁷ can contribute to this own campaign. Candidates for the Presidency and the Vice-Presidency are limited to expenditures of \$50,000 out of family funds; candidates for the Senate are limited to \$35,000; and candidates for the House of Representatives are confined to a contribution not in excess of \$25,000 from family resources.⁵⁸ Finally, the Act is best known for its disclosure requirements. Candidates are required periodically⁵⁹ to make reports of all receipts and expenditures, including the names and addresses of all contributors of more than \$100 and all persons to whom expenditures of over \$100 have been made.⁶⁰ Political committees, defined as organizations which make expenditures or accept contributions of over \$1,000 in a calendar year,⁶¹ are also covered by these requirements.⁶² These reports are made to the Secretary of the Senate by Senate candidates, to the Clerk of the House of Representatives by House candidates, and to the Comptroller General by presidential and vice-presidential candidates.⁶³ In addition, reports must be filed with the Secretary of State of the state in which the candidate seeks election, or in the case of presidential and vice-presidential candidates, of each state in which an expenditure is made.⁶⁴ These disclosure requirements made available reliable information on campaign financing for the 1972 elections, for the first time in American history, at least after the April 7th deadline.⁶⁵

The Dollar Check-Off Act represents the first real breakthrough in history in the area of public funding of campaigns. Under this Act, every taxpayer may designate one dollar, or two dollars in the case of a joint return, to be deposited in a Presidential Election Campaign Fund.⁶⁶ The money in the Fund is to be used to cover the campaign expenses of presidential general elections. The candidates of major parties—those which received twenty-five percent of the popular vote in the previous election⁶⁷—are, if they so choose, entitled to receive fifteen cents for every person of voting age in the country to be used to finance their campaigns, provided that they meet a number of conditions.⁶⁸ First, they must not exceed in expenditures the amount of their share of the public fund and must accept no private contributions;⁶⁹ second, they must keep certain financial records for inspection by the Comptroller General.⁷⁰ A candidate of a minor party—defined as one whose candidate received between five percent and twenty-five percent of the popular vote in the preceding presidential election⁷¹—may be funded in the same proportion to the major party subsidy as its previous popular vote bears to the average popular vote of the major parties.⁷² A minor party accepting fed-

eral funding, unlike a major party, would be allowed to accept private contributions, but only up to the limit of major party funding.⁷³ A party which received less than five percent of the total popular vote in the previous election is termed a "new party,"⁷⁴ and is eligible to receive retroactive federal funding if it receives at least five percent of the vote in the current election. If this condition is met, the party's subsidy is calculated by the same formula as the subsidy of a minor party, except that figures for the current election are used.⁷⁵ The new party formula may also be used by minor parties, subject to offset for whatever funds it received under the minor party formula.⁷⁶

In its first year of operation, only slightly over three percent of the taxpayers availed themselves of the check-off privilege.⁷⁷ A major reason for the disappointing participation in the program was that the check-off was included on a separate form in the income tax materials and was not only difficult to find, but also was not described in understandable language.⁷⁸ Many citizens were unaware of its existence and unaware that the dollar donation did not increase their personal tax liability.⁷⁹ Thus, the check-off's failure in the initial year of operation did not necessarily indicate a lack of public interest in public campaign financing. Fortunately, in 1974 the check-off box is being placed at line eight of page one on both the long and short tax form. It should be both conspicuous to and understandable by the taxpayer.⁸⁰

REFORM PROPOSALS

Cannon bill

In April, 1974, the Senate passed and sent to the House the Federal Election Campaign Act Amendments of 1974,⁸¹ a bill which provides for the federal financing of campaigns for federal office. In addition the bill imposes limitations on overall campaign expenditures and contributions to a candidate.⁸² The funding is optional and extends to both primary and general elections. The proposal provides for matching grants in the primary elections, based on contributions of \$250 or less for President and \$100 or less for Senator or Representative.⁸³ Primary candidates would be allowed to spend eight cents times the voting age population, except that candidates for Senator and Representatives from one-district states would be allowed to spend at least \$125,000, and candidates for Representative from all other states at least \$90,000.⁸⁴ Candidates in presidential primaries would be allowed to spend twice the amount allowed Senate candidates from that state.⁸⁵

Major party candidates⁸⁶ who opt for public funding could receive in the general election a subsidy equal to the full amount of the expenditure limitations.⁸⁷ For all federal candidates the spending limit is twelve cents per voting age person, except that candidates for Senator or Representative in one-district states are allowed at least \$175,000 and all other candidates for Representative at least \$90,000.⁸⁸ Minor party candidates⁸⁹ would be allowed funding based on past or current performance.⁹⁰ All other candidates would be allowed retroactive funding based on current performance.⁹¹ To make monitoring of spending easier, candidates would be required to establish a central committee and campaign depositories, through which all money must be channelled.⁹² The system is to be supervised by an independent commission.⁹³

Contributions to a candidate are limited to \$3,000 by an individual and \$6,000 by a committee or organization. No individual may donate more than \$25,000 in total contributions in a year. Other provisions of the bill would amend the equal time provision of the Communications Act of 1934,⁹⁴ provide for financial disclosure for all federal office-holders and candidates,⁹⁵ and change the date and time of federal elections.⁹⁷

The Cannon bill represents only one ap-

proach to the question of public financing of elections. Numerous alternatives to it have been suggested in other recent proposals. Since the bill must be passed by the House and signed by the President before it becomes law, an examination of these other proposals is useful. For example, the House could pass legislation that differs from the Cannon bill, and incorporates provisions taken from these other proposals. Also, even if the House enacts the Cannon bill, the President could veto it; in which case one of these presently dormant bills could be revived. Finally a discussion of the alternative proposals provides a useful framework for analysis of the policy questions relating to public financing of elections.

The Nixon Proposal

On March 8, 1974, President Richard M. Nixon delivered a message to the Congress setting forth his proposal with respect to campaign financing.⁹⁸ In the President's view "the single most important action to reform financing should be broader public disclosure."⁹⁹ To this end Mr. Nixon proposes that all candidates in federal elections be required to designate one committee to handle all campaign funds, and that indirect private contributions through organizations be severely limited.¹⁰⁰ In addition, to augment the reform implemented by the disclosure requirements, the President recommends that there be limits placed on individual contributions to campaigns.¹⁰¹ The President, however, specifically opposes both ceilings on total campaign spending by a candidate and the public financing of elections.¹⁰²

The Hart bill

The Congressional Election Finance Bill of 1973¹⁰³ proposed by Senator Hart is one of the leading congressional bills providing for public financing of elections. Covering nomination and election to Congress but not to the presidency,¹⁰⁴ the bill is most notable for its requirement of a threshold showing of support to qualify a candidate for public funding. A candidate of a major party,¹⁰⁵ if he chooses to participate in the optional program, must post a security deposit of twenty percent of the subsidy which he is entitled to receive.¹⁰⁶ The security deposit, composed of small contributions,¹⁰⁷ will be refunded to the contributors if the candidate receives a minimum percentage of the vote in the election.¹⁰⁸ If the candidate fails to receive an even smaller percentage of votes, he must repay the entire subsidy to the government.¹⁰⁹

The amount of the subsidy is sufficient to run a relatively strong campaign.¹¹⁰ Minor party candidates are eligible to receive a smaller subsidy.¹¹¹ In addition, a candidate may supplement the subsidy to which he is entitled with money raised from small private contributions.¹¹² Those candidates who elect not to receive public fundings are not limited either in spending or in contributions.¹¹³

The Kennedy-Scott bill

The Federal Election Campaign Act¹¹⁴ introduced by Senators Kennedy and Scott, passed the Senate in late 1973 as a rider to a debt-ceiling bill, but was not enacted into law at that time.¹¹⁵ It would extend the Dollar Check-Off Act¹¹⁶ to congressional general elections but not to primaries, and would increase the amount of the check-off from one dollar to two dollars, or to four dollars on a joint return.¹¹⁷ Private contributions would be prohibited by the Kennedy-Scott Bill in all federal general elections, but again not in the primaries.¹¹⁸ The amount of the subsidy would tend to maintain present spending levels.¹¹⁹

The Stevenson-Mathias bill

The Federal Election Finance Act of 1973,¹²⁰ introduced by Senators Stevenson and Mathias, relies heavily on private financing and provides for public financing in all federal general elections, but not in primaries.¹²¹ The subsidy is optional, but the bill provides

Footnotes at end of article.

an overall spending ceiling on all primary and general election campaigns somewhat higher than that contained in the Campaign Amendments Bill of 1973.¹²² On the other hand, the provisions of the two bills limiting private contributions are similar.¹²³ Candidates may receive up to one-third the maximum spending amount from the public treasury¹²⁴ and may qualify for funding in one of two ways, past performance and submission of petition signatures.¹²⁵

The Mondale-Schweiker bill

The Mondale-Schweiker Bill, also known as the Presidential Campaign Financing Act of 1973,¹²⁶ provides public financing for presidential candidates only. It utilizes a variation of the Dollar Check-Off Act¹²⁷ for purposes of the general election and a system of matching grants in the pre-nomination campaign. Each dollar designated by the taxpayer will be matched by the treasury in the general election¹²⁸ with candidates able to supplement the subsidy with private funds.¹²⁹ For pre-nomination campaigns, the fund matches small contributions once the candidate has amassed a "trigger fund."¹³⁰ The proposal contains relatively generous spending and contribution ceilings.¹³¹

The Cranston bill

The Clean Election Financing Act of 1973,¹³² introduced by Senator Cranston, provides for a financing system in all federal elections which depends to a very great extent on public subsidies. The program is to be funded on a variation of the Dollar Check-Off Act,¹³³ and grants matching payments in the primaries and flat subsidies in the general elections. Individual private contributions are severely limited,¹³⁴ whereas spending ceilings are generous.¹³⁵ To qualify for subsidies in pre-nomination campaigns, candidates must raise a "trigger fund" from small contributions;¹³⁶ they are then entitled to receive matching payments in the proportion of four dollars for every one dollar raised from private contributions of limited amounts.¹³⁷ In general election campaigns, the system provides a grant to major party candidates of eighty percent of the spending limit.¹³⁸ Candidates of other than major parties receive smaller subsidies.¹³⁹

The Clark bill

The Comprehensive Election Reform Act of 1974,¹⁴⁰ introduced by Senator Clark, would virtually eliminate the role of private financing in all federal primary and general elections while providing for generous public subsidies based on the Check-Off Act to both candidates and political parties. Under the proposal, primary candidates would qualify for funding by submitting petition signatures.¹⁴¹ In general elections, major party candidates would be given full funding, and minor party and independent candidates partial funding based on past or current performance.¹⁴² Private money would be prohibited except in petition drives and minor party and independent campaigns.¹⁴³ The subsidy would be subject to repayment according to the candidate's electoral performance.¹⁴⁴

The Anderson-Udall bill

The Clean Election Act of 1973,¹⁴⁵ introduced in the House by Representatives Anderson and Udall, is another matching payment proposal and is perhaps most notable for its provision for free broadcasting time for candidates. The campaign subsidy is provided in all federal primary and general election campaigns.¹⁴⁶ The proposal is unique among the bills in that, in presidential general election campaigns, funding is to be made to party committees rather than to the candidates themselves,¹⁴⁷ the idea being to allow party committees to play a key role in the campaigns of presidential nominees. Once a candidate or committee has amassed a small "trigger fund,"¹⁴⁸ the first \$50 of each

contribution¹⁴⁹ is matched by the government, until a certain level of subsidy is reached.¹⁵⁰

Under the proposal for free broadcasting time—to be called "Voter's Time"—federal candidates in general elections may qualify for a certain number of prime time blocks of television time to be aired, in most cases, simultaneously¹⁵¹ over all stations in the district. Each broadcast must include a substantial live appearance of the candidate and be of a format designed to promote rational political discussion, to illuminate campaign issues, and to give the audience insight into the abilities and personal qualities of the candidate.¹⁵²

THE BIDEN PROPOSAL

The Cannon Bill, as recently passed by the Senate, is a significant step towards the enactment of a plan of publicly financed elections. For this reason I voted in favor of its passage. However, in the process of formulating my own thoughts on the issue of campaign financing, I find that I differ from the Cannon Bill in certain respects. The following is a discussion of what I would propose ideally as a plan for public financing.

Briefly, my proposal would cover both nomination and general elections for all federal offices. It would provide federal subsidies to candidates for nomination based both on petition signatures and on security deposits from small contributions. For general elections it would provide funding for major party candidates, with funding up to the major party amount for other candidates based not on past performance, but on petition signatures or security deposits. Public funding would be adequate to run a competitive race. In addition, subsidies in kind would be given. Small private contributions would be allowed, but cash contributions of \$50 or more would be prohibited as well as large contributions from a candidate's personal or family funds. In an effort to offset constitutional objections that expenditure limitations are an infringement on the first amendment, total campaign spending would be limited at either a high level or not at all. To enforce the plan, an independent elections commission would be created. Most importantly, candidates would be required to maintain one central "checkpoint" to monitor all financial transactions.

Which Elections to Cover?

The deficiencies of our present method of financing campaigns are found throughout the entire electoral system. Correspondingly, they should be corrected everywhere. Although the problem of presidential campaign financing is perhaps most visible, reform is also needed with regard to congressional campaigns. The Hart¹⁵³ and Mondale-Schweiker¹⁵⁴ bills cover only congressional or presidential campaigns respectively and thus leave the completion of the reform process until a later date. Nevertheless, it seems necessary to cover all levels of the federal election process simultaneously. If, for example, large sums of private money were precluded only from presidential campaigns, they might move to congressional campaigns. Reform of presidential campaign financing at the expense of creating more severe problems for congressional campaigns is no reform at all.

The above problem also arises in connection with any attempt to provide public financing for general election campaigns, while leaving primaries and primary run-offs unregulated. It has been suggested that any public financing system which attempts to include primaries within its coverage has a minimal chance of enactment.¹⁵⁵ If the Congress is serious about reform of the political process, however, primaries should not be ignored. Private money statutorily excluded from the general election may be used to influence the primaries and the evil of its presence at that level of an election is no

less real than in the general election itself. In fact, in certain circumstances large contributions may be more influential in the primary than in the general election.¹⁵⁶ Thus, any system of campaign financing which would be both workable and fair would necessarily have to cover primary and general elections for all federal elections.

Are subsidies necessary?

Some have commented that the Federal Election Campaign Act of 1971¹⁵⁷ should be given an opportunity to demonstrate its effectiveness before further reform is attempted,¹⁵⁸ or that appropriate limitations on contributions and expenditures should be adequate to cure the current evils.¹⁵⁹ It would seem clear, however, that neither of these two partial reforms is sufficient to correct the widespread shortcomings of current campaign practices.

The disclosure requirements of the 1971 Act, it is argued, were not given a chance to prove themselves in the 1972 elections because of the April 7 loophole.¹⁶⁰ If operative for the entire campaign process, the argument continues, the requirements would be effective and render subsidies unnecessary, because large private contributions cannot stand "the light of day." The public reaction to a candidate receiving special interest contributions and to interest groups making large contributions will be so adverse that both parties will stop the practice. Both fact and logic, however, would seem to demonstrate the remoteness of that possibility. First, although substantial 1972 contributions were made before April 7 to avoid the reporting requirement, most candidates, especially those for Congress, appeared to obey both the spirit and the letter of the law and reported large amounts of interest group contributions.¹⁶¹ Nevertheless, no large scale public reaction to these contributions occurred. There has, of course, been a great public reaction since the 1972 election to allegations of misconduct involving large presidential campaign contributions. The aim of campaign finance reform, however, is to prevent not just the undue influence of a \$400,000 presidential contribution but also of a \$5,000 congressional contribution.

The problem of insufficient campaign funds is also the drawback of a statutory system dependent solely on limitations on contributions and spending. If contributions by interest groups were sharply limited, many candidates, especially those challenging incumbents, might suffer from a serious lack of funds. Such a system without the addition of public funding would be likely to "lock-in" incumbents to a greater extent than they are at present. Challengers, especially those without access to wealthy individuals as a source of funds, would be likely to have greater difficulty than incumbents in raising adequate small contributions to compensate for the loss of large contributions. This result would be intensified if low limitations on overall spending were enacted. Incumbents already can secure re-election with little effort; we hardly need to make it easier for them. Thus, the need for public subsidies is demonstrated.

A mixed public and private system

The answer to the problem of creating a campaign finance system which diminishes the influence of interest groups without "locking-in" incumbents would seem to be a scheme of public subsidies supplemented, for constitutional reasons,¹⁶² by small private contributions. The full subsidy should be sufficient to allow a candidate to run a reasonable race, but additional provisions should be made, particularly in the primaries, for partial funding, at least until a candidate is able to take his campaign to the public and thereby obtain sufficient support to qualify for the full amount of public funds.

My proposal would not be based on matching grants for a number of reasons. Matching

Footnotes at end of article.

grant proposals provide money for those who already have sufficient financing under the present system, but makes it difficult for precisely those candidates whom the system should be designed to help—the non-wealthy individual. Incumbents, for example, would not find it difficult to raise the funds necessary to receive similar sums from the treasury. A matching grant of \$50 as provided for in the Anderson-Udall Bill¹⁶³ or \$100 as provided for in the Cranston Bill¹⁶⁴ may not sound like a very large amount to raise when compared with some of the huge contributions publicized recently,¹⁶⁵ but it is clearly beyond the capacities of most Americans. If candidates were permitted to use public money only after they had demonstrated strength by raising private money, the well-to-do would maintain their present stranglehold on the supply of public offices.¹⁶⁶ Furthermore, by magnifying the difference in private money raised by the candidates, matching grants place the non-wealthy individual at a "self-perpetuating disadvantage."¹⁶⁷ Every extra dollar raised by an incumbent or a wealthy candidate over his opponent actually becomes two dollars to use to influence the electorate and to raise more money. The less affluent candidate would thus find it increasingly difficult to catch up. A system of matching grants combined with small private contributions would, in short, satisfy one of the three goals of campaign reform—that of curtailing the influence of special interest money—but not the other two. Non-wealthy individuals with no access to the wealthy would still be shut off from running for public office and incumbents would still retain a tremendous advantage over challengers.¹⁶⁸

The system which I would prefer to see enacted would allow less wealthy individuals greater financial access to the political arena. The full-funding amount would be, for the Senate and the Presidency, ten cents per voting age person in the district in the primary—including the entire pre-nomination period in the case of the Presidency—and fifteen cents per voting age person in the general election. The minimum subsidy would be \$100,000 and \$150,000 in Senate primary and general elections. Candidates for the House of Representatives would be eligible to receive a full-funding amount of twenty cents per voting age person in the primary and twenty-five cents in the general election, with a minimum full subsidy of \$40,000 and \$50,000 respectively. A House candidate from a one-district state would, however, receive the subsidy which a Senate candidate from that state would receive because the constituencies and thus the needs of the candidates are the same. Candidates in primary run-off elections would be given half the total subsidy which they had received in the primary.

The amounts would be sufficient to enable a candidate to take his case before the voters. A candidate for the presidential nomination could receive up to \$14,000,000 and could spend that amount in any way which he chose to win the nomination; he would not be restricted to spending his subsidy in primaries, but could use it in state or local conventions or at the national convention. A presidential nominee who qualified for the full-funding amount would receive about \$21,000,000.¹⁶⁹ The full-funding amount for a candidate for the Senate from, for example, Minnesota would be about \$250,000 in the primary and \$375,000 in the general election.¹⁷⁰ The amounts for a Senate candidate from Ohio would be \$720,000 and \$1,080,000 and for New York \$1,280,000 and \$1,900,000.¹⁷¹ A congressional candidate from a typical district with 300,000 residents of voting age would receive up to the full subsidy of \$60,000 in the primary and \$75,000 in the general election.

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In primary elections, funding would be qualified in two ways. The first would be a variation of the Hart Bill's security deposit.¹⁷² As in the Hart Bill, a candidate for the House or Senate would have to raise twenty percent of the full amount of the primary subsidy in contributions of \$250 or less.¹⁷³ He would then qualify to receive the full subsidy. Also, as in the Hart Bill, if the candidate received ten percent of the vote or more, the security deposit would be refunded to his contributors; otherwise, unless he withdrew from the primary more than one month before the election, it would be forfeited. Unlike the Hart Bill, under my proposal a candidate would not be forced to repay the amount of his subsidy if he received few votes in the election. It hardly seems to be good policy to permit a candidate to risk placing himself in debt for years because he might lose the election. One of the goals of campaign reform is to induce more people to enter the political process. To frighten people away because of a large penalty for failure is inconsistent with that goal.

The security deposit method of qualification would also be available for candidates for the presidential nomination. Because of the great amount of money involved, however, the security deposit would be five percent of the full subsidy, or, for the current population, \$700,000 in contributions of \$500 or less. The amount would be refunded to the contributors if the candidate attained a minimal level of success, in particular if he received the nomination or if he was one of the top three finishers, in total votes, on the first ballot at his party's convention.

One drawback to the security deposit system is that it would tend to give public money to those already capable of raising a substantial amount of private funds. Nevertheless, the reason for requiring candidates to qualify for public subsidies is to prevent frivolous candidates with no hope of victory from receiving money. It certainly cannot be said that a candidate for the Presidency who is able to raise \$700,000 from contributions of \$500 or less is a frivolous one. Similarly, an individual able to raise \$9,000 from contributions of \$250 or less is likely to run a competitive race for the House of Representatives.

Nevertheless, candidates should not be limited to the security deposit method of qualifying for public funds. First, the security deposit would, in practice, be limited to those who have access to substantial amounts of private money. Qualified potential officeholders are not found solely among the rich, but the security deposit system would tend to attract candidates from this group exclusively. Second, since the security deposit is an "all or nothing" device, with no provision for partial funding, it places a premium on immediate celebrity.

Therefore, there should be an alternative method of qualifying for federal funding, namely petition signatures. A candidate for any federal office should, if he submits signatures of ten percent of the registered voters in his potential constituency, receive the full subsidy.¹⁷⁴ Under this system, he would also qualify for partial funding. For each ten percent of the signatures required for full-funding which a candidate submits, he should receive ten percent of the full-funding amount. In other words, if a candidate submitted signatures equaling one percent of the registered voters in his potential constituency, this would amount to ten percent of the amount required for full-funding and he would be entitled to receive ten percent of the full-funding amount. He could then begin his campaign and try to sell the public on his candidacy. If his candidacy "caught hold," he would be able to obtain more signatures and thus receive more money from the government. This method would be especially appealing to potential presidential candidates. An individual could submit the

minimal amount of signatures and receive enough money to enter a few primaries. If he did well there, he should be able to obtain additional signatures, sufficient to take his candidacy to primaries in other states. This "snowball" effect might propel to victory a candidate who might otherwise not be able to enter the race at all. In this way candidates would be given the opportunity to prove themselves, and the public would receive the benefit of an influx of new and, in all likelihood, talented individuals into the political process.

In general elections, candidates of major parties—which would be defined, as in present law,¹⁷⁵ as those whose candidates received in the previous election twenty-five percent of the votes for that office—would receive the full subsidy without having to submit signatures or file a security deposit. The danger is present that his proposal would become an "immorality law" for the Democratic and Republican parties because their continual existence would be virtually assured by a guaranteed source of funds for their candidates. Nevertheless, it seems almost certain that their candidates would qualify for full-funding if required to do so. For them to obtain signatures or contributions for a security deposit would amount to mere busy-work.

Independent candidates and those of non-major parties, on the other hand, would be required, as in primary campaigns, either to file a security deposit or to submit signatures in order to qualify for public funding. The pending proposals base minor party qualification for funding either on performance in the previous election or, by means of retroactive funding, on the party's performance in the current election, whichever formula generates the greater subsidy. This method, however, has several drawbacks. To base funding on past performance¹⁷⁶ makes it difficult for a new party to become established. A party can rarely become successful without money, yet the parties are not eligible to receive money unless they have proven relatively successful in the past. The other proposals generally provide for retroactive funding after the election for parties which have done well without it. By its very nature, therefore, this subsidy comes after the money could be of any help to fledgling political parties. Retroactive funding is really a reward for past performance, whereas public funding should be a vehicle for achieving future success.

One objection concerning public financing of general election campaigns is that to finance the campaign of the opponent of an entrenched incumbent is a waste of the taxpayer's money.¹⁷⁷ The opponent has very little chance of winning anyway, the argument goes, so it serves no purpose to give him money.

Furthermore, according to this reasoning, it is wasteful to give money to the incumbent since he can obtain private financing so easily. It seems to me, however, that our electoral system could be improved only by promoting vigorous contests between incumbents and challengers. Perhaps incumbents would still win the vast majority of their elections; nevertheless, with an adequately financed opponent they would not be as assured of victory as they are under the present system of financing campaigns.¹⁷⁸ This increased competition would force incumbents to be more responsive to the interests of their constituents, for they would be truly accountable to the electorate at the next election. As one political scientist has observed:¹⁷⁹

"Elections have become the first and most important article in our unwritten constitutional arrangements. They give people a direct check upon officials. But elections—like the separation of powers—depend entirely upon the counterposing of ambitions of men. Here candidates provide the necessary competition.

"Their campaigns alert the people to the on-coming election; advance their personal qualifications and program [sic]; and supply a searching scrutiny of the opposition record. Only with this kind of vigorous competition are elections meaningful. Without it, they present the people no real choices and are as irrelevant to self-government as the staged elections in authoritarian countries."

The argument that incumbents should not receive money from the government because they are able to raise sufficient private funds overlooks one of the major goals which campaign financing reform is designed to achieve. The object of the proposal is not simply to enable poor people or non-incumbents to run for office, but also to diminish the domination of politics by special interests. To achieve that goal, the reliance of incumbents on large private contributions must be ended.

Payments in kind

In addition to subsidy payments, the government could provide candidates with services, namely reduced postage rates and free broadcasting time. If these proposals are adopted, campaign expenses would decrease and the amount of the cash subsidy could be decreased accordingly. Although I have serious doubts, on a constitutional level, concerning the proposal, the idea of giving candidates free access to the broadcast media has received great attention and has been endorsed by a number of organizations.¹⁹⁰ Television and radio are perhaps the most effective as well as possibly the most expensive means which a candidate has available for reaching the voters. Campaign advertising through these media have been the subject of increasing criticism because of the "slick" techniques used.¹⁹¹ In fact, most of the criticism directed against the "Madison Avenue" approach to campaigning has been a result of the use of television, particularly "spot advertising" of a minute or less. A proposal such as the Anderson-Udall Bill's "Voter's Time,"¹⁹² which provides for free television use in large blocks of time, would go far toward mitigating these problems. By making free time available to all candidates,¹⁹³ the use by well-financed campaigns of what has become known as a "media blitz" would be eliminated. At the same time, because the Anderson-Udall Bill provides for campaign broadcasts to be aired over all stations simultaneously, it removes a traditional drawback of long political programs—the tendency of viewers to watch competing entertainment programs instead.¹⁹⁴

Candidates could also be provided gratuitous services with respect to their use of the mails. Rather than prohibit the use of the "frank" for mass mailing of newsletters during campaigns, as one bill provides,¹⁹⁵ Congress should extend the "frank" to all candidates for federal office for perhaps two free mailings of campaign materials.¹⁹⁶ Without the full use of the "frank" during campaign periods, incumbents are still able before the campaign period to use the "frank" at least indirectly for re-election purposes by means of both mass mailings and personal letters. Fairness therefore dictates that challengers be allowed to use the "frank" as well. Such a measure would also help decrease campaign costs.

Because of the tendency by voters to ignore campaign mailings as "junk-mail," a sounder proposal would be to issue a "Voter's Pamphlet," as is already done by the states of Washington¹⁹⁷ and Oregon.¹⁹⁸ This pamphlet would be published by the government and mailed to all registered voters. Space would be made available to each candidate for a picture and a statement setting forth his personal background and program. The pamphlet would be less expensive than individual

mailings, and because it contains information about all candidates, less likely to be discarded without reading. The pamphlet would probably be the best means available to provide voters with information about the various issues and to make intelligent decisions about the candidates. A "Voter's Pamphlet" proposal was made on the floor of the Senate in 1973 in the form of an amendment to a bill. Regrettably the amendment was withdrawn because it had not been studied in committee.¹⁹⁹ It is hoped, however, that such a proposal will be adopted in the future.²⁰⁰

Limitations on contributions

The most direct method of curtailing the influence of large contributions on the political process is simply to limit them outright. Because of constitutional considerations,²⁰¹ it seems unlikely that contributions can be prohibited entirely. Nevertheless, a reasonable limitation could satisfy the constitutional standard by maintaining an outlet for citizen expression of candidate preference. The \$3,000 limitation adopted in the Cannon Bill,²⁰² however, seems too high to achieve the desired purpose. Many contributions made by special interest groups presently are not above \$3,000.²⁰³ An incumbent's campaign for the House of Representatives might cost \$75,000, and in such a campaign \$3,000 is a significant figure. A limitation of \$500 on contributions by individuals or political committees to any campaign or political committee with an overall limitation of \$2,500 on all such contributions in a calendar year, would appear more likely to eliminate the undue influence of special interests in the electoral process.

Such a limitation would also be large enough to satisfy constitutional requirements.²⁰⁴ The limitation on contributions by a candidate or his family to his own campaign, however, should not be quite so small. There are certain "start-up" expenditures involved in any campaign, particularly to qualify for public funding. A limitation of \$3,000 from personal and family funds would seem to be sufficiently high for a candidate to begin his campaign and sufficiently low to prevent wealthy candidates from buying their way into office.

Limitation on Expenditures

Although the increasing cost of campaigning has been cause for public concern, the beneficiary of a low limitation on total campaign spending will not be the public, but rather incumbents, who do not need to spend as much money on the campaigns as do their challengers.²⁰⁵ The Senate-passed Cannon Bill in particular works to the advantage of incumbents,²⁰⁶ with its \$90,000 limitation for House campaigns.²⁰⁷ The average expenses of all challengers who defeated an incumbent Representative in 1972 exceeded that figure by \$35,000.²⁰⁸ Chances are that, had the \$90,000 limitation been in effect in 1972, those defeated incumbents would still be serving in the Congress.

Three possible reasons can be advanced for enacting some limitation on overall expenditures. First, it would prevent an affluent candidate from being able to finance a lavish campaign. Second, it would prevent wealthy contributors from doing the same on behalf of favored candidates. And third, it would prevent the use of sophisticated and expensive advertising techniques which sell candidates to the public as if they were laundry detergents. The first two of these goals, however, are achieved more directly by limitations on contributions.

Furthermore, although the present use of certain advertising techniques is disturbing, as well as debasing, it is not nearly as disturbing as the prospect of providing life terms for incumbent office holders which might occur if a fairly low overall expenditure limitation was enacted into law. Moreover, limitations on contributions would provide a rough check

on spending. Limited to \$500 per contributor, candidates would not easily procure the funds to allow excessive spending.

Nevertheless, campaign expenditures should be limited, at least to some degree, for two reasons. It would assure that expenditures do not get completely out of hand and it would prevent candidates with access to the wealthy from amassing a large number of \$500 contributions. For these purposes an appropriate limitation would be \$200,000 each for primary and general election campaigns for the House of Representatives and twenty cents and twenty-five cents per voting age person in pre-nomination and general election campaigns respectively for both the Senate and the Presidency.

The best way to enforce these limitations would be to require each campaign to designate one central "check point" through which all receipts and expenditures would be channeled. Similarly, each campaign would be required to maintain one designated bank account, which would be the sole repository of campaign funds. After the campaign—and, perhaps, at periodic intervals during the campaign—a candidate would be required to make public this account together with all its deposits and withdrawals. Since all campaign expenditures could be withdrawn from this account, the amount of withdrawals could not exceed the limitation on spending. To prevent candidates from evading this requirement there would have to be a prohibition on all large cash transactions—for example, above \$50.

Supervision

The 1971 Campaign Act provides for a tripartite system of supervision, with disclosure reports required to be made to three enforcing congressional officers, the Secretary of the Senate, the Clerk of the House of Representatives, and the Comptroller General.²⁰⁹ In addition, reports must be made to the Secretary of State of the state in which the campaign is being conducted.²¹⁰ This system was generally effective in the last national elections;²¹¹ nevertheless, the full-time and vigorous enforcement necessary to carry out campaign reform requires an independent supervisory commission.

In reforming the electoral process one of the major goals is restoring public confidence in the political system. Thus, any enactment must have the appearance of genuine reform. The major drawback of the present enforcement system is that supervision by employees of those who are to be supervised, no matter how effective it may in fact be gives the appearance of only a half-hearted effort at reform. Not only is there an inherent conflict of interest between the supervisory duties of those to whom reports are presently to be made and their position as employees of party leaders and candidates in their own right, but also it is doubtful that they have the staffs or resources necessary to enforce a public financing system.²¹²

The system proposed by the Campaign Amendments Bill²¹³ is an improvement on the present system. It provides for a bipartisan commission composed of members appointed by a process in which the President, congressional leaders of both parties, and Congress itself participate. This commission would have complete enforcement powers including that of initiating criminal proceedings. It has the advantage of being dominated neither by one branch of government, nor by one political party.

An intriguing suggestion has been made by an academician to draw the members of the commission from the ranks of retired judges.²¹⁴ The proposal has the advantage of assuring the public that the commission members would be independent. It could be combined with an attractive proposal made by the Director of the Office of Federal Elections of the General Accounting Office that the commission members serve part-time

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and be supported by a large professional staff and a "strong executive director."²⁰⁶ Talented individuals might be more attracted to serve in a part-time position rather than in a full-time capacity.²⁰⁶ In addition, the commission should be given, along with its powers to initiate criminal proceedings and the power to initiate civil proceedings and the power to exact civil penalties.²⁰⁷

A provision for a commission was originally part of the 1971 Campaign Act, but was removed because of opposition by the House of Representatives.²⁰⁸ The same fate should not await any bill enacted in the future. Unless Congress wishes to give the impression that it is converting the present statutory campaign finance system, which is "more loophole than law,"²⁰⁹ into one in which violations are difficult to enforce, a strong, independent campaign commission must be created.

Summary

In a fashion similar to the Cannon Bill, recently passed by the Senate, the system which I have outlined here would go a long way towards eradicating the major evils inherent in the current method of financing campaigns. By limiting contributions and by limiting spending, a curb would be imposed on the power of special-interest groups.

The public subsidy would enable more people from diverse economic backgrounds to run for office and would help challengers to run more vigorous campaigns against incumbents. The fulfillment of these last two goals would be served in particular under my proposal by the provisions authorizing an alternative method of qualifying for funding simply by presenting petition signatures, since it would enable individuals without significant access to wealth to run for office and would allow them to receive increasing amounts of partial funding as the campaign progressed.

A CONSTITUTIONAL DEFENSE

Federal regulation of campaign financing poses several potential problems from a constitutional standpoint: Specifically, two general issues are raised by the legislation recommended both by this article and by the other proposals already introduced into the Congress. The first is whether Congress has the constitutional authority to enact such legislation, and the second is whether this type of legislation violates constitutional rights of a candidate or members of the electorate.²¹⁰

Constitutional authority for regulation of elections

With respect to the regulation of congressional elections, the authority of Congress is derived from article I, section 4 of the Constitution, which states: "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations. . . ." ²¹¹ A program which combines federal subsidies with limitations on contributions and expenditures would appear to deal with the "manner" of holding elections and, therefore, to be a proper exercise of congressional authority. This view is supported by a broad interpretation given the phrase "times, places and manner" by the Supreme Court in *Smiley v. Holm*,²¹² in which it stated: ²¹³

"[T]hese comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns; in short, to enact the numerous requirements as to procedure and

safeguards which experience shows are necessary in order to enforce the fundamental right involved."

The *Smiley* Court further ruled that article I, section 4 gave the Congress "a general supervisory power over the whole subject"²¹⁴ of congressional elections. It seems apparent, therefore, that, at least with respect to congressional elections, Congress has the authority to regulate federal campaign spending.²¹⁵

The congressional power to impose similar legislation on a presidential campaign presents a more difficult question. The Constitution provides that it is the state which "shall appoint, in such manner as the legislature thereof may direct," its presidential electors.²¹⁶ Indeed Congress' express authority extends only to "the time of choosing the Electors, and the day on which they shall give their votes."²¹⁷ The propositions, however, that the states possessed exclusive authority over the "manner" of presidential elections was put to rest in *Burroughs and Cannon v. United States*.²¹⁸ That case involved a constitutional challenge to a section of the Corrupt Practices Act of 1925,²¹⁹ which required that any political committee accepting contributions or making expenditures for the purpose of influencing the election of presidential electors file statements containing the name and address of each contributor. In sustaining the constitutional validity of the statute, the Court expressly rejected the argument that congressional authority in this area was limited merely to setting the date for selection of electors and the date on which those electors were to cast their votes.²²⁰ The Court added that Congress has the power on policy grounds to enact substantive legislation affecting the conduct of elections:²²¹

"The importance of [a presidential] election and the vital character of its relationship to and effect upon the welfare and safety of the whole people cannot be too strongly stated. To say that Congress is without power to pass appropriate legislation to safeguard such an election from improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection. Congress, undoubtedly, possesses that power, as it possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction whether threatened by force or by corruption."

Admittedly, *Burroughs* might be limited on its facts to controversies concerning disclosure laws. In that case, however, the petitioner's constitutional objection was that the statute allowed Congress to invade an area under the exclusive authority of the states. Since the Court overruled this objection with respect to a filing requirement, it seems reasonable that an objection to Congress' power to enact a program of federally subsidized elections would similarly be overruled. This conclusion is supported by the broad language employed by the Court in the *Burroughs* opinion. In holding that Congress possessed the power "to pass appropriate legislation to safeguard [a presidential election] from the improper use of money to influence the result,"²²² the Court apparently left room for legislation combining government subsidies with limitations on contributions and campaign spending.²²³

A final question with regard to congressional authority to enact one of the proposed reform bills is whether Congress has the power to regulate campaign primaries. Although the Court had discussed the question previously,²²⁴ the first decision on the issue of whether the constitutional grant of power to regulate "the manner of holding elections"²²⁵ extended to primary elections was rendered in *United States v. Classic*.²²⁶ An eight-man majority in that case held: ²²⁷

"[T]he authority of Congress, given in § 4, includes the authority to regulate primaries

when, as in this case, they are a step in the exercise by the people of their choice of representatives in congress."

Although a victory in the primary in that jurisdiction was tantamount to victory in the general election, that fact was not crucial to the decision of the Court. Moreover, in subsequent cases, the primary has been held to be a part of the general election process without the presence of any such special circumstances.²²⁸

The constitutional provisions dealing with the regulation of elections have, as these cases demonstrate, been broadly construed. As a result, Congress possesses far-reaching authority to enact measures necessary to protect the integrity of the electoral process. The scope of the authority extends beyond the comparatively explicit constitutional delegation with respect to congressional elections and includes presidential and primary elections. Given the policy motivation for enactment, passage of the proposed program of federal subsidies combined with contributions and spending limits is clearly within the constitutional authority of the Congress.

Limitation on contributions

A number of commentators have expressed doubt concerning the constitutionality of limitations on the size of campaign contributions.²²⁹ Indeed, supporters of public financing themselves have expressed concern in this area. These doubts are based on the belief that a contribution to a political campaign is a means of political expression, and since free political expression is protected by the first amendment,²³⁰ political expression in the form of a campaign contribution is similarly protected. Under this view, the act of contributing is characterized as symbolic speech.

As a threshold consideration, two factors must be taken into account here. First, it is not at all clear that the act of making unlimited contributions to a political campaign is protected as "speech" under the first amendment. Second, assuming that the act is so protected, the state interest in preserving the integrity of the electoral and governmental processes from the corruptive influence of large contributors might be found to be sufficiently compelling to justify an incidental infringement on first amendments rights.

The first amendment clearly protects more than purely verbal communications.²³¹ It may well be, however, that courts will not regard a campaign contribution as protected symbolic speech. When pure speech is joined with verbal acts which are not necessary to the communication, the state may regulate that mode of expression.²³² Certainly, a limitation on contributions does not abridge free speech on its face because "there is nothing necessarily expressive about" contributing to a political campaign.²³³ Nevertheless, the argument could be made that in particular cases campaign contributions were expressive. The judiciary may, however, hold that the physical act of delivering unlimited is not essential to political expression and that a campaign donation is thus not protected symbolic speech.

To the extent that the right to make unlimited contributions is protected by the first amendment, it is my belief that some limitation on contributions would be constitutionally valid because of the compelling state interest in protecting the electoral and governmental process from the undue influence of excessively large contributions.²³⁴ This view was taken by Mr. Justice Douglas, dissenting in *United States v. United Auto Workers*,²³⁵ a case in which the majority specifically declined to address itself to the question of whether a prohibition on labor union campaign contributions²³⁶ was constitutionally valid. Justice Douglas, joined in his dissent by Mr. Chief Justice Warren and Mr. Justice Black, emphatically stated that the

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absolute prohibition on campaign contributions constituted "a broadside assault on the freedom of political expression guaranteed by the First Amendment."²³⁷ He was careful to note, however, that:²³⁸

"[I]f Congress is of the opinion that large contributions by labor unions to candidates for office and to political parties have had an undue influence upon the conduct of elections, it can prohibit such contributions."

Thus Mr. Justice Douglas, the jealous protector of first amendment freedoms, adopted the position that large political contributions are not protected under the Constitution to the extent that they exert an undue influence upon the election process.

Justice Douglas' remarks suggest that the constitutionality of limitations on campaign contributions depends upon the particular level of limitation imposed. While Justice Douglas deemed invalid an absolute prohibition on contributions, he recognized that at some point the size of contributions can be restricted because of the very real likelihood of undue influence on the political process. In light of the presumption of constitutionality afforded a congressional act, it would appear, therefore, that a limit on contributions would be held unconstitutional only if it were shown that the limitation was manifestly below the level at which there could be a reasonable fear of improper influence on the recipient candidate.²³⁹

The level at which restrictions are imposed is a matter largely overlooked by those who would argue that limits on political contributions are unconstitutional. These critics treat a limitation in amount as if it were an absolute prohibition on contributions. The error in so doing is illustrated by *Kovacs v. Cooper*,²⁴⁰ a case which is relevant if a campaign contribution is viewed as symbolic speech. In *Kovacs* the Court²⁴¹ upheld against a first amendment challenge an ordinance which forbade the use on public streets of a sound truck emitting "loud and raucous noises." It was noted that an "absolute prohibition within municipal limits of all sound amplification, even though reasonably regulated in place, time and volume, is . . . probably unconstitutional . . ."²⁴² The ordinance, however, was upheld because its prohibition applied only to "loud and raucous" noises. Thus, while the absolute prohibition would be unconstitutional, a limitation on the permissible physical volume of the regulated communicative content was held valid. In applying this rationale to the issue of campaign contributions, Professor Freund has stated:²⁴³

"We are dealing here not so much with the right of personal expression or even association, but with dollars and decibels. And just as the volume of sound may be limited by law, so the volume of dollars may be limited without violating the First Amendment."

It might be argued that an overall limit on contributions would be an absolute prohibition on contributions as to those who seek to contribute after the ceiling has been reached. If this situation were to pose a serious obstacle to the passage of the proposed limitations, Congress could enact a program of pro-rata contribution refunds.

Under such a program all who so desired could contribute up to the limit imposed on the individual contribution. If the sum of these contributions exceeded the overall limit on contributions received, the excess could be refunded to all contributors on a pro-rata basis of the size of their original contributions. For example, if total contributions exceeded the overall limit by twenty-five percent, someone who had contributed \$80 would receive a refund of twenty-five percent of

his contributions, i.e., \$20. To avoid the administrative burden of mailing refund checks to each contributor, the amount to be refunded would be turned over to the Internal Revenue Service and would be credited against the contributor's income tax in the following year.

The Supreme Court has held that:²⁴⁴ "when 'speech' and 'non-speech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitations on First Amendment freedoms."

In attempting to define the elements of this "sufficiently important governmental interest," the Court in *United States v. Oregon* stated:²⁴⁵

"[W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

In view of this standard the proposed limitations on campaign contributions are constitutionally valid. With regard to the first element of the test, it has been previously shown that Congress has power under the Constitution to regulate congressional and presidential elections both at the primary and at the general election levels.²⁴⁶

The second element is also satisfied since the limitation on contributions is designed to advance substantial government interests: the independence of elected officials from large contributors and the prevention of fraud and corruption in the electoral process. These interests are sufficiently important to satisfy the *O'Brien* test. In *Ex parte Yarbrough*²⁴⁷ the Court stated:²⁴⁸

"If the government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the general government, it must have the power to protect the elections on which its existence depends from violence and corruption."

"If it has not this power it is left helpless before the two great natural and historical elements of all republics, open violence and insidious corruption."

And in another case the Court said:²⁴⁹

"To say that Congress is without power to pass appropriate legislation to safeguard [a presidential and vice-presidential] election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection."

The third element of this test is that "the governmental interest is unrelated to the suppression of free expression."²⁵⁰ Since the governmental interest in regulating campaign contributions is to preserve the integrity of the election process and the independence of elected officials, this condition would clearly appear to be satisfied, especially in view of the rationale of the *O'Brien* decision. In that case the defendant contended that a statute which prohibited the knowing destruction of a draft card was unconstitutional as to him because the act of burning his draft card was "symbolic speech" protected under the first amendment. The Court upheld the statute and thereby acknowledged that the governmental interest involved was "unrelated to the suppression of free expression." Such a conclusion was justified since the statute did not seek to prohibit communication of the defendant's antiwar beliefs but only to assure the effective operation of the Selective Service by prohibiting the act of draft card burning.

In much the same way the proposed limitations on campaign contributions seek not to prohibit communication of political beliefs, but only to assure the effective opera-

tion of the electoral process and to prevent corruption on the part of elected officials. Furthermore, the Court in *O'Brien* attempted to clarify this third element by citing *Stromberg v. California*.²⁵¹ In *Stromberg* the Supreme Court struck down a statute which punished those who expressed their "opposition to organized government" by displaying "any flag, badge, banner or device." Under this statute, therefore, a banner or badge could have been prohibited based solely on the written contents contained thereon. The statute did not seek to prohibit the act of displaying a banner nor the act of displaying a banner for the purpose of expressing any abstract idea; it sought to prohibit the expression of a particular idea or belief. Put another way, the conduct was lawful but for the particular idea it sought to express. The majority in *O'Brien* indicated that a *Stromberg*-type statute could not be sustained because it "was aimed at suppressing communication" and, therefore, violative of the third element of the *O'Brien* balancing test.

The case of limitation on contributions is clearly distinguishable from *Stromberg*. An excessive contribution is unlawful under my proposal regardless of the particular political idea or belief which the contributor seeks to express by his act of contributing money. In *Stromberg* the act was illegal only if it were performed for the purpose of expressing an opposition to government. This type of prohibition clearly suppresses expression and is distinguishable from a ceiling on political contributions where only the act of excessive contributions is suppressed without regard to the idea sought to be expressed by that act. It appears, therefore, that the proposed limitation on contributions satisfies the third element of the *O'Brien* test.

Finally, it must be shown that the alleged incidental infringement on first amendment rights is no greater than is necessary to achieve the governmental interest. Critics of limitations have suggested that alternative remedies could insulate the electoral process from undue influence of unlimited contributions without the arguable infringement on free expression. Suggested alternatives include free broadcast time or franking privilege and tax incentives for contributions. While such measures might solve some of the problems of the current system, none would work to improve all problems as would public financing coupled with limitations on contributions. As long as there are limitations neither on expenditures nor on contributions, a candidate can be expected to spend up to and beyond the limits of the funds which he is able to raise. As a result, any right to mail campaign circulars for free or to receive free radio and television time will not reduce the pressure on the candidate, once elected, to repay in one form or another "debts" owed to major campaign contributors. Clearly, the limitation on contributions is essential to the elimination of this potential for undue influence. Furthermore, this final element of the *O'Brien* test is perhaps not quite as rigorous as are the other elements. Elsewhere, the Supreme Court has stated:²⁵²

"The power of Congress to protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress. If it can be seen that the means adopted are really calculated to attain the end, the degree of their necessity, the extent to which they conduce to the end, the closeness of the relationship between the means adopted and the end to be attained, are matters for congressional determination alone."

A judgment by Congress, therefore, that limitation on contributions constitutes the only effective remedy is likely to be given great deference by the Court.

Another line of precedent lends support to

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the conclusion that the right to contribute to a campaign may be outweighed by the strong policy considerations inherent in any congressional act designed to limit the right to contribute. These cases deal with the Hatch Act's²⁵³ prohibition of political activity by public employees. In *United Public Workers v. Mitchell*²⁵⁴ the Supreme Court sustained the validity of a provision of the Act which prevented employees of the executive branch from taking an "active part in political campaigns."²⁵⁵ The Court justified this total prohibition of political activity by balancing it against the determination by Congress of the "material threat to the democratic system"²⁵⁶ posed by partisan activity on the part of government employees. *Oklahoma v. Civil Service Commission*,²⁵⁷ a case decided the same day, upheld a similar ban imposed on state officials whose work was financed in part by a federal agency.²⁵⁸

Mitchell was recently reaffirmed by the Court in *United States Civil Service Commission v. National Association of Letter Carriers*.²⁵⁹ The Court balanced against the infringement of first amendment rights a number of factors which also apply to limitations on contributions: effective and fair operation of the government, protection of the role of elections in representative government, and—a factor not mentioned in the cases discussed thus far—maintenance of public confidence in the government by avoiding the appearance of corruption.²⁶⁰

Significantly, these cases upheld a complete ban on all political activity, except the right to vote, on the part of government employees. Such a prohibition was held justified to prevent undue influence on government workers. The proposal made by this article for campaign financing reform would constitute only a partial prohibition on a specific type of political activity—contributions of money. It is designed to prevent undue influences, not on government employees working in a non-political part of the government,²⁶¹ but on elected officials. Since the Hatch Act has withstood the constitutional challenge, it seems only reasonable to conclude that limitations on campaign contributions will do so as well.²⁶²

Limitation on Expenditures

Legislation restricting the amount of a particular campaign contribution may be accompanied by limitations on campaign expenditures. Without the restrictions on expenditures candidates with access to large numbers of wealthy individuals might, despite the limitations on contributions, be able to amass a large campaign treasury from many individual \$1,000 contributions. Thus, non-wealthy candidates, without significant contacts among the wealthy, would still be essentially shut off in many instances from effectively seeking elective office. Political offices would remain within the reach of the affluent or those associated with them.²⁶³ To avoid such a result it seems necessary to implement the proposed limitations on campaign expenditures.²⁶⁴

Limits on expenditures, however, have encountered many of the same constitutional questions raised by limits on contributions.²⁶⁵ Since campaign expenditures are viewed as indispensable to mass communication of political ideas, it has been suggested that such expenditures constitute speech plus conduct and are protected under the first amendment.²⁶⁶ The validity of this suggestion hinges on many of the same factors discussed in relation to whether limitations on contributions would be constitutionally permissible.²⁶⁷

Accordingly, the first issue is whether the act of making unlimited campaign expenditures is protected under the Constitution. Unquestionably, campaign expenditures are indispensable to effective political speech,

probably more so than contributions. If contributions are limited, the candidate can nevertheless effectively communicate his political message to the voters through expenditure of his own personal resources. Once a limit on expenditures is enacted, however, and that limit is reached by a candidate, the prohibition on effective political speech by that candidate is absolute. As a result, one could likely make a stronger argument for a constitutional right to unlimited campaign expenditures than could be made for unlimited campaign contributions. This fact alone, however, does not guarantee the right to make unlimited campaign expenditures. Again the sound truck cases are applicable. In *Saia v. New York*²⁶⁸ the Supreme Court concluded that amplified speech was deserving of first amendment protection since "loud-speakers are today indispensable instruments of effective public speech."²⁶⁹ Less than a year later, however, the Court allowed a local government to accommodate the public interest in privacy by upholding a reasonable limitation on amplified speech.²⁷⁰ The rule to be taken from these cases is that where a sufficiently important governmental interest exists as a justification, a reasonable limitation on the use of an instrumentality indispensable to effective public speech may be enacted.

Application of this rule to limits on campaign expenditures again necessitates the balancing test analysis of *O'Brien*.²⁷¹ The constitutional authority of the Congress to regulate campaign expenditures is derived from the same source as is the authority to regulate contributions.²⁷²

The countervailing governmental interest present in this instance is that both the wealthy and the not-so-wealthy, or those without access to the wealthy, share an equal opportunity to participate in the electoral process. The importance of this objective was emphasized in *Kramer v. Union School District*,²⁷³ in which the Court declared that "unjustified discrimination in determining who may participate in political affairs . . . undermines the legitimacy of representative government."²⁷⁴ Elsewhere, the Court has stated, "wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process."²⁷⁵

It seems clear therefore, that the governmental interest of fostering equal political opportunity for both those with vast as well as those with meager resources is "important or substantial." With regard to the third requirement of the *O'Brien* test, the governmental interest in equal political opportunity is "unrelated to the suppression of free expression."²⁷⁶ Any doubt on this point is resolved in favor of limitation on expenditures by the sound truck cases. Finally, without limits on expenditures the candidate who has access to vast financial resources can overwhelm his poorer opponent. Although a ceiling on contributions would prevent an elected official from being unduly influenced by a single large contributor, without a limit on total spending a number of individuals with similar interests could together contribute a large sum of money to a candidate; the same evil of undue influence on elected officials would then be present. Moreover, because of the natural tendency of candidates to spend all available funds, this problem would persist even where a program of federal subsidies would assure a certain level of funds to all qualified candidates. It is apparent, therefore, that a persuasive argument can be made for expenditure limits on the basis of a balancing test analysis.

A second constitutional criticism of campaign spending limits focuses on undue interference with the right of the voter to receive information relevant to his electoral decisions. It is well established that the freedom of speech and press necessarily

protects an individual's right to receive information and ideas.²⁷⁷ Two cases dealing with this right have been cited in support of the position that spending limits are constitutionally invalid.²⁷⁸ In *Red Lion Broadcasting Co. v. FCC*²⁷⁹ the petitioner challenged the Federal Communication Commission's "fairness doctrine"²⁸⁰ on the ground that it denied the petitioner its right to free speech by dictating in certain cases which material would be broadcast. The essence of the petitioner's argument was that the broadcaster enjoyed the same constitutional right of free speech as the individual. In upholding the "fairness doctrine" the Court emphasized that the public's right to receive diverse social and political ideas overrode the broadcaster's right to free speech by radio.²⁸¹ In *Mills v. Alabama*²⁸² the Court found invalid a statute prohibiting solicitation of votes on election day. The Alabama Supreme Court had sustained the statute on the ground that it protected the public from the confusion of unverified, last-minute political charges. In striking down this statute, the Court in *Mills* has been heralded as sustaining the public's right to receive political information in situations in which that information might be unverifiable. It should be noted, however, that the reasoning of the Court in *Mills* was based on the right of a newspaper to publish an editorial not on the right of the public to read it.

On the basis of this precedent it has been argued that limits on campaign spending abridge the individual's constitutional right to receive political information. Under this view the ceiling on spending is regarded as a restriction upon the ability of the candidate to convey information to the public and is, therefore, unconstitutional.²⁸³

In my opinion the effect of the proposed spending limits will be precisely the opposite. Instead of reducing the flow of political information to the voting public, these ceilings will help assure a balanced flow of diverse viewpoints. Without spending limits those candidates having unlimited financial resources are able to dominate the flow of political information to the public. They do this by monopolizing the most effective channels of communication. For example, there is only a limited supply of prime time television advertising slots. If these are all taken by a wealthy candidate who can in essence outbid all other candidates, those political viewpoints that are less than extravagantly financed will be denied this highly effective means of presenting their case to the electorate.²⁸⁴ Limiting expenditures, however, helps to promote "free trade in ideas"²⁸⁵ and "provides hopes for access to the political process by the weaker minority interests. . . ." ²⁸⁶ The proposed federal campaign subsidies would make this hope a reality. Thus, the ceilings would protect the flow of political information to the public by preventing the well-financed candidates from overwhelming by sheer volume of spending the communications of other candidates. In this manner the public would be exposed to a greater diversity of viewpoints. Such a result seems highly consistent with the constitutional right of the public to receive information and ideas.²⁸⁷

Admittedly, the validity of any limitation might hinge upon the level of restriction. A limit could be set so low as to deny all candidates the chance to present their cases effectively to the electorate. Such legislation would be difficult to justify. Thus, the limitations should be set at a relatively high level, but low enough to prevent the heavily financed candidate from "so overloading the channels of communication as to render his opponent's right to speak virtually worthless."²⁸⁸ The limitations contained in my proposal set forth in this article would seem to meet that test.²⁸⁹ Once Congress has set such limits, its judgment in setting the level of

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limitation so as to maximize the flow of political information should be given great deference by the Court.²⁹⁰

A final challenge to the constitutionality of spending limits is the contention that such limits favor the incumbent because of the public familiarity which he has acquired prior to the campaign. The argument here is that the only way in which the relatively unknown challenger can overcome the "recognition gap" between himself and the well known incumbent is by outspending the incumbent on media campaigning. Under this rationale a limit on spending is thought to preclude the challenger from any chance to close this "recognition gap."²⁹¹

Proponents of this view cite *Williams v. Rhodes*²⁹² authority for their position. In that case the American Independent Party and the Socialist Labor Party challenged the constitutionality of an Ohio law which required a new political party to obtain petitions signed by qualified electors totaling fifteen percent of the number of the votes in the last gubernatorial election to be placed on the presidential ballot. On the other hand, the Democratic and Republican parties retained their positions on the ballot merely by polling ten percent of the votes in the last gubernatorial election, and were not required to obtain signature petitions.²⁹³ The State of Ohio sought to justify the restriction on the ground that it promoted political stability, and that by minimizing the number of new parties placed on the ballot, it would protect voters from "a choice so confusing that the popular will could be frustrated."²⁹⁴ The Court, however, found that the effect of this election law was to "make it virtually impossible for any party to qualify on the ballot except the Republican and Democratic Parties."²⁹⁵ Having concluded that the State had failed to demonstrate any "compelling interest" to justify these restrictions, the Court held them to be a violation of both first amendment and equal protection rights.²⁹⁶

Williams calls into question the constitutionality of any election law which tends to lock in the Democrat-Republican, two-party system. Some have argued that limits on expenditures prevent smaller parties from closing the "recognition gap" by effectively denying them the opportunity to outspend the two major parties. On this basis it is urged that the spending limits fall within the prohibition of *Williams*.²⁹⁷

The restrictions overturned in *Williams*, however, are clearly distinguishable from the spending limitations contained in my proposal. In the first place, the burden of the spending limits will fall equally on all parties and on all candidates. The unequal burden of the regulation in *Williams* was obvious. This distinction, however, is unlikely to settle the issue since critics of campaign spending limits view the equal burden of the limits as the factor which will most tend to solidify the presently dominant position of the two major parties.²⁹⁸ A stronger distinction lies in the existence of a more compelling state interest in the case of campaign spending limits. The state interest articulated in *Williams*, namely to protect the electorate from undue confusion, sounds suspiciously like the state interest rejected in *Mills*.²⁹⁹ On the other hand, the limits on campaign spending are imposed to further a state interest which has on many occasions been upheld: an equal opportunity to participate in the electoral process regardless of ability to pay.

The principle announced in the *Williams* case does not prohibit every measure which restricts the right of a new party to appear on the ballot, but merely holds that in that particular case the regulation was unreasonably restrictive. Restrictions deemed unreasonable

by the Court have been upheld subsequently. In *Jenness v. Fortson*³⁰⁰ a Georgia law was challenged which provided that a candidate for elective public office who did not win a political party's primary election could have his name printed on the ballot at the general election only by filing a nominating petition signed by at least five percent of the number of registered voters who voted at the last general election for that particular office.

The Court unanimously upheld the Georgia statute and distinguished it from *Williams v. Rhodes* primarily on the ground that Georgia's election laws, unlike Ohio's, do not operate to freeze the political status quo.³⁰¹ The proposed campaign spending limits would likewise not freeze the existing political status quo, which can be characterized as the domination of politics by those with access to vast financial resources. Furthermore, by providing qualified minor party candidates with funds, the program of subsidies would serve to encourage them actively to challenge the dominance of the major parties and might enable them to become more competitive. Such an effect seems entirely consistent with *Williams* and *Jenness*.

As with limitations on contributions, the conclusion here is that reasonable limitations on campaign spending are constitutionally valid. Because campaign expenditures are essential to effective political speech, it appears that such expenditures are protected under the first amendment. The protection of these expenditures does not, however, guarantee to the candidate the right to make unlimited expenditures when a compelling state interest requires limitation. Equal political opportunity for wealthy classes and prevention of undue influence on elected officials are, as demonstrated, sufficiently compelling interests to justify spending limits. Furthermore, instead of infringing on the voting public's right to receive information, the limits can be set so as to enhance that right by assuring that political information flows to the public from viewpoints which might otherwise be drowned out by the more heavily endowed interests. Finally, rather than freezing the status quo, the limitation on expenditures when combined with the proposed subsidy will enable minor party candidates to challenge the major party candidates with unprecedented vigor. On this basis it seems clear that the spending limits are constitutionally valid.³⁰²

Contribution disclosure requirements³⁰³

To enforce the limitation on campaign contributions it will remain necessary, as the law now provides,³⁰⁴ for a candidate to disclose the amount and donor of all political contributions received. While this disclosure requirement raises several constitutional questions, it seems clear upon analysis that such a requirement is constitutionally permissible.

The first question relates to what might be called the first amendment right to anonymity.³⁰⁵ The rationale supporting this "right" is that, where, because of fear of embarrassment or reprisal a disclosure requirement stifles an individual's freedom of association or speech, the requirement is constitutionally invalid. This doctrine was developed in a series of cases which overturned statutes requiring disclosure of NAACP membership lists.³⁰⁶ These cases originated in southern communities at a time of violent hostility to civil rights groups. Under these circumstances the fear of reprisals was sufficiently acute that disclosure of membership lists would have severely threatened rights of association. The right of anonymity was also upheld in *Talley v. California*,³⁰⁷ in which the Court invalidated an ordinance prohibiting the distribution of a handbill which did not have printed on its face the name and address of the person responsible for its printing and distribution. The Court concluded that the

ordinance would discourage the expression of unpopular ideas and thereby restrict the freedom of speech. On the other hand, where the government interest was deemed to be sufficiently compelling, disclosure of membership lists has been upheld in spite of the infringement on the right of association.³⁰⁸

On the basis of the *Talley* precedent it has been contended that campaign disclosure laws might impose an unconstitutional burden on the freedom of political expression. For example, a resident in a predominantly Republican neighborhood might be discouraged from contributing to a Democratic candidate for fear that disclosure would subject him to social ridicule. The constitutionality of disclosure requirements, however, seems to be established in *Burroughs and Cannon v. United States*.³⁰⁹ In that case the Court upheld the constitutionality of the Federal Corrupt Practices Act of 1925 on the ground that disclosure requirements "would tend to prevent the corrupt use of money to affect elections."³¹⁰ It should be noted, however, that the first amendment arguments dealing with the right to anonymity was not raised in *Burroughs*.³¹¹

Any lingering doubt as to the first amendment constitutionality of campaign disclosure requirements was erased by *United States v. Harris*.³¹² In *Harris* the Court employed the rationale of *Burroughs* in upholding the constitutionality of a statute which required a lobbyist to disclose the source and amount of any contributions made to him. The majority in *Harris* declared:³¹³

"Congress has . . . merely provided for a modicum of information from those who for hire attempt to influence legislation. . . . It wants only to know who is being hired, who is putting up the money, and how much. It acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process."

The first amendment arguments were offered and specifically rejected in *Harris*.³¹⁴ On the basis of *Burroughs* and *Harris*, therefore, it seems clear that campaign disclosure requirements do not offend the first amendment.

The second constitutional question raised by the proposed disclosure requirements involves the privilege against self-incrimination. Given that the contributor must report his contribution and that he can be held criminally liable for making a contribution which exceeds the limitation, it would appear that he is compelled to incriminate himself by compliance with the disclosure requirement.³¹⁵ This view seems to be supported in *Marchetti v. United States*³¹⁶ and *Grosso v. United States*.³¹⁷ In each of these cases a statute requiring anyone engaged in specified gambling practices to register and to pay a special tax on gambling activities was held invalid on the ground that compliance would have the unmistakable result of incriminating the registrant.

It is significant to our inquiry that the majority in *Marchetti* made a special point to distinguish and reaffirm *United States v. Sullivan*.³¹⁸ In *Sullivan* the taxpayer, a bootlegger, was convicted for failing to file an income tax return despite his claim that filing a return would have necessitated his admission of violations of the National Prohibition Act. The Court in *Sullivan* concluded that the taxpayer could have answered most of the questions on the return without making incriminating disclosures and indicated that he could lawfully withhold answers only with respect to those questions which elicited incriminating answers. *Marchetti* distinguished *Sullivan* on the ground that "every portion of these [gambling] requirements had the direct and unmistakable consequence of incriminating the petitioner,"³¹⁹ thereby rendering inapplicable the solution of partial compliance suggested in

Sullivan. The basis for this distinction is that in the case of the income tax return the questions "were neutral on their face and directed at the public at large,"²⁰ while the gambling disclosure requirements were directed at a "highly selective group inherently suspect of criminal activities."²¹ In the latter case the disclosure requirement violates the privilege against self-incrimination while in the former it does not.

In applying this test to the campaign contribution disclosure requirements, it seems clear that there is no violation of the privilege. The requirement is neutral on its face and is directed not at some suspect group but at the general public. Furthermore, anyone who makes an illegal contribution can still be required to report all legal contributions he makes. Since the non-incriminating data is severable from the incriminating, the contribution disclosure requirement is analogous to the *Sullivan* case and distinguished from *Marchetti* where selective compliance was impossible without violation of the privilege. On the basis of this distinction the contribution disclosure requirement would not violate the fifth amendment privilege against self-incrimination.

CONCLUSION

Public financing proposals have provoked strong remonstrances from critics, one of the most effective of whom is Representative Bill Frenzel. Mr. Frenzel has charged, among other things, that public financing will have a number of drastic effects on our political system.²² He believes that, by placing an over-all spending limit on campaigns while inadequately funding them through public subsidies, the re-election of incumbents will be made easier, the influence of political parties will be diminished by direct subsidies for individual candidates and abuse through discriminatory application of the law may result from increased bureaucratic control over our electoral process. Furthermore, taxpayers, in Frenzel's view, will object to government funds provided to candidates whom they oppose. Election for local offices will also be affected by public financing of federal campaigns, Frenzel contends, with one of two consequences: either private money, unable to find an outlet in congressional and presidential campaigns, will flood state and local campaigns; or the entire source of private money will dry up, leaving local candidates unable to fund their own campaigns.

Moreover, special interest groups will concentrate on the non-electoral sources of their power to maintain their control over governmental decision-making, such as increased lobbying efforts. Finally, in Frenzel's view, private financing is not a bad system. Private money, he contends, is not necessarily tainted, and controlled by appropriate limitations it provides an effective "market test" for candidates.

Many of these are valid criticisms. Some of them, such as the possibility of advantage for incumbents, are met through my proposal. Others, such as the possibility of abuse of bureaucratic control, can be prevented by appropriate statutory standards for administration of the system. On balance, however, the advantages of public financing seem to outweigh the potential drawbacks. Although some taxpayers may object to the funding of candidates whom they oppose, it seems better that the public subsidize them rather than allowing special interests to do so. Furthermore, the loss of the "market test" provided by private contributions will be more than offset by its replacement with a system in which the true market test, one in which all citizens participate equally, is that of the election itself.

It is important to recognize that public financing is not a cureall for all the ills besetting our present political system. In particular we cannot expect to see the influence of special interest groups vanish with the

enactment of a system of public campaign subsidies. Nevertheless, by eliminating an important source of special interest power, an adequate campaign finance law will go a long way toward reducing the disproportionate political strength of these groups. Similarly, public financing by itself may not provide equal access to elected public office for all those capable and desirous of serving; nor is it alone likely to place incumbents and their challengers on an equal footing. Public financing of elections will, however, constitute a sizeable step in those directions, and that prospect alone should be sufficient reason for its enactment.

FOOTNOTES

¹ Yates Amendment to H.J. Res. 468, 92d Cong., 1st Sess., 117 CONG. REC. 7023-24 (1971); First Senate Committee Amendment to H.J. Res. 468, 117 CONG. REC. 7828-29 (1971).

² Emergency Loan Guarantee Act, 15 U.S.C. §§ 1841-52 (1971).

³ Senator Walter F. Mondale has said, "I think any candid study of American politics shows that that temptation [to receive contributions from the special interests] is almost irresistible." *Hearings on S. 1103, S. 1954 and S. 2417 Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. 29 (1973)* [hereinafter cited as *Hearings on S. 1103*]. The pressure, of course, is not always inflicted by the contributor on the candidate. Sometimes the candidate, using the fear of future reprimands as a weapon, pressures the contributor. *See, e.g., id.* at 30 (press release from American Airlines).

⁴ It is perhaps presumptuous to speak of "proposing" an idea which, if it were a person, would be of retirement age. Public financing of presidential campaigns was proposed by President Theodore Roosevelt in his State of the Union Message in 1907. 42 Cong. Rec. 78 (1907). President Roosevelt conceded that he was "well aware that it will take some time for people so to familiarize themselves with such a proposal as to be willing to consider its adoption." *Id.*

⁵ Cf. the observations of Alexis de Tocqueville in 1835 that wealthy men were ill-disposed to seek public office and that the public was less-inclined to elect them. A. de Tocqueville, *Democracy in America* 182-84, 188-89 (1966 ed.).

⁶ A third reason commonly heard for reform is the high cost of the campaigns themselves. Nevertheless, as will be shown, a severe limit on campaign spending would seriously tend to hamper efforts of challengers to unseat incumbents. *See* notes 195-98 and accompanying text *infra*.

⁷ An election in which the winning candidate received less than 55% of the vote.

⁸ *Hearings on S. 1103, supra* note 3, at 96 (Common Cause study). The exact figure was \$107,378. These figures from the Common Cause study represent the first comprehensive spending figures on congressional races ever made public.

⁹ *Id.* The Republican candidates averaged \$88,375 while the Democratic candidates averaged \$89,430.

¹⁰ *Id.* at 97. The Republican candidates averaged \$465,264 while the Democratic candidates averaged \$496,297.

¹¹ *Id.* at 96-97.

¹² *Id.* at 102, 105. Moreover, Senate elections were held in neither of the two most populous states, California and New York, where campaigns would tend to be the most expensive.

¹³ *Id.* at 105. This trend was not apparent in campaigns for election to the Senate. Two of the five candidates who defeated incumbents spent less than their opponents. *Id.* at 110-11. This difference has been attributed to the greater amount of media attention a Senate race receives as compared to a House race. Thus the need for a Senate challenger to

spend money to create name identification is lessened. *Id.* at 142. (remarks of Rep. Bill Frenzel).

¹⁴ 2 U.S.C. § 431 (note) (Supp. II, 1972) [hereinafter cited as Campaign Act of 1971]. The Act did not go into effect until April 7, 1972; thus, many of the expenditures in the presidential campaign went unreported.

¹⁵ *Hearings on S. 23, S. 343, S. 372, S. 1098, S. 1189, S. 1303, S. 1355, & S.J. Res. 110 Before Senate Subcomm. on Privileges and Elections and Senate Comm. on Rules and Administration, 93d Cong., 1st Sess. 268 (1973)* (remarks of Fred Wertheimer, Director, Legislative Activities, Common Cause) [hereinafter cited as *Hearings on S. 372*]. Estimates of the size of President Nixon's campaign fund have ranged as high as \$60 million. Reichley, *Let's Reform Campaign Financing—But Let's Do It Right*. Fortune, December, 1973, at 95, 97.

¹⁶ For example the campaigns of victorious Senate candidates in 1972 cost an average of over \$500,000. *Hearings on S. 1103, supra* note 3, at 108. The corresponding figure ten years before was perhaps \$200,000. Congressional Quarterly Service, Guide to the Congress of the United States, 471-72 (1971).

¹⁷ *See* D. Dunn, *Financing Political Campaigns* 17 (1972) [hereinafter cited as Dunn]. For example, a common reason for the giving of a campaign contribution appears to be "social." A contributor may desire nothing more than to be able to "show off" a United States Senator as a guest at one of his parties.

¹⁸ *See id.*

¹⁹ *Hearings on S. 1103, supra* note 3, at 323 (remarks of Rep. John Anderson).

²⁰ Dunn, *supra* note 18, at 17.

²¹ Instances of vote-buying through the device of campaign contributions are necessarily hard to document. Nevertheless, in the words of one veteran officeholder, "whether we want to admit it or not, some contributors have at least felt they 'owned' us on certain occasions." *Hearings on S. 1103, supra* note 3, at 86 (remarks of Sen. Frank E. Moss).

²² In 1972, 18 individuals contributed almost \$7.5 million to the Committee to Re-elect the President. This was more than the entire amount spent by President Lyndon B. Johnson in his campaign eight years earlier. *Id.* at 66 (remarks of Sen. Adlai E. Stevenson III). One individual alone donated \$2 million, almost all of it before the Campaign Act's reporting requirements went into effect. 33 Cong. Q. Wkly Rept. 2382 (Sept. 1, 1973).

²³ This impression is strengthened by the character of many of the contributors. Large contributions have been given by interest groups—organizations of individuals having in common a specialized occupational interest in one aspect of government, for example, businessmen all dealing in the same industry. For a list of 1972 contributions to congressional and presidential candidates of selected interest groups, see 31 Cong. Q. Wkly Rept' 571-88 (March 17, 1973).

²⁴ *Hearings on S. 1103, supra* note 3, at 34 (remarks of Sen. Hugh Scott).

²⁵ *Id.* Senator Scott also quoted an expression of former New York Mayor Fiorello LaGuardia: "The most important quality an office-holder can have is monumental ingratitude." *Id.*

²⁶ *See Hearings on S. 372, supra* note 17, at 207 (remarks of Sen. James Abourezk concerning controversial amendments to a recent farm bill and the donations he received from dairy farmers).

²⁷ One exception is Common Cause.

²⁸ In recent years there have been a few noble examples of wealthy candidates, previously politically unknown, gaining electoral victories because of extraordinarily well-financed campaigns. *See* Congressional Quarterly Service, Guide to the Congress of the United States 475-76 (1971). There is no reason for a publicly unknown individual

not to be encouraged to seek public service, and an expensive campaign may be a necessity for such a person to carry his message to the public. Unfortunately, however, if one is neither well-known nor wealthy, his candidacy is often doomed from the start.

³⁰Including the author. See also *Hearings on S. 1103, supra* note 3, at 176 (statement of losing candidates for the House of Representatives).

³¹Senator Floyd Haskell recounted his experience in running for the Senate in 1972:

In my case in Colorado, the primary was September 12. That gave me less than 60 days to raise money for the general election. It was necessary to make a commitment the day after the primary for TV productions. If I had not had some money in the bank, I could not have done that and I would not be here today.

Hearings on S. 1103, supra note 3, at 69.

³²27 Cong. Q. Wkly Rep't 2434 (December 5, 1969).

³³*Hearings on S. 1103, supra* note 3, at 254 (remarks of Rep. Barbara Jordan).

³⁴*Id.* at 159-61 (remarks of Frances Tarlton Farenthold, chairwoman of the National Women's Political Caucus).

³⁵See Twentieth Century Task Force on Financing Congressional Campaigns, Electing Congress: The Financial Dilemma 6-7 (1970) [hereinafter cited as *Electing Congress*]; Congressional Quarterly, Inc., *Almanac* 1073, 180 (1970); *Hearings on S. 1103, supra* note 3, at 105, 110-11 (Common Cause study).

³⁶*Hearings on S. 1103, supra* note 3, at 144 (statement of Rep. Bill Frenzel).

³⁷See, e.g., *Electing Congress, supra* note 35, at 26.

³⁸Rosenbloom, *A Background Paper, in* *Electing Congress* 36.

³⁹*Hearings on S. 1103, supra* note 3, at 95-96, 101 (Common Cause study). My campaign was an exception. See note 13 and accompanying text *supra*.

⁴⁰119 Cong. Rec. 14794 (daily ed. July 26, 1973).

⁴¹See note 35 and accompanying text *supra*.

⁴²*Hearings on S. 1103, supra* note 3, at 176. Another graphic comment was made by Norma B. Handloff, unsuccessful candidate for the House of Representatives from Delaware:

By election day my husband and I had acquired debts that we shall spend the rest of our lives paying off. . . . To those [who talk to me about running "next time"] I have only one possible answer: What kind of a nut do you think I am?

Id. at 178.

⁴³*Id.* at 97.

⁴⁴119 Cong. Rec. 14985 (daily ed. July 28, 1973).

⁴⁵For example: is disclosure of contributions and spending enough? How much should contributions be limited, if at all? Should contributions by committees and organizations be limited? Should overall campaign spending be limited? How could these limits be enforced? Should presidential and congressional campaigns be financed by the public? If so, to what extent? Should contributions be limited to money or should they also include services? How should third party and independent candidates qualify for funding? Should primary candidates be financed? If so, how can this policy be carried out without opening the floodgates to frivolous candidates? Should the government finance candidates in "one-party districts" to the same extent candidates are funded in more competitive districts? Finally, would any such system be constitutional?

⁴⁶S. 3044, 93d Cong., 2d Sess. (1974), introduced by Senator Cannon, passed, 120 Cong. Rec. 5853 (daily ed. Apr. 11, 1974).

⁴⁷Congressional Election Finance Act of 1973, S. 1103, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Hart Bill*]; Federal

Election Finance Act of 1973, S. 1954, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Stevenson-Mathias Bill*]; Clean Election Financing Act of 1973, S. 2417, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Cranston Bill*]; Presidential Campaign Financing Act of 1973, S. 2238, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Mondale-Schweiker Bill*]; Federal Election Campaign Fund Act, S. 2297, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Kennedy-Scott Bill*]; Comprehensive Election Reform Act of 1974, S. 2943, 93d Cong., 2d Sess. (1974) [hereinafter cited as *Clark Bill*].

⁴⁸Clean Elections Act of 1973, H.R. 7612, 93d Cong., 1st Sess. (1973) [hereinafter cited as *Anderson-Udall Bill*].

⁴⁹119 Cong. Rec. 3211 (daily ed. March 8, 1974) (message from the President).

⁵⁰Int. Rev. Code of 1954 §§ 6096 (a), 9001-13, 9021 (1972).

⁵¹2 U.S.C. §§ 431-42, 451-54; 18 U.S.C. §§ 591, 600, 608, 610-11; 47 U.S.C. §§ 312, 315, 801-05 (Supp. II, 1972). This legislation repealed the earlier largely ineffective limitations on campaign spending and contributions of the Hatch Political Activity Act, 18 U.S.C. §§ 608, 609 (1970). The Act prohibited campaign contributions exceeding \$5,000 per year, 18 U.S.C. § 608 (1970); and the receipt and expenditure by any national political committee of more than three million dollars per year, *id.* § 609; and contributions by national banks, corporations and labor unions to federal election campaigns, *id.* § 610. These limitations were to be enforced by disclosure provisions of the Federal Corrupt Practices Act which directed every campaign committee to account for all its receipts and expenditures, 2 U.S.C. § 242 (1970); and to report such data to a clerk of one of the houses of Congress within thirty days after the election, *id.* § 248.

Enforcement of these early limitations on spending and contributions, however, was quite ineffective. The three million dollar limit on receipts and expenditures by any national political committee was avoided by the formation of numerous independent committees that did not conform to the strict definition of "political committee" found at 18 U.S.C. § 591 (1970). The enforcement problems were compounded by the fact that the expenditure ceilings did not apply to primaries, that contributions received by political committees without the candidate's knowledge were exempt from reporting requirements, that there was no required form for a candidate's financial statements and that complete discretion was given congressional clerks in reporting spending violations, 2 U.S.C. §§ 244-46 (1970).

⁵²Campaign Act of 1971 § 104(a)(1), 47 U.S.C. § 803(a)(1) (Supp. II, 1972). The statute does not cover primary or run-off elections. The amount is to be increased as the cost of living increases. Campaign Act of 1971 § 104(a)(4), 47 U.S.C. § 803(a)(4) (Supp. II, 1972).

In order to enforce these limitations regulations have been passed pursuant to the Act that require the media before accepting advertisements in support of a candidate to obtain certification from that candidate that the payment of the charge for such advertisement will not violate the applicable expenditure limitation, 11 C.F.R. § 4.4(a) (1973).

⁵³Campaign Act of 1971 § 104(a)(1)(B), 47 U.S.C. § 803(a)(1)(B) (Supp. II, 1972).

⁵⁴Campaign Act of 1971 § 103(a)(1), 47 U.S.C. § 315(b) (Supp. II, 1972).

⁵⁵Campaign Act of 1971 § 104(a)(3)(A), 47 U.S.C. § 803(a)(3)(A) (Supp. II, 1972).

⁵⁶S. Rep. 93-170, 93d Cong., 1st Sess. 40-41 (1973).

⁵⁷Immediate family was defined as "a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candi-

date, and the spouses of such persons." Campaign Act of 1971 § 203, 18 U.S.C. § 608(a)(2) (Supp. II, 1972).

⁵⁸Campaign Act of 1971 § 203, 18 U.S.C. § 608(a)(1) (Supp. II, 1972).

⁵⁹The reports must be filed on March 1, June 1 and September 1 during the election year, and also five and 15 days before the election and January 31 after the election. Any contribution of \$5,000 received after the last reporting date before the election must be reported within 48 hours of its receipt. Campaign Act of 1971 § 304(a), 2 U.S.C. § 434(a) (Supp. II, 1972).

⁶⁰Campaign Act of 1971 § 304(b), 2 U.S.C. § 434(b) (Supp. II, 1972).

⁶¹Campaign Act of 1971 § 301(d), 2 U.S.C. § 431(d) (Supp. II, 1972).

⁶²Campaign Act of 1971 § 304(a), 2 U.S.C. § 434(a) (Supp. II, 1972).

⁶³Campaign Act of 1971 § 301(g), 2 U.S.C. § 431(g) (Supp. II, 1972), 304(a), 2 U.S.C. § 434(a) (Supp. II, 1972).

⁶⁴Campaign Act of 1971 § 309, 2 U.S.C. § 439 (Supp. II, 1972).

⁶⁵See notes 7-15 and accompanying text *supra*. The Act did not go into effect until April 7, 1972; thus all contributions and expenditures made before that date were exempt from its requirements, Campaign Act of 1971 § 406, 2 U.S.C. § 431 (note) (Supp. II, 1972).

⁶⁶Int. Rev. Code of 1954, § 6096.

⁶⁷*Id.* § 9002(6).

⁶⁸*Id.* § 9004(a)(1).

⁶⁹*Id.* § 9003(b). It should be noted that if the amount available to the candidate from the fund is less than the amount he is entitled to, he may make up the difference in private contributions.

⁷⁰*Id.* § 9003(a).

⁷¹*Id.* § 9002(7).

⁷²*Id.* § 9004(a)(2)(A). In other words, if party A received forty-five percent of the vote, party B thirty-five percent and party C twenty percent, parties A and B would be major parties and party C a minor party. If parties A and B decided to accept federal funding in the next presidential election they would receive the full subsidy of fifteen cents for every voting age citizen in the United States. Since in our example we have assumed that the average vote received by A and B was forty percent, or twice party C's vote of twenty percent, party C would be eligible to receive half the full subsidy.

⁷³*Id.* § 9003(c)(2).

⁷⁴*Id.* § 9002(8).

⁷⁵*Id.* § 9004(a)(3).

⁷⁶*Id.*

⁷⁷*Hearings on S. 372, supra* note 15, at 170 (remarks of Sen. Edward M. Kennedy).

⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰Internal Revenue Service Form 1040, 1040A (1974). In March, the three member Delaware delegation (Senator Roth, Representative duPont and I) at my instigation wrote more than 1600 employers in the state and all local union heads urging them to publicize the check-off provision among their employees.

⁸¹S. 3044, 93d Cong., 2d Sess. (1974) (introduced by Senator Cannon), passed, 120 Cong. Rec. 5853 (daily ed. April 11, 1974).

⁸²This is the second bill passed by the Senate in less than a year that imposes such limitations on campaign spending and contributions. In July 1973, the Senate passed and sent to the House of Representatives the Federal Election Campaign Act Amendments of 1973, S. 372, 93d Cong., 1st Sess. (1973). Since that time the bill has remained in committee in the House.

With regard to spending limitations, the 1973 Campaign Amendments Bill requires that spending by Senate and House candidates in states where there is only one congressional district be limited in primary elec-

tions to either ten cents for every individual of voting age in the state or \$125,000, whichever is greater. House candidates in other states would be limited to ten cents per voting age individual in the respective congressional district or \$90,000, whichever is greater. For general elections, the limit would be fifteen cents per person of voting age or \$175,000 for candidates for the Senate or House of Representatives in a state with one congressional district, and \$90,000 for other congressional candidates, whichever is greater. S. 372, 93d Cong., 1st Sess. § 20(a) (1973) (to create 18 U.S.C. § 614). Candidates running in a primary for the presidential nomination and candidates for the Presidency itself are allowed to spend in each state the amount which a candidate for Senate might spend for the nomination or in the general election respectively. In addition, expenditures for a vice-presidential candidate count toward the totals of his presidential running mate.

The 1973 Campaign Amendments Bill also imposes limits on contributions. *Id.* § 20(a) (to create 18 U.S.C. § 615). Individuals and independent political committees are restricted to total contributions not exceeding \$3,000 for any presidential candidate or for any congressional primary or general election. In addition, an individual is prohibited from making total contributions to all candidates and political committees of more than \$25,000 per year. The bill would also increase the limitations on the amount which a candidate could spend out of personal or family funds to finance his campaign to \$100,000 for a candidate for President or Vice President, \$70,000 for candidate for the Senate, and \$50,000 for candidate for the House of Representatives. *Id.* § 18(a) (1).

Every candidate would be required to have one central campaign committee through which all donations and contributions must be channeled. A presidential candidate would be allowed one central committee in each state, as well as one overall national committee. Each candidate would also have to designate one bank as a campaign depository to receive all deposits and to make all payments. *Id.* § 9(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create §§ 310, 311). To supervise the law, the bill sets up a Federal Election Commission, similar to that in the Cannon Bill.

In addition, this bill would repeal the "equal time" requirement of the Communication Act of 1934, 47 U.S.C. § 315(a) (1970), prohibit the use of the "frank" for mass mailings of congressional newsletters within two months of an election, S. 372, 93d Cong., 1st Sess. § 11 (1973), limit the amounts which citizens could contribute to campaigns and which candidates could spend, and require campaigns to follow certain procedures. For example, a candidate must designate one committee as his central campaign committee through which all financial reports must be channelled. *Id.* § 9(a) (to amend Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 310). A candidate must also designate one checking account to receive all contributions and from which all expenditures must be made. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 311).

§ S. 3044, 93d Cong., 2d Sess. § 101 (1974) (to create § 503(a) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). In order to avoid the funding of frivolous candidates candidates would be required to raise a "trigger fund" before qualifying for the subsidy. The "trigger fund" would amount to: \$10,000 for House candidates; twenty per cent of the maximum spending allowance or \$125,000, whichever is lesser, for senatorial candidates; and \$250,000 with not less than \$5,000 being received from residents of at least twenty states, for Presidential candidates. *Id.* § 101 (to create § 503

(c) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ *Id.* § 101 (to create § 504(a) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). Candidates who elect not to accept public funding are subject to the same limitations. *Id.* § 304(a) (to create 18 U.S.C. § 614(a) (1)).

§ *Id.* § 101 (to create § 504(a) (2) (A) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). These limits would be increased in line with the cost of living. *Id.* § 101 (to create § 504(f) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ Defined as a party whose candidate in the previous election for that office received at least 25 percent or more or finished in second place while receiving at least 15 percent of the vote. *Id.* § 101 (to create § 501(g) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ *Id.* § 101 (to create § 503(b) (1) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ *Id.* § 101 (to create § 504(b) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ A minority party candidate is one whose candidate received between five and twenty-five percent of the vote in the previous election for that office. *Id.* § 101 (to create § 501(a) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ A minor party candidate would be allowed the amount which bears the same ratio to the major party amount as the candidate's vote (or the vote of the candidate for that party) in the last election bears to the average major party vote. In addition, a candidate who ran for party A in the previous election and received between five and 25 percent of the vote is eligible to receive funding according to this formula even if he switches from party A to party B in the next election. If this candidate does switch to party B, party A nevertheless remains eligible for funding on the basis of his performance as a party A candidate in the previous election. *Id.* § 101 (to create § 503(b) (2) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). If, after the election, the above formula as applied to the current election would yield a greater amount, the candidate is entitled to retroactive funding in the amount of the difference. *Id.* § 101 (to create § 503(b) (4) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ A candidate of a party which is neither "major" nor "minor" who receives five percent of the vote is funded in the amount which bears the same ratio to the major party amount as his vote bears to the average major party vote. *Id.* § 101 (to create § 503(b) (4) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ *Id.* § 207(a) (to create §§ 310, 311 of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)).

§ *Id.* § 207(a) (to create § 308 of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). The Commission is to consist of the Comptroller General and a bipartisan group of seven other members appointed by the President with the advice and consent of the Senate for staggered seven-year terms. Two of the members are to be appointed from different parties from a list of individuals recommended by the President pro tempore of the Senate with the consultation of the Senate majority and minority leaders. Two of the members are to be members of different parties appointed from a group recommended by the Speaker of the House of Representatives with the consultation of the majority and minority leaders of the House. Of the remaining three members no more than two are to be members of the same parties. *Id.*

The Commission is to be given a wide range of powers, including the power to compel testimony and production of documen-

tary evidence, to initiate civil and criminal proceedings, and to assess civil penalties of up to \$10,000. In enforcing these sections the Commission is to take precedence over the Justice Department.

§ *Id.* § 304 (to create 18 U.S.C. § 615(a) (1), (a) (2) and (d) (1)). In addition, contributions by foreigners are prohibited. *Id.* § 304 (to create 18 U.S.C. § 615(a) (2) (A) (i)). Candidates may not receive from personal or family funds in excess of \$50,000 in the case of presidential or vice-presidential candidates, \$35,000 in the case of candidates for Senator and \$25,000 in the case of candidates for Representative. *Id.* § 302(a) (1).

§ 47 U.S.C. § 315(a) (1970). The "equal time" requirement compels broadcasting stations which provide air time to a candidate to afford equal broadcast opportunities to his opponents. The effect of this provision of the present law is to prevent stations, particularly in those elections where a great number of minor party candidates are running, from providing free air time to major party candidates. It would be amended to require licensees to provide opponents, in federal elections other than for President or Vice-President, five minutes. *Id.* § 201.

§ *Id.* § 401.

§ The first Wednesday after the first Monday in November of all even numbered years would become a national holiday, federal Election Day. *Id.* § 502. All polls in the country in federal elections would close simultaneously at 11 p.m. Eastern Standard Time. *Id.* § 501.

§ 119 Cong. Rec. 3211 (daily ed. March 8, 1974) (message from the President). The proposal has not been introduced in the form of a bill at this writing.

Other portions of this same presidential message deal with campaign practices, campaign duration, and encouragement of candidate participation. The President proposes that there be enacted federal criminal statutes regulating deceptive campaign practices, such as issuing fraudulent public opinion poll results, placing misleading advertisements in the media, or misrepresenting a Congressman's voting record. In addition, activities involving the use of organized demonstrators to impede entry at a political rally, and practices such as stuffing ballot boxes and rigging voting machines, would become federal offenses. Mr. Nixon recommends that presidential campaigns be shortened by having the primaries and state conventions held no earlier than May of the election year, and urging that the national nominating conventions be delayed until the month of September. The President also urged the Congress to consider possible action to limit the benefits of incumbency such as the "frank" and large staffs which enhance re-election efforts, and the repeal of the "equal time" provision of the Communications Act of 1934, 47 U.S.C. § 315(a) (1970). Finally the President called for legislation making a libel remedy for public figures more readily available. *Id.* at 3213-14.

§ *Id.* at 3212.

§ *Id.* Every donation to the candidate's central committee would have to be tied directly to the original individual donor, except donations by a national political party organization. The exception, of course, is designed to allow individuals to make general donations to a political party without specifying a candidate. *Id.*

§ Individual contributions to House or Senate campaigns in primary or general elections would be limited to \$3,000, and contributions to pre-nomination or general election campaigns for the presidency would be limited to \$15,000. Non-monetary campaign contributions, such as the use of a private airplane or paid campaign workers are prohibited when donated by any organization other than a major political party. If these

"in kind" contributions are given by an individual, they are to be covered by the same ceiling applicable to cash contributions. In addition, all loans to political committees are to be prohibited, as are contributions from foreign citizens. The program is to be supervised by a bipartisan Federal Elections Commission. *Id.* at 3212-13.

¹⁰² *Id.* at 3212-13. Mr. Nixon feels as I do, see notes 195-98 and accompanying text *infra*, that low spending limitations may unduly hamper the efforts of candidates challenging incumbents.

The major reason for the President's opposition to campaign subsidies seems to be the idea that taxpayers should not be forced to support candidates they oppose. In addition, he makes the point that public financing will not increase but diminish the ability of prospective candidates to enter the political arena:

[I]f we outlaw private contributions, we will close the only avenue to active participation in politics for many citizens who may be unable to participate in any other way. Such legislation would diminish, not increase, citizen participation and would sap the vitality of both national parties by placing them on the federal dole.

Id. at 3213. Many public financing proposals, however, including the one suggested by this article, see notes 191-94 and accompanying text *infra*, do not prohibit private contributions.

¹⁰³ S. 1103, 93d Cong., 1st Sess. (1973). The program is to be carried out by the Congressional Elections Finance Board. *Id.* §§ 5, 6.

¹⁰⁴ *Id.* § 2(1).

¹⁰⁵ A major party is defined as one whose candidate received at least twenty-five percent of the vote for that office in the preceding election. *Id.* § 3(9)(A). In addition, an independent candidate who received twenty-five percent of the vote in the previous election qualifies as a "major party." *Id.* § 3(9)(B).

¹⁰⁶ *Id.* § 7(a)(2).

¹⁰⁷ The contributions may not exceed \$250. *Id.* § 12(a)(1).

¹⁰⁸ The percentage is ten percent. Otherwise, the security deposit is forfeited. *Id.* § 7(a)(1)(B).

¹⁰⁹ The percentage is five percent. *Id.* § 7(a)(1)(C).

¹¹⁰ A candidate of a major party is eligible to receive the greater of ten cents for every voting age person in the state or \$75,000 in Senate primary elections and fifteen cents or \$150,000 for the general election. *Id.* § 10(a).

Major party candidates for Representative receive fourteen cents for each voting age resident of the district for a primary election and twenty cents for a general election. *Id.* § 10(b)(1). A candidate for Representative in a district representing an entire state, however, is eligible to receive the same amount as the candidate for Senator from that state. *Id.* § 10(b)(2). It should be noted that unless a candidate elects to receive public funding for a primary election (or unless he does not participate in a primary) he is ineligible to receive funding in a general election. *Id.* § 7(c). If a candidate runs unopposed in the primary, he receives one-third the full subsidy. *Id.* § 8(d).

¹¹¹ A minor party is defined as one whose candidate received between ten and twenty-five percent of the vote for the previous election. *Id.* § 3(10)(A). An independent candidate who received between five and twenty-five percent of the vote in the previous election also qualifies as a "minor party." *Id.* § 3(10)(B). A minor party candidate may, if he so elects, receive the greater of one-fifth the major party subsidy or the amount which bears the same ratio to the major party subsidy as his vote total in the previous election bears to the vote received by the major party candidate who received the fewest votes. *Id.* § 10(c)(1). A minor party candidate must,

of course, post a security deposit of twenty percent of the subsidy. In no event, however, is the security deposit to be less than \$3,000. *Id.* § 7(a)(2). Any other candidate may receive the greater of one-tenth the major party subsidy or an amount calculated by the same formula used to calculate the alternative subsidy for minor party candidates. *Id.* § 10(c)(2). Non-major party candidates can make up in private contributions the difference between their subsidies and the total spending allowance of major party candidates who elect to receive public financing. *Id.* § 11(d). If they receive twenty-five percent of the vote in the current election they are to have their expenses reimbursed to the limit of the major party subsidy. *Id.* § 10(d). In addition, a candidate who is neither from a major or a minor party who receives ten percent of the vote may have his expenses reimbursed to the limit of the minor party subsidy. *Id.* § 10(d).

¹¹² In senatorial primary campaigns, the limit for private funding is the greater of two cents per voting age resident or whatever sum is needed to reach \$100,000 for total campaign funds; in general election campaigns, the limit is five cents or whatever is needed to reach \$200,000. *Id.* § 11(b). In elections for the House of Representatives the limit is three cents per voting age person in the primary and five cents in the general election. *Id.* § 11(c). No private contribution may exceed \$250. *Id.* § 12(a).

¹¹³ *Id.*

¹¹⁴ S. 2297, 93d Cong., 1st Sess. (1973).

¹¹⁵ See 31 Cong. Wkly. Rep't. 3177 (Dec. 3, 1973).

¹¹⁶ See notes 66-80 and accompanying text *supra*.

¹¹⁷ S. 2297, 93d Cong., 1st Sess. § 2(a) (1973). The program is to be supervised by the Comptroller General.

¹¹⁸ *Id.* (to amend Int. Rev. Code of 1954, § 9012(b)). In addition, individuals not authorized by a candidate may not spend more than \$1,000 on behalf of a candidate eligible for public funds. *Id.* (to amend Int. Rev. Code of 1954, § 9012(f)).

¹¹⁹ *Id.* (to amend Int. Rev. Code of 1954, § 9004(a)(1)). The bill follows the same basic formula as the Check-Off Act in allocating funds between major and minor parties. See text accompanying notes 67-76 *supra*. As is provided for in presidential campaigns, major party senatorial candidates are to receive fifteen cents per voting age person, with a \$175,000 minimum. *Id.* In elections for the House of Representatives, a major party candidate is to receive the greater of \$90,000 or the average major party expenditure in that district for the past two elections. *Id.* Congress is to appropriate funds to make up any deficits after the operation of the check-off. *Id.* (to amend Int. Rev. Code of 1954, § 9006(a)).

¹²⁰ S. 1954, 93d Cong., 1st Sess. (1973).

¹²¹ *Id.* § 1(c) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 303(a), present § 303 to be renumbered as § 311).

¹²² See note 82 *supra*. For presidential candidates there is a limit of fifteen cents per each person of voting age within a state first for the primaries and if the candidate receives the nomination then for the general election. In no event, however, shall a candidate be required to spend less than \$175,000 per state in presidential primaries. S. 1954, 93d Cong., 1st Sess. § (c) (1973) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 308(a), (b), present § 308 to be renumbered at § 316). For senatorial primaries and elections the limit is the greater of twenty cents per voting age person or \$175,000 and for the House twenty-five cents or \$90,000, except for House candidates running in states with one district where the limit is twenty-five cents of \$175,000. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create

§ 308(d), (e) present § 308 to be renumbered as § 316).

¹²³ *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 309, present § 309 to be renumbered as § 317). See note 82 *supra*. Individual and committee contributions to a single candidate are limited to \$3,000 per campaign in the aggregate for both the primary and general election. No limit is made on total donations to all candidates by a contributor. *Id.*

¹²⁴ Major party candidates would receive one-third the maximum spending allowance from the public treasury. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 304(a), present § 304 to be renumbered as § 312). The minor party subsidy is calculated by the same formula as in the Hart Bill, see note 111 *supra*, except that the average major party vote in the previous election is used in place of the lowest major party vote. In addition, if a non-major party candidate performs like a major party candidate in the election, he is to be reimbursed his expenses to the limit of the major party candidate's subsidy. A similar reimbursement is provided for in the case of a candidate who before the election qualifies as coming from neither a major nor minor party, but in the particular election performs well enough to meet the requirements of a minor party candidate. Otherwise, such a candidate receives no subsidy funds. S. 1954, 93d Cong., 1st Sess. § 1(c) (1973) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 304, present § 304 to be renumbered as § 312).

¹²⁵ The two methods of qualification are implicit in the definitions of major and minor parties. A major party is one whose candidate received twenty-five percent of the vote in the previous election for that office or, in the case of Senate and House candidates, if a party's candidate did not attain the requisite twenty-five percent figure, the party will still be considered a major one if it received twenty-five percent of the vote in that state's previous gubernatorial election. In addition, if a candidate presents to the supervisory commission petitions containing signatures of eight percent of the voting age population of the district, or, in the case of a presidential election, eight percent of the voting age population of half the states, such a candidate would be treated as a major party candidate. A minor party is one which received ten percent of the vote in the previous election or presents signatures of four percent of the voting age population. A presidential candidate would have to present signatures of five percent of the voting population from half the states, ten percent from one-third of the states, or fifteen percent from one-fourth of the states, to qualify as a minor-party candidate. *Id.* § 1(b)(6). In addition, to be eligible for funding a candidate must furnish a security deposit of one-fifth the amount which he is entitled to receive, but in no event less than \$3,000. *Id.* § 1(c) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 305(a)(2), present § 305 to be renumbered as § 312). Each candidate must also designate one central campaign committee to make all required reports and receive all subsidies. *Id.* § 1(d).

¹²⁶ S. 2238, 93d Cong., 1st Sess. § 4 (1973).

¹²⁷ See notes 66-80 and accompanying text *supra*. S. 2238, 93d Cong., 1st Sess. § 4 (1973). The bill attempts to remedy the situation which occurred in 1973, when many people were unaware of the check-off provision, by directing the Secretary of the Treasury to publicize it through the use of poster, media publicity, and the like. *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* § 7 (to amend Int. Rev. Code of 1954, § 9012(b)).

¹³⁰ The first \$100 of every private contribution is to be matched by the government, so long as total payments do not exceed five

cents for every voting age person in the United States. *Id.* § 8 (to create Int. Rev. Code of 1954, §§ 9034(a), 9035(a)(2)). To be eligible for payments a candidate must raise \$100,000 in contributions of \$100 or less during the fourteen months preceeding his party's convention. As soon as he does so, this money is matched. *Id.* (to create Int. Rev. Code of 1954, § 9035(b)).

¹³¹ Candidates may not spend more than \$30,000,000 in the general election campaign, *id.* § 6, nor more than \$15,000,000 in the pre-nomination campaign. *Id.* § 8 (to create Int. Rev. Code of 1954, § 9037(a)). Contributions to presidential candidates are limited to \$3,000 per candidate per year by an individual and \$25,000 by a registered political committee. *Id.* § 10. The bill also limits cash transactions to \$100, *id.* § 9 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 310, present § 310 to be renumbered as § 313), and repeals the "equal time" requirement for presidential and vice-presidential candidates. *Id.* § 11.

¹³² S. 2417, 93d Cong., 1st Sess. (1973). The program is to be supervised by a bipartisan commission. *Id.* § 2 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 502).

¹³³ See notes 66-80 and accompanying text *supra*. Under this bill the amount of the check-off is to be increased from one dollar to two dollars and four dollars for a joint return. In addition, instead of indicating that he wishes to participate, as the program works now, the taxpayer is to "check-off" if he desires not to participate. S. 2417, 93d Cong., 1st Sess. § 4 (1973).

¹³⁴ No private contributions may exceed \$250. *Id.* § 2 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972) to create § 507(a)). No matching payment at all is awarded for any aggregate contribution of over \$100 from one contributor. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(b)(2)). In primary elections, candidates may not receive from all sources total contributions which do not qualify for matching funds in excess of \$100,000 for President, \$10,000 for Senator and \$5,000 for Representative. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 507(b)(2)). A candidate is also limited to \$250 from personal funds. Family funds are not included in this limitation. *Id.* § 3.

¹³⁵ Primary candidates are limited to the following total expenditures: for Senator or President the greater of fifteen cents for every voting age person in the State or \$250,000, for Representative, \$150,000, or \$200,000 if the candidate's state has only one congressional district. *Id.* § 2 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 506(b)). The spending limits for general elections are, for Senator or President, the greater of \$250,000 or twenty cents for each voting age person in the state, and, for Representative, \$150,000. The limit for candidates for the House of Representatives in states with one Congressional district is, however, \$200,000. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 506(a)).

¹³⁶ The trigger fund is \$2,500 for candidates for the House of Representatives, \$5,000 for the Senate and \$50,000 for the Presidency. A candidate for the Presidency must raise \$50,000 no matter how many primaries he enters. A candidate for the Senate from a state with only one congressional district need only raise \$2,500. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 504(c)).

¹³⁷ *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(b)(1)).

¹³⁸ *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(a)(1)). The definitions of major, minor

and new parties are the same as those in the Campaign Act of 1971. Int. Rev. Code of 1954, § 9002(6), (7), & (8).

¹³⁹ Minor and new party candidates are awarded twenty-five percent of the maximum expenditure, with provision for retroactive major party payments if they receive at least twenty-five percent of the vote. In the latter case, they must return all private contributions which exceed twenty percent of the maximum expenditure. *Id.* (to create § 505(a)(2) of the Campaign Act of 1971).

¹⁴⁰ S. 2943, 93d Cong., 2d Sess. (1974).

¹⁴¹ *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 504(d)). A candidate for Representative must file petitions 210 days before the primary election with the supervisory commission containing signatures of more than two percent of the voting age population of the district. Candidates for President, Vice-President, Senator, or Representative in a state which is entitled to only one representative must file petitions containing signatures of more than one percent of the voting age population of the state in which the primary election is being conducted.

Primary candidates are to receive an amount equal to the entire spending limit. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(a)). The spending limit for candidates for representative is twenty-five cents for each voting age person. For President, Senator, or Representative in a state with only one congressional district the limit is fifteen cents for each voting age person of \$175,000, whichever is greater. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 506(a)(1) and (b)(1)). Where a convention or caucus is held in place of a primary, candidates are limited to ten percent of the amount to which they would otherwise be entitled. *Id.* § 3(a) (to amend the Campaign Act of 1971, to create § 506(c)(3)). All expenditures incurred by any candidate or political party are to be paid by the supervisory commission directly to the person contracting with the candidate or party. *Id.* § 3(a) (to amend the Campaign Act of 1971, to create § 509(d)(1)).

¹⁴² A candidate in the general election for Representative may receive thirty cents for every voting age person in the district. A candidate for Senator or Representative in a state with one congressional district is to be subsidized twenty cents for each voting age person in the United States or \$250,000, whichever is greater. Presidential candidates are to be allotted twenty cents for each voting age person in the country. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 506(a)(2) and (b)(2)). Minor party and independent candidates are to be funded according to whichever of two formulae yields the greater amount. Under the first formula, such a candidate is to receive the amount which bears the same ratio to the major party amount as the vote received by the minor party candidate in the previous election bears to the average major party vote. Under the second formula the current election is used in place of the previous election. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(b)(1)(B) and (b)(2)(B)).

A major party is defined as one whose candidate in the previous election for that office received at least twenty-five percent of the vote or finished first or second. A minor party is any other party. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 501(7) and (8)). A minor party or independent candidate is treated as a major party candidate if he was the candidate of a major party in the previous election for that office, finished first or second in total votes in the previous selection, or received more than twenty-five percent of

the vote in the previous election. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(c)).

Political parties are entitled to payment for expenditures incurred in voter registration efforts, get-out-the-vote drives and nominating conventions. These expenditures are limited during a presidential election year to twenty percent of the amount to which the party's presidential candidate is entitled and during any other year to fifteen percent of the presidential allotment. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505(d)).

¹⁴³ *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 507(a)). Minor parties and minor party candidates may accept contributions of \$100 or less until the major party entitlement is reached. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 507(b), (c), (d), and (e)). Candidates are allowed to use private contributions in connection with primary election petition drives. In such efforts, a candidate for Representative may spend two cents for each voting age person in the district. Candidates for President, Senator, or Representative in a one-district state may spend one cent for each voting age person or \$7,500, whichever is greater. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 508(a)). Each contributor is limited to overall contributions of \$1,000 a year, with contribution to be made directly to the commission. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 507(g) and (h)). Candidates themselves are limited to \$1,000 out of personal or family funds. *Id.* § 5. The public subsidies are to be financed out the Dollar Check-Off Act, see notes 66-80 *supra*, with the amount paid to the campaign fund to be increased to two dollars or four dollars for a joint return. The taxpayer is to "check-off" if he wishes not to participate. *Id.* § 8(a) (to amend Int. Rev. Code of 1954, § 6096(a)).

¹⁴⁴ A major candidate must repay the subsidy if he fails to receive fifteen percent of the votes in the primary or of the delegate votes in the nominating convention or if he fails to receive twenty-five percent of the vote in the general election. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 510(a)(3)). In addition, a candidate who withdraws more than forty-five days before the primary or thirty days before the general election and before receiving twenty-five percent of the subsidy must repay half the amount received. *Id.* § 3(a) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 510(d)).

Other provisions of the Clark bill would repeal for federal elections the equal time requirement of the Communications Act of 1934, 47 U.S.C. § 315(a) (1970), *id.* § 6(a), and would eliminate the franking privilege. The Frank would not be allowed within ninety days of a federal election. In its place, all federal candidates would be allowed to mail campaign material at a reduced rate. *Id.* § 4.

¹⁴⁵ H.R. 7612, 93d Cong., 1st Sess. (1973).

¹⁴⁶ *Id.* § 201 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 402(a), present § 402(a) to be renumbered at § 502).

¹⁴⁷ *Id.* Party congressional campaign committees, as well as congressional nominees themselves are also eligible to receive funding.

¹⁴⁸ The fund must come from contributions of \$50 or less. A candidate for the House of Representatives must raise \$1,000 and a candidate for the Senate \$5,000. Both national party committees and candidates for presidential or vice-presidential nominations must raise a fund of \$15,000. *Id.* (to amend the Campaign Act of 1971, compiled at 86

Stat. 3 (1972), to create § 403, present § 403 to be renumbered as § 503).

¹⁴⁹ Individual contributions are limited to \$2,500 for a presidential campaign and \$1,000 for a congressional one. Contributions to or by political committees are limited to \$2,500. *Id.* § 301 (to create 18 U.S.C. § 608 (c), (d), present subsection (c) to be redesignated as (f)).

¹⁵⁰ Total payments from the government fund are limited to ten cents per eligible voter for congressional candidates and candidates for presidential or vice-presidential nomination, and to \$15,000,000 for a national party committee and its affiliated congressional campaign committees. *Id.* § 201 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 403(a) (2), present § 403 to be renumbered as § 503).

¹⁵¹ *Id.* § 501 (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603 (c), (d) (1), and (f) (1)). Eligibility for "Voter's Time" depends on the status of a candidate's party. Any party whose candidate finished first or second in either of the last two elections for that office is a "major party." A "third party" is one whose candidate received fifteen percent of the vote in the previous election for that office. A "minor party" for the purposes of presidential elections is one whose candidate appears on the ballot in more than thirty states or, in the case of Senate but not House elections, received over five percent of the vote in the previous election for that office. It presents petitions containing signatures of registered voters equal to five percent of the total vote for Senator in the previous election, including signatures from each congressional district in the state equal to at least two percent of the vote in that district. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 602). Under the proposal, presidential candidates of major parties would receive five half-hour blocks of air time with each block to be broadcast simultaneously over all stations and networks in the country. Each third party candidate for President would receive two such half-hour blocks, and each minor party candidate one such block. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603(a) (1)).

In Senate elections, each candidate would receive three half-hour blocks of time, each block of time to be broadcast simultaneously by every station in the state and, where part of the state is served only by out-of-state stations, by those stations. Each third party Senate candidate is to receive one half-hour block, and each minor party candidate one fifteen-minute block. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603(a) (2) and (d) (2)).

Major party candidates for the House of Representatives are to receive two half-hour blocks and minor party candidates one fifteen-minute block. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603(a) (3)). These broadcasts are to be aired over one station, if that station is the only one which substantially serves the district. If more than one station substantially serves the district they are to broadcast the "Voter's Time" simultaneously unless any of them substantially serves a part or whole of an adjoining district not substantially served by another station. In districts where no station is located, the broadcasts are to be carried on a nearby station. In large metropolitan areas where two or more stations serve a number of districts, the Federal Communications System is to allocate broadcasts over the stations, with all broadcasts to be aired simultaneously, provided no broadcasts of competing candidates are aired at the same time. *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603(f)).

¹⁵² *Id.* (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 603 (h)).

¹⁵³ S. 1103, 93d Cong., 1st Sess. (1973). See notes 103-13 and accompanying text *supra*.

¹⁵⁴ S. 2238, 93d Cong., 1st Sess. (1973). See notes 126-31 and accompanying text *supra*.

¹⁵⁵ *Hearings on S. 1103, supra* note 3, at 39 (remarks of Sen. Hugh Scott).

¹⁵⁶ In order to see how effective large private primary contributions could be, you need only ask any successful politician what particular financial help he valued above any he has received in his career. Almost always the answer will come back that the money that helped him most was the early primary contribution in his very first race. The refrain is certainly familiar to all of us here. "So and so has become one of my closest friends. He helped me back when I really needed it. In those days nobody had ever heard of me and I couldn't raise a dime," is the way most candidates would put it.

Id. at 71 (remarks of Sen. James Abourezk).

¹⁵⁷ 86 Stat. 3 (1972).

¹⁵⁸ See *Hearings on S. 372, supra* note 15, at 81, 93-94 (remarks of Sen. Claiborne Pell).

¹⁵⁹ *Hearings on S. 1103, supra* note 3, at 142-45 (remarks of Rep. Bill Frenzel).

¹⁶⁰ See note 65 and accompanying text *supra*.

¹⁶¹ See note 24 *supra*.

¹⁶² See notes 240-43 and accompanying text *infra*.

¹⁶³ H.R. 7612, 93d Cong., 1st Sess. § 201 (1973) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 402 (a), present § 402 to be renumbered as § 502). See notes 145-52 and accompanying text *supra*.

¹⁶⁴ S. 2417, 93d Cong., 1st Sess. § 2(a) (1973) (to amend the Campaign Act of 1971, compiled at 86 Stat. 3 (1972), to create § 505 (b)). See notes 132-39 and accompanying text *supra*.

¹⁶⁵ One contributor reportedly donated approximately \$2,000,000 in the presidential campaign alone. Reichley, *supra* note 15, at 96.

¹⁶⁶ Cf. Comment of Sen. Adlai E. Stevenson III that a matching grant system "runs counter to the purpose of reducing or eliminating private moneys in politics." *Hearings on S. 1103, supra* note 3, at 64.

¹⁶⁷ *Id.* at 259 (remarks of Sen. Philip A. Hart).

¹⁶⁸ One writer in a business magazine favored a matching grant system because "businessmen as a group [would] still be able to gain some extra leverage within the political system." Reichley, *supra* note 15, at 162. It is for precisely this reason that a matching grant system should not be adopted. Neither businessmen nor anybody else should be able to buy any more political leverage than they already possess as interested and concerned citizens.

¹⁶⁹ See S. REP. NO. 93-170, 93d Cong., 1st Sess. 40 (1973).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² S. 1103, 93d Cong., 1st Sess. § 7(a) (2) (1973). See notes 105-09 and accompanying text *supra*.

¹⁷³ Individuals could actually contribute up to \$500 to a candidate under my proposal but only the first \$250 could be used for the security deposit. See notes 191-94 and accompanying text *infra*.

¹⁷⁴ The signatures would be submitted to the supervisory commission which would have the task of verifying them. See notes 199-209 and accompanying text *infra*. This process would be potentially difficult and contain the risk of fraud. One method of preventing this possibility which has been suggested is that each registered voter receive a computer card, one each for the of-

fices of President, Senator, and Representative, which he would give to the candidate instead of signing his name on a petition.

¹⁷⁵ Int. Rev. Code of 1954, § 9002(6).

¹⁷⁶ *E.g.*, S. 1103 § 10(c) (1) (B).

¹⁷⁷ *Hearings on S. 1103, supra* note 3, at 144 (remarks of Rep. Bill Frenzel).

¹⁷⁸ Members of the House might have to neglect their duties as congressmen, at least during the second year of their terms, to run for re-election. During this time Congress might come to a standstill. For this reason, the proposal made by, among others, President Richard M. Nixon to amend the Constitution to provide for a four year term of office for representatives should receive careful consideration. 119 Cong. Rec. 3698 (daily ed. May 16, 1973).

¹⁷⁹ *Hearings on S. 1103, supra* note 3, at 188 (remarks of David Admany, Professor of Political Science, University of Wisconsin).

¹⁸⁰ This idea has been endorsed by the National Committee for an Effective Congress, *Hearings on S. 1103, supra* note 3, at 202; the AFL-CIO, *id.* at 347; the Communications Workers of America, *id.* at 359; and Common Cause, *id.* at 140. In addition, a Twentieth Century Fund study recommended providing candidates with air time at reduced rates. Electing Congress, *supra* note 35, at 21.

¹⁸¹ See generally The Twentieth Century Fund, *Voter's Time* (1969).

¹⁸² H.R. 7612, 93d Cong., 1st Sess. § 501 (1973). See notes 151-52 and accompanying text *supra*.

¹⁸³ The Anderson-Udall Bill provides for payment by the government to the television station for "Voter's Time."

¹⁸⁴ See Dunn, *supra* note 18, at 38-39.

¹⁸⁵ S. 372, 93d Cong., 1st Sess. § 11 (1973). See note 82 *supra*.

¹⁸⁶ See Electing Congress, *supra* note 35, at 26; *Hearings on S. 1103, supra* note 3, at 202-03 (remarks of Russell Hemenway, National Director, National Committee for an Effective Congress); *Id.* at 347 (remarks of Andrew J. Biemiller, Director, Department of Legislation, AFL-CIO).

¹⁸⁷ Wash. Rev. Code Ann. § 29.81 (West Supp. 1972).

¹⁸⁸ Ore. Rev. Stat. § 255 (1971).

¹⁸⁹ 119 Cong. Rec. 14859-60 (daily ed. July 27, 1973).

¹⁹⁰ This proposal was also recommended in Electing Congress, *supra* note 35, at 23.

¹⁹¹ See notes 240-43 and accompanying text *infra*.

¹⁹² S. 3044, 93d Cong., 2d Sess. § 304(a) (to create 18 U.S.C. § 615(a) (1) (1974)).

¹⁹³ See note 24 *supra*.

¹⁹⁴ See notes 240-43 and accompanying text *infra*.

¹⁹⁵ See Electing Congress, *supra* note 35, at 18.

¹⁹⁶ During debate over a similar limitation in the Campaign Amendments Bill of 1973 the following colloquy took place on the Senate floor between Senator John Pastore and Senator Marlowe Cook:

Mr. PASTORE. Is it not a fact that the lower you make the amount [for overall spending] the more you make it an incumbent's bill?

Mr. COOK. That is what bothers me.

Mr. PASTORE. That is just the point. 119 Cong. Rec. 14985 (daily ed. July 28, 1973).

¹⁹⁷ S. 3044, 93d Cong., 2d Sess. § 101 (to create § 504(b) of the Campaign Act of 1971, compiled at 86 Stat. 3 (1972)). The \$900,000 limitation applies if it is greater than an amount equal to twelve cents times the number of voting age persons. In most cases it will be greater.

¹⁹⁸ See text accompanying note 13 *supra*.

¹⁹⁹ Campaign Act of 1971 §§ 301, 304, 2 U.S.C. §§ 431(g), 434 (Supp. II, 1972), formerly, ch. 368, title III, 43 Stat. 1070 (1925).

²⁰⁰ *Id.* § 309.

²⁰¹ See generally *Hearings on S. 372, supra* note 15, at 33-65 (remarks of Francis R. Valeo, Secretary of the Senate); *Id.* 66-73 (remarks of Phillip S. Hughes, Director, Office of Federal Elections, General Accounting Office).

²⁰² See ELECTING CONGRESS, *supra* note 35, at 19, 48-49.

²⁰³ S. 3044, 93d Cong., 2d Sess. § 207(a) (1974). See note 93 and accompanying text *supra*.

²⁰⁴ *Hearings on S. 1103, supra* note 3, at 228-29 (remarks of Joel L. Fleishman, Director, Institute of Policy Sciences & Public Affairs, and Associate Professor of Law, Duke University).

²⁰⁵ *Id.* at 283 (remarks of Phillip S. Hughes).
²⁰⁶ We believe men and women who have demonstrated their ability and integrity would be more easily persuaded to serve part-time, rather than full-time, especially given the intermittent nature of elections.

Id.
²⁰⁷ See *Hearings on S. 372, supra* note 15, at 91 (remarks of Fred Wertheimer, Director of Legislative Activities for Common Cause).

²⁰⁸ *Id.* at 190 (remarks of Chairman Pell).
²⁰⁹ 112 Cong. Rec. 11951 (1966) (message of Pres. Lyndon B. Johnson).

²¹⁰ For a discussion of the constitutional questions raised by regulation of election campaign practices see *Hearings on S. 372, supra* note 15, at 356; Court & Harris, *Free Speech Implications of Campaign Expenditure Ceilings*, 7 Harv. Civ. Rights-Civ. Lib. L. Rev. 214 (1972); Ferman, *Congressional Controls on Campaign Financing: An Expansion or Contraction of the First Amendment?*, 22 Am. U.L. Rev. 1 (1972); Fleishman, *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens*, 52 N.C.L. Rev. 349 (1973); Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 N.C.L. Rev. 389 (1973); Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L. Rev. 900 (1971); Rosenthal, *Campaign Financing and the Constitution*, 9 Harv. J. Legis. 359 (1972).

²¹¹ U.S. Const. art. I, § 4.

²¹² 285 U.S. 355 (1932).

²¹³ *Id.* at 366.

²¹⁴ *Id.* at 367.

²¹⁵ The expansive definition of "manner" was first employed by the Court in *Ex parte Siebold*, 100 U.S. 371 (1879) ("manner" held to include authority to provide for election marshalls to supervise congressional elections) and *Ex parte Yarbrough*, 110 U.S. 651 (1884) (sustaining a congressional act which protected voters from intimidation, threat, force or hindrance with respect to exercise of right to vote).

For a discussion of alternative theories concerning the authority of Congress to regulate congressional elections, see Rosenthal, *supra* note 210, at 364-65.

²¹⁶ U.S. Const., art. II, § 1, cl. 4.

²¹⁷ U.S. Const., art. II, § 1, cl. 2.

²¹⁸ 290 U.S. 534 (1934).

²¹⁹ 2 U.S.C. §§ 241 et. seq. (1970).

²²⁰ 290 U.S. at 544.

²²¹ *Id.* at 545.

²²² *Id.*

²²³ The view that Congress has broad authority to regulate presidential elections is supported by Mr. Justice Black in *Oregon v. Mitchell*, 400 U.S. 112 (1970). In an opinion announcing the judgment of the Court and expressing his own view of the cases, Justice Black stated:

I would hold, as have a long line of decisions in this Court, that Congress has ultimate supervisory power over congressional elections. Similarly, it is the prerogative of Congress to oversee the conduct of presidential and vice-presidential elections and to set the

qualifications for voters for electors for those offices. It cannot be seriously contended that Congress has less power over the conduct of presidential elections than it has over congressional elections.

Id. at 124 [footnotes omitted].

²²⁴ In *Newberry v. United States*, 256 U.S. 232 (1921), the Court split four to four on the issue of whether Congress had the constitutional power to regulate primaries, with the ninth Justice reserving the question and holding that, since the statute involved was enacted prior to the adoption of the seventeenth amendment, it did not cover senatorial primaries. His reasoning was apparently that before the passage of the seventeenth amendment senatorial primaries were merely advisory and not binding on the state legislatures, and thus they were not elections within the meaning of article I, § 4. See *United States v. Classic*, 313 U.S. 299, 317 (1941). In addition, *United States v. Gradwell*, 243 U.S. 476, 489 (1917), discussed but reserved the question of Congress' constitutional power to regulate primaries.

²²⁵ U.S. Const. art. I, § 4.

²²⁶ 313 U.S. 299 (1941).

²²⁷ *Id.* at 317.

²²⁸ *Terry v. Adams*, 345 U.S. 461 (1953); *Smith v. Allwright*, 321 U.S. 649 (1944); *Rice v. Elmore*, 165 F.2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948).

²²⁹ *Ferman, supra* note 210, at 9-12; *Lobel, Federal Control of Campaign Contributions*, 51 MINN. L. REV. 1, 24 (1966); *Rosenthal, supra* note 210, at 372.

²³⁰ *De Jonge v. Oregon*, 299 U.S. 353 (1937).

²³¹ See, e.g., *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. (1943); *Stromberg v. California*, 283 U.S. 359 (1931).

²³² *Cox v. Louisiana*, 379 U.S. 536 (1965); cf. *California v. La Rue*, 409 U.S. 109, 117 (1973).

²³³ *United States v. O'Brien*, 391 U.S. 367, 375 (1968).

²³⁴ An argument advanced by Common Cause on behalf of limitations on contributions has been that they effectuate the constitutional policy of "one person, one vote." *Gray v. Sanders*, 372 U.S. 368, 381 (1963). See *Hearings on S. 372, supra* note 15, at 364 (Memorandum from Common Cause on the Constitutionality of Contribution and Expenditure Limitations). This argument is not that limitations on contributions are constitutionally mandated, for presumably the element of state action is absent; rather, the argument seems to be that the limitations help assure equality of voting power and that this policy goal outweighs the incidental infringement on first amendment rights. The policy basis of the argument seems to be supported to some extent by language in *Columbia Broadcasting Sys. v. Democratic Nat'l Comm.*, 412 U.S. 94 (1973), a case holding that broadcasting stations were not required by the first amendment—assuming governmental action—to accept editorial advertisements. The Court stated: [T]he public interest in providing access to the marketplace of "ideas and experiences" would scarcely be served by a system so heavily weighted in favor of the financially affluent, or those with access to wealth. . . . Even under a first-come-first-served system . . . the views of the affluent could well prevail over those of others, since they would have it within their power to purchase time more frequently. Moreover, there is the substantial danger . . . that the time allotted for editorial advertising could be monopolized by those of one political persuasion.

Id. at 123. Nevertheless, as a policy justification for incidental infringement of first amendment rights, effectuation of the principle of one person, one vote seems questionable. No matter how much money is spent in a political campaign, each voter retains his equal voice at the ballot box. Thus, the case involving limitations on contributions

is not similar in all respects to cases involving malapportioned legislative districts, *Reynolds v. Sims*, 377 U.S. 533 (1964), or unit voting districts, *Gray v. Sanders*, 372 U.S. 368 (1963), nor is it like the imposition of financial burdens on the right to vote. *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966). In fact, this policy basis seems valid only if it is assumed that the principle of one person, one vote is a reflection of a larger constitutional policy of equal political input or "one person, one unit of political power"—an assumption that is dubious at best. For example, aside from financial considerations, some individuals have greater influence over the outcome of elections than others by virtue of their positions as publishers of newspapers, or as leaders of organizations, or even by virtue of their ability as speechwriters or orators. Still, the power of certain people to influence the votes of others most certainly does not violate the policy of one person, one vote.

Fleishman, in his article *Public Financing of Election Campaigns: Constitutional Constraints on Steps Toward Equality of Political Influence of Citizens, supra* note 210, makes the further argument that the current system of private financing of elections is a violation of the federal equal protection requirement incorporated into the due process clause of the fifth amendment, and thus that the courts have an affirmative obligation to require public financing of elections. *Id.* at 352-68. Mr. Fleishman appears to reason that private financing discriminates against the non-wealthy in three ways: first, as Common Cause also argues, it violates the principles of one person, one vote; second, it deprives potential candidates of the right to compete equally for elective office; and third, it denies citizens of the opportunity to vote for non-wealthy candidates. Fleishman translates this discrimination into a denial of equal protection of the laws by asserting, without support of case citation, that there is no "state action" requirement contained in the equal protection guaranty. He adds that, even if the fifth amendment is deemed to require some sort of governmental participation before a finding of unconstitutionality may be made, the requirement is met for two reasons: first, state action is present because of government regulation of campaign financing; and second, Congress by permitting private contributions participates in the present discriminatory system of financing.

There are several problems with Fleishman's analysis. It is highly doubtful that the court would either make the novel ruling that state action is not required for purposes of equal protection or find that it is present in private financing of elections. Although government compulsion of private discrimination constitutes a violation of equal protection, *Adickes v. S. H. Kress and Co.*, 398 U.S. 144, 170 (1970), the element of state action is absent when the government, as it does in campaign financing, merely regulates private conduct. *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163 (1972). In that case, for example, the granting by the state of a liquor license to a private club even when combined with a number of regulations such as the keeping of financial records did not constitute state action. Fleishman's argument that discriminatory campaign financing is an act of the state because of state permission to finance campaigns would seem to mandate a finding of state action in any case where the government is able to but does not prohibit private action; this argument is dubious at best. See *Lucas v. Wisconsin Elec. Power Co.*, 466 F.2d 638 (7th Cir. 1972), *cert. denied*, 409 U.S. 1114 (1973). Moreover, it is questionable whether private financing, even were state action present, would constitute an unconstitutionally discriminatory practice. Of Fleishman's three reasons supporting such a finding of unconstitutionality, the one based on the principle

of one man, one vote has been discussed *supra*. The argument that private financing prevents citizens from voting for non-wealthy candidates is founded on the assumption that non-wealthy individuals are prevented from running for office because of private financing. In truth, they are merely prevented from waging effective campaigns. Private financing does not prevent individuals from voting for non-wealthy candidates, but merely from voting for viable non-wealthy candidates, and it is highly questionable whether there is a constitutionally protected right to vote for a *winning* candidate. On the other hand the argument that private financing discriminates between candidates on the basis of wealth may have some validity, but only if it be assumed that the right to run a viable campaign is a constitutionally protected right. Thus far the Court has not held that the right to wage a serious campaign—as opposed to the right to a place on the ballot—is a fundamental interest. See *Bullock v. Carter* 405 U.S. 134, 142-44 (1972). Finally, there is the problem of what kind of relief the Court could fashion to remedy the discriminatory system of private financing—a problem which *Fleishman*, to be sure, acknowledges.

²⁵⁵ 352 U.S. 567 (1957).

²⁵⁶ 18 U.S.C. § 10 (1970).

²⁵⁷ 352 U.S. at 598.

²⁵⁸ *Id.* at 598 n. 2 (emphasis added).

²⁵⁹ *Rosenthal, supra* note 210, at 373.

²⁶⁰ 335 U.S. 77 (1949).

²⁶¹ Although there was no majority rationale in *Kovacs*, its holding and reasoning were approved by the Court in *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 386-87 (1969).

²⁶² 336 U.S. at 81-82.

²⁶³ Commentary of Professor Freund, of the Harvard Law School, in *Rosenthal, Federal Regulation of Campaign Finance: Some Constitutional Questions* (1971) included in *Hearings on S. 372, supra* note 15, at 357.

²⁶⁴ *United States v. O'Brien*, 391 U.S. 367, 376 (1968). See *Sherbert v. Verner*, 374 U.S. 398, 406 (1963); *NAACP v. Button*, 371 U.S. 415, 438 (1963); *Bates v. Little Rock*, 361 U.S. 516, 524 (1960).

²⁶⁵ 391 U.S. 367, 377 (1968).

²⁶⁶ See text accompanying notes 211-28 *supra*.

²⁶⁷ 110 U.S. 651 (1884).

²⁶⁸ *Id.* at 657-58 (emphasis added).

²⁶⁹ *Burroughs & Cannon v. United States*, 290 U.S. 534, 545 (1934).

²⁷⁰ 391 U.S. at 377.

²⁷¹ 283 U.S. 359 (1931).

²⁷² *Burroughs & Cannon v. United States*, 290 U.S. 534, 547-48 (1934).

²⁷³ 5 U.S.C. §§ 1303, 1502, 3333, 7311, 7324, 7325, 7327; and 18 U.S.C. §§ 594, 595, 598, 600, 601, 604, 605, 1918 (1970).

²⁷⁴ 330 U.S. 75 (1947).

²⁷⁵ *Codified at* 5 U.S.C. § 7324(a)(2) (1970).

²⁷⁶ 330 U.S. at 99.

²⁷⁷ 330 U.S. 127 (1947).

²⁷⁸ Two previous Supreme Court cases dealt with similar issues. In *Ex parte Curtis*, 106 U.S. 371 (1882), the defendant was convicted of violating the predecessor of the Hatch Act which prevented subordinate government employees from receiving money from other government employees. The Court upheld this statute on the ground that the need to "promote efficiency and integrity in the discharge of official duties," justified the prohibition on political contributions. *Id.* at 373. The Court held that the statute was within the legislative power of Congress and that it did not restrict any political privileges of government employees. It "simply for[bade] their receiving [money] from or giving [money] to each other." *Id.* at 372. It should be noted that even Justice Bradley, who dissented on the grounds that the statute was an infringement of government employees' freedom of speech and assembly, observed,

"The legislature may make laws ever so stringent to prevent the corrupt use of money in an election, or in political matters generally . . ." *Id.* at 378. In *United States v. Wurzbach*, 280 U.S. 396 (1930), the respondent was indicted on charges of having violated an act under which members of Congress were prohibited from receiving contributions for "any political purpose whatever" from any federal employee. The respondent, a member of the House of Representatives, was alleged to have received contributions from United States employees to promote his nomination in a party primary. The Court, per Justice Holmes, dismissed in one sentence the respondent's argument that the act was unconstitutional because of its interference with the rights of a citizen to make a political contribution. *Id.* at 399.

²⁷⁹ 413 U.S. 548 (1973). A few courts had taken exception to the validity of *Mitchell*. See *Hobbs v. Thompson*, 448 F.2d 456, 472 (5th Cir. 1971); *Mancuso v. Taft*, 341 F. Supp. 574, 581 (D.R.I. 1972).

²⁸⁰ 413 U.S. at 564-65.

²⁸¹ The employee in *Mitchell* was a roller in the government mint, with no contact with the public.

²⁸² It should be noted here that the Supreme Court on three occasions has dealt with the absolute prohibition on labor union contributions to federal political campaigns under 18 U.S.C. § 610 (1970). *Pipefitter's Local 562 v. United States*, 407 U.S. 385 (1972); *United States v. UAW*, 352 U.S. 567 (1957); *cf. United States v. CIO*, 335 U.S. 106 (1948). Each time, however, the Court failed to address itself specifically to the issue of whether such a prohibition was constitutionally valid.

There is also a ban on corporate contributions which is contained in the same section of the United States Code, 18 U.S.C. § 610 (1970), as the restriction on labor union contributions, but it has never been construed in a Supreme Court case. As a result of the Campaign Act of 1971, the Court may never reach this issue because the Act makes legal accumulation of "voluntary" labor union and corporate funds for the purpose of political contributions. 18 U.S.C. § 610 (Supp. II, 1972).

²⁸³ Some would say that politics has already become a plaything of the wealthy. See *F. Lundberg, The Rich and the Super-Rich 584-678* (Bantam ed. 1968).

²⁸⁴ For a discussion of similar issues see *Ferman, supra* note 210, at 24.

²⁸⁵ Since the existing campaign spending limits have been largely unenforced, there is very little case law dealing with the constitutionality of such regulations. Indeed, *State v. Kohler*, 200 Wis. 518, 288 N.W. 895 (1930) is the only case reported which addresses itself to this question. The Wisconsin Supreme Court upheld the validity of such ceilings in that case. The court declared:

"It is a matter of common knowledge that men of limited financial resources aspire to public office. It is equally well known that successful candidacy often requires them to put themselves under obligation to those who contribute financial support. If such a candidate is successful, these obligations may be carried over so that they color and sometimes control official action. The evident purpose of the act is to free the candidates from the temptation to accept support on such terms and to place candidates during this period upon a basis of equality so far as their personal ambitions are concerned, permitting them, however, to make an appeal on behalf of the principles for which they stand, so that such support as may voluntarily be tendered to the candidacy of a person will be a support of principles rather than a personal claim upon the candidate's consideration should he be elected. . . . It may be replied that the act seeks to throw de-

mocracy back upon itself, and so induce spontaneous political action in place of that which is produced by powerful political and group organizations."

Id. at 565-66, 228 N.W. at 912.

²⁸⁶ *Court & Harris, supra* note 210, at 220; *Ferman, supra* note 210, at 13.

²⁸⁷ See text accompanying notes 229-62 *supra*.

²⁸⁸ 334 U.S. 558 (1948).

²⁸⁹ *Id.* at 561.

²⁹⁰ *Kovacs v. Cooper*, 336 U.S. 77 (1949). See text accompanying notes 240-42 *supra*.

²⁹¹ See notes 244-52 and accompanying text *supra*.

²⁹² See notes 244-45 and accompanying text *supra*.

²⁹³ 395 U.S. 621 (1969).

²⁹⁴ *Id.* at 626.

²⁹⁵ *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 668 (1966).

²⁹⁶ *United States v. O'Brien*, 391 U.S. 367, 377 (1968).

²⁹⁷ *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

²⁹⁸ See *Redish, supra* note 210, at 908.

²⁹⁹ 395 U.S. 367 (1969).

³⁰⁰ The "fairness doctrine" is the term used to describe the requirement imposed by the Federal Communications Commission on radio and television broadcasters that discussion of public issues be broadcast and that each side of those issues be given fair coverage. The "fairness doctrine" is separate from the statutory provision § 315(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 315(a) (1970), which requires that equal time be allotted all qualified candidates for public office.

³⁰¹ 395 U.S. at 390.

³⁰² 384 U.S. 214 (1966).

³⁰³ See *Redish, supra* note 210, at 910-11.

³⁰⁴ At first glance, limitations on spending may seem to be no different for purposes of the right to receive information from the law struck down in *Mills*. Even assuming that the Court in *Mills* was concerned with the right to receive information, see text accompanying note 282 *supra*, there are several distinguishing factors. In *Mills* the prohibition was absolute; in order to protect the public from some potentially false and un rebuttable charges, all election day editorials were banned. Limitations on spending, on the other hand, prohibit individuals from spending money on a campaign only after a certain point—indeed, under the system recommended by this article, after a point which is more than adequate to run an effective campaign.

See text accompanying notes 195-98 *supra*. The limitations are designed not to protect the public from the evils of potentially false, un rebuttable speech, but from the corruptive influence which it is felt is present in all excessively financed campaigns. Furthermore, the limitations are designed not to stifle speech, but rather to perfect the right to receive campaign information from all sides—to assure that the few hours a member of the public has to devote to politics are not dominated by the din emanating from one or two campaigns. This idea of perfecting competition in the "marketplace of ideas and experiences" received the approval of the Supreme Court in a somewhat different context in *Columbia Broadcasting Sys. v. Democratic Nat'l Comm.*, 412 U.S. 94, 123 (1973), a case holding that the first amendment did not require broadcasters to sell air time for editorial advertisements in part because of the public interest in receiving a balanced viewpoint on public issues. See note 234 *supra*; *cf. Justice Stewart's concurring opinion*, 412 U.S. at 133.

³⁰⁵ *Abrams v. United States*, 260 U.S. 616, 630 (1919) (Holmes, J., dissenting).

³⁰⁶ *Ferman, supra* note 210, at 24.

³⁰⁷ It is interesting to note here that the governmental interest in limiting expenditures (i.e., to open the channels of political process and expression to the weaker minor-

ity viewpoints is derived from the same constitutional source as the first amendment rights which have been viewed as the countervailing interest in this balancing test. In the more typical case the constitutional interest is balanced against an interest which derives from the police or health and safety powers of the state, examples being the interest in keeping sidewalks open for pedestrians or in maintaining the efficiency of the Selective Service System. When both interests are constitutionally derived the balancing test will merely weigh the extent to which the regulation serves each first amendment interest. See Ferman, *supra* note 210, at 25; Redish, *supra* note 210, at 907.

²⁰⁶ Rosenthal, *supra* note 210, at 389.

²⁰⁷ See notes 195-98 and accompanying text *supra*.

²⁰⁸ See text accompanying note 252 *supra*.

²⁰⁹ See Fleischman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, *supra* note 210, at 468; Redish, *supra* note 210, at 917-20.

²¹⁰ 393 U.S. 23 (1968).

²¹¹ For additional burdens Ohio law places on those seeking to establish a new party see *id.* at 25 n. 1.

²¹² *Id.* at 33.

²¹³ *Id.* at 25.

²¹⁴ *Id.* at 30, 34.

²¹⁵ See Fleischman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, *supra* note 210, at 468; Redish, *supra* note 210, at 919.

²¹⁶ *Id.*

²¹⁷ See text accompanying note 282 *supra*.

²¹⁸ 403 U.S. 431 (1971).

²¹⁹ *Id.* at 438.

²²⁰ In order to enforce these spending limitations the proposals generally provide that a candidate must certify that a given expenditure will not violate the applicable limitation on spending. Before accepting any campaign expenditure, therefore, a newspaper or radio station must obtain such certification from the candidate's central campaign finance committee. In this manner, however, the candidate is given the veto power over campaign expenditures an independent party might want to make in his behalf. Recently, a federal district court held this type of requirement to be an unconstitutional prior restraint of free speech. *ACLU v. Jennings*, 366 F. Supp. 1041 (D.D.C. 1973). If this holding is ultimately sustained, it will require implementing an alternative method for enforcement of spending limitations. In that case one possible solution would be to require affidavits of all those making expenditures on behalf of a candidate stating that they are making such expenditures independently of the candidate and not through his central finance committee. In this manner the level of expenditures attributable to the candidate himself could be monitored without the prior restraint of free speech.

²²¹ For a discussion of the constitutionality of campaign disclosure laws, see Note, *The Constitutionality of Financial Disclosure Laws*, 59 CORNELL L. REV. 345 (1974).

²²² 2 U.S.C. §§ 431 *et seq.* (Supp. II, 1972). See notes 59-65 and accompanying text *supra*.

²²³ This is the term used by Redish, *supra* note 210, at 925.

²²⁴ *Louisiana ex rel. Gremlion v. NAACP*, 366 U.S. 293 (1961); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

²²⁵ 362 U.S. 60 (1960).

²²⁶ See, e.g., *Rabinowitz v. Kennedy*, 376 U.S. 605 (1964) (registration of foreign agents); *Communist Party of the United States v. Subversive Activities Control Bd.*, 367 U.S. 1 (1961) (registration of Communist

Party members and officials). See also *Pilcher v. Jennings*, 347 F. Supp. 1061 (S.D.N.Y. 1972) where the court dismissed a constitutional challenge to the financial disclosure provisions of the Campaign Act of 1971, 2 U.S.C. §§ 431-41 (Supp. II, 1972). See notes 59-65 and accompanying text *supra*. The complaint was dismissed for failure to allege any specific deprivations of first amendment rights.

²²⁷ 290 U.S. 534 (1934).

²²⁸ *Id.* at 548.

²²⁹ The narrow constitutional holding of *Burroughs* was that Congress had authority under the Constitution to regulate presidential and vice-presidential elections. The regulation which was the subject of the constitutional challenge to the power of Congress to regulate presidential elections was a disclosure requirement.

²³⁰ 347 U.S. 612 (1954).

²³¹ *Id.* at 625 (citations omitted).

²³² *Id.* at 625-26.

²³³ The Supreme Court has stated that:

By its very nature, the privilege [against compulsory self-incrimination] is an intimate and personal one. . . . The Constitution explicitly prohibits compelling an accused to bear witness "against himself": it necessarily does not proscribe incriminating statements elicited from another.

Couch v. United States, 409 U.S. 322, 327, 328 (1973).

Since enforcement authorities would acquire knowledge of an illegally large contribution only through the candidate's campaign finance reports, there may well be no self-incrimination questions here because of the personal nature of the privilege. The following textual discussion, however, takes the position that there is a self-incrimination question and demonstrates that even if there is, the disclosure requirements here do not violate the privilege.

²³⁴ 390 U.S. 39 (1968).

²³⁵ 390 U.S. 62 (1968).

²³⁶ 274 U.S. 259 (1927).

²³⁷ 390 U.S. at 49.

²³⁸ *Albertson v. Subversive Activity Control Bd.*, 382 U.S. 70, 79 (1965).

²³⁹ *Id.*

²⁴⁰ Hearings on S. 1103, *supra* note 3, at 141-58.

INFLATION: ANALYSIS AND CURE

Mr. TALMADGE. Mr. President, I and other Members of the Senate concerned about the economy have been denouncing the irresponsibility of Federal spending policies that have allowed virtually limitless spending regardless of the limits of revenue.

The idea that government could, or even should, be all-things to all people is at last being exploded into the fragments of fiscal insanity that it is. The people of the country are, I believe, ready to sacrifice in the short run in order to maintain the economy and our form of government in the long run.

There may well be the need for individual Americans, as well as their Federal bureaucracy, to do some belt tightening. Faced with the example set in Washington, too many families have adopted the practice of living on credit. This private financial folly, like excessive government spending, has got to be halted.

I was given an analysis of inflation cures by Mr. William A. Trotter, Jr., a businessman from Augusta, Ga. It is a very concise view of what I believe to be the mandatory economic course for us to follow immediately. I ask unanimous consent that it be printed in the RECORD,

There being no objection, the analysis was ordered to be printed in the RECORD, as follows:

THE PROBLEM—INFLATION ANALYSIS AND CURE (By William A. Trotter, Jr.)

The commonly accepted definition of inflation is "too much money chasing too few goods". If this is true, there are only two ways of attacking this problem. The first is reducing the amount of money and the second is increasing the production of goods. Both of these corrections have to be applied at the consumer level. Applying the first correction (reducing the supply of money) at the banking level does not solve the problem but actually increases it. To see that this is true, let's look at what this policy has done for us in recent years.

In 1969 when inflation seemed to be getting out of hand, the Federal Reserve Board and the U.S. Treasury instituted a program of tight and expensive money. This had the adverse effect and the rate of inflation actually increased. It was discontinued and the rate of inflation dropped back to a normal 4 to 5 percent per year. In 1973 the inflation rate of 5% per year was deemed intolerable and so again a tight and expensive money policy was instituted. Again it had the adverse effect and the rate of inflation rapidly increased. As it increased, the money managers decided that more drastic action was needed and so they made money scarcer and more expensive. The rate of inflation is now at an annual rate of over 12%. The administration is now trying to get it back to 9% by year end. This policy didn't work in 1969 and it did not work in 1973 or 1974 for the following reasons.

Tight and expensive money which costs the banks from 7½ to 10% and even 12%, has to be loaned at rates which will pay them a profit in addition to their cost of operation. This greatly discourages businesses and factories from expanding since the resultant high cost of amortizing the plant would increase the cost of their products beyond a price at which they can sell them. Two other things happen. When the plants do not expand, new jobs are not created and the unemployment rate goes up. Also, less goods are produced to meet an ever increasing demand and this forces prices to rise.

High cost of money is as of itself very inflationary. There are three major elements in production; labor, capital, and management. It is readily understood that when the cost of labor goes up and higher wages must be paid the resultant price must be passed on to the consumer in the form of an increased cost of the product. Why then is it so hard to understand that you cannot increase the cost of money without increasing the cost of every single thing produced since money is one of the three basic items of production.

To increase the cost of money actually has little effect on consumer demand. The consumers are accustomed to paying service charges or interest rates of 1½% per month. The banks and financial institutions, because of the high price they have to pay for the money, advertise extensively in all of the media for the consumer loans trying to persuade all of the people to buy whatever they want at the moment and pay for it later on. The banks have to favor consumer loans in order to make a profit. This means that in times of expensive money, the buying American public which is not accustomed to denying itself anything, still buys, still can get the financing that they need at prices they are used to paying, and their competition to buy the reduced supply of products available pushes the prices upward.

To correct inflation then, the problem must be attacked in two ways. The first is