SELECTED ASPECTS OF CENTRALIZED AND DECENTRALIZED CONTROL OVER CAMPAIGN FINANCE:

A COMMENTARY ON S. 636

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I

SENATE bill 636, introduced during the first session of the 84th Congress,¹ represents a recent legislative effort to remedy some of the most pronounced defects in the federal corrupt practices statutes. The centrally underlying presupposition of this bill appears to be the conviction that full disclosure of campaign contributions and increased responsibility in the field of campaign finance requires initially a two-dimensional "centralization."² One, state primaries, caucuses, and conventions need to be subjected "vertically" to federal law with respect to reports and limitations, inasmuch as such elections represent, in effect, merely a first and inseparably connected phase of any properly integrated campaign process. Two, for greater responsibility in matters of financing and directing campaigns, the candidate ought to be given much greater control over the collections and expenditures by political committees and individuals allegedly organized on his behalf and in support of his candidacy.

It is, of course, true that these major objectives of S. 636 are neither entirely new nor unique in congressional thought.³ They have also proved for some years most successful in the British approach to control over campaign finance in Parliamentary elections.⁴ At present the rather rigid limitations imposed by

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¹ The bill was introduced in the Senate on January 21, 1955, by Senator Hennings (D., Mo.) on behalf of himself and Senators Hayden, Green, and Gore. 101 Cong. Rec. 543 (1955). Representative Udall introduced a companion measure in the House, H.R. 3139, 84th Cong. 1st Sess. (1955), 101 Cong. Rec. 797 (1955).

² Hearings before Senate Subcommittee on Privileges and Elections of Committee on Rules and Administration on Sen. 636, 84th Cong. 1st Sess. (1955).

³ Senator Gillette, chairman of the 1940 Committee on Campaign Expenditures, introduced a measure containing very similar "centralization" provisions. Sen. 593, 78th Cong. 1st Sess. (1943), 89 Cong. Rec. 447 (1943).

⁴ The Representation of the People Act of 1918 incorporated very much strengthened interpretations of the law of agency into the earlier Corrupt Practices Act of 1883. Consult Butler, *The Electoral System in Britain* 9 (1953); McKenzie, *British Political Parties* 164 (1955): "It has not generally been noted that this act [Corrupt and Illegal Practices Prevention Act of 1883] provided a very important stimulant to the development of the mass party in this country."

British law⁵ are predicated almost entirely on a candidate-centered responsibility over campaign finance.⁶

In the United States also, recently passed statutes in Florida⁷ and Texas⁸ were based, much like the British, on a more candidate-centered control over campaign finance. If there had still been any unawareness, in Congress or out, of the need for continued attention and possible remedial federal legislation in the realm of the corrupt practices statutes, none could have been left after the recent explosive developments in connection with the revelations by Senator Case and the presidential veto of the natural gas bill.

The peculiar failure of federal and state statutes designed to control campaign finance to achieve any significant degree of success has concerned students of government and politics for many years.⁹ Some have advocated partial or complete government subsidy of campaign expenditures.¹⁰ With

⁵ 450 pounds plus twopence for each parliamentary elector in a county constituency. Penalties for the violation of the corrupt practices provisions are very severe and include forfeiture of office. Consult British Information Service, *Parliamentary Electoral Procedure in Britain* 13 (1951).

⁶ "No expenses shall, with a view to promoting or procuring the election of a candidate at a parliamentary or local government election, be incurred by any person other than the candidate, his election agent and persons authorised in writing by the election agent. . . ." Representation of the People Act, 11 & 12 Geo. VI, c. 65, § 42(1) (1948). Also consult Nicholas, *The British General Election of 1950* 19 (1951).

⁷ Fla. Stat. (1955) § 99.161(4) (a).

⁸ 9 Tex. Civ. Stat. Ann. (Vernon, 1952) § 14.04.

⁹ Professor James K. Pollock, nationally known authority on election statutes, testified in 1952: "I have found in looking over the books I wrote on the subjects some 20 years ago, and in my previous testimony before senatorial and congressional committees during these intervening years, that the situation has not changed very much, nor have we made very much progress in improving our legislation either at the Federal level or at the State level." Hearings before Special House Committee to Investigate Campaign Expenditures, 82d Cong. 2d Sess. 116 (1952). Also consult for general discussions, Overacker, *Money in Elections* (1932); Key, *Politics, Parties, and Pressure Groups* (1952); Sait, *American Parties and Elections* (4th ed., Penniman, 1948); Council of State Governments, *Corrupt Practices Legislation in the 48 States* (1942); Sikes, *State and Federal Corrupt Practices Legislation* (1928).

¹⁰ President Theodore Roosevelt, in a message to Congress on December 3, 1907, suggested that the federal government make grants to political parties and "that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor. . . ." Mr. McAdoo proposed that the "expenses of a national election should be paid out of the . . . Treasury, and it should be made a crime for a man to contribute a dollar to influence an election." Sikes, *op. cit. supra* note 9, at 249-50. Dr. Overacker contends that "such limitations are not only useless but positively pernicious," and insists that candidates who are not wealthy may put themselves "under obligation to those who are"; that there is no scientific basis "for determining how much a candidate or a party may spend, legitimately"; that "every attempt to apply limitations in this country has proved an empty gesture"; that "it encourages subterfuge, tends toward devolution of expenditure, and militates against the effectiveness of any program of publicity" (which she strongly supports). Dr. Overacker also advocates state aid in the form of publicity pamphlets and meeting places (school houses at "nominal cost

the great increases in the cost of elections, public opinion also appears to be dissatisfied with the sufficiency of the corrupt practices statutes.¹¹ Congress, particularly since the enactment of the important Hatch Political Activities Act of 1939,¹² has not been insensitive to these problems, and House and Senate campaign expenditures committees have been ordered to conduct numerous hearings and investigations.¹³

Some of the major defects in the federal regulatory statutes over campaign finance as revealed in these hearings and field investigations appear to center around the following somewhat interrelated areas: (1) the general inapplicability of these laws to primary elections and elections to office in political parties, caucuses, and conventions;¹⁴ (2) the "unrealistic" and largely

for light, heat, and janitor service"). Overacker, *op. cit.* supra note 9, at 385, 393. Consider also Professor Alexander Heard's plea during the hearings on Sen. 636, to "[a]bandon the effort to impose ceilings on the amount that can be spent . . . [a]bandon the myth we have nursed so long that campaign costs are 'too high.' They are neither too high nor too low. They are simply what they are because of the necessities of campaigning in the American political system." Hearings, supra note 2, at 104. Heard would like to see Congress (1) assure responsible political competitors balanced access to radio and television, (2) provide for annual personal income tax exemptions for individual political contributions (\$500) per person, per committee, (3) limit personal contributions to something like \$3,000 per year, (4) regularize and simplify reporting. *Ibid.*, at 105-16. Finally, consult the Neuberger-Thompson legislative proposals introduced March 6, 1956 (Sen. 3242 and H.R. 9488, 84th Cong. 2d Sess. [1956]) urging federal subsidies to campaigns and the establishment of a federal campaign contributions board supervising payments under the act to the national committee of each major political party.

¹¹ According to the Gallup poll sixty-seven per cent of the people questioned expressed themselves in favor of a tightening of the laws dealing with campaign spending. *Washington Post and Times Herald* p. 14, col. 1 (June 2, 1955).

¹² 53 Stat. 1157 (1939), 18 U.S.C.A. § 595 (1950).

¹³ Furthermore, Department of Justice officials under Democratic and Republican administrations have found the corrupt practices statutes so defective as to be nearly unenforceable, or so vague as to give a completely unrealistic picture of the actual scope of federal law. Hearings, supra note 2, at 197-215. Assistant Attorney General Warren Olney III testified that in 1952 "there were 245 election law complaints which resulted in 139 investigations but only 2 prosecutions. In 1953 there were 92 complaints resulting in 54 investigations with but 1 prosecution. However, in 1954, there were 118 complaints from which 68 investigations were made and which resulted in 56 indictments. . . . Those figures on the number of investigations as compared with the number of cases resulting from them is some indication of how common it is for people, complainants and others, to suppose that the Federal laws do apply to factual situations but investigation reveals that the Federal statutes are not applicable." Hearings, supra note 2, at 199.

¹⁴ E.g., Report of the House Special Committee to Investigate Campaign Expenditures No. 2517, 82d Cong. 2d Sess. 57 (1953); *ibid.*, No. 3252, 81st Cong. 2d Sess. 21 (1951); Report of the House Special Committee on Campaign Expenditures No. 2469, 80th Cong. 2d Sess. 45 (1948); Report of the Senate Special Committee to Investigate Senatorial Campaign Expenditures, 1946, No. 1, part 2, 80th Cong. 1st Sess. 36 (1947); Report of the Senate Special Committee to Investigate the Presidential, Vice Presidential, and Senatorial Campaign Expenditures for 1944, No. 101, 79th Cong. 1st Sess. 40, 80, 81 (1945).

unenforceable expenditure limitations specified by these laws;¹⁵ and (3) the tendency of these laws to facilitate the proliferation, decentralization, and diffusion of political campaign committees.¹⁶

II

Federal statutes provide with respect to the structure of campaign finance, among other things, that political committees functioning in one or more states or in a subsidiary intrastate capacity must have a designated chairman and treasurer,¹⁷ must maintain detailed records of contributions and expenditures¹⁸ (including the names and addresses of the persons contributing \$100 or more),¹⁹ and file periodic reports with the Clerk of the House of Representatives.²⁰ Individual reports must also be filed with the Clerk of the House by persons contributing \$50 or more, not to a political committee, but "for the purpose of influencing in two or more states the election of candidates."²¹ National banks, corporations and labor unions are prohibited from making a "contribution or expenditure in connection with any election" to any federal office or in connection with "any primary election or political convention or caucus held to select candidates for any political office."²²

Candidates for the United States Senate and the House of Representatives are limited to a maximum campaign expenditure of \$25,000 and \$5,000 respectively.²³ Political committees functioning in one or more states or as a

¹⁵ E.g., Hearings, *supra* note 2, at 2; House Committee Report No. 3252, *supra* note 14, at 23; Report of the House Special Committee on Campaign Expenditures, 1946, No. 2739, 79th Cong. 2d Sess. 43 (1947); Senate Committee Report No. 1, part 2, *supra* note 14, at 37; Senate Committee Report No. 101, *supra* note 14, at 82; Report of the Senate Special Committee to Investigate Presidential, Vice-Presidential, and Senatorial Campaign Expenditures for 1940, No. 47, 77th Cong. 1st Sess. 13, 80 (1941).

¹⁶ E.g., Hearings, *supra* note 2, at 2; House Committee Report No. 3252, *supra* note 14, at 24, 25; Senate Committee Report No. 47, *supra* note 15, at 13; Senate Report No. 101, *supra* note 14, at 5, 80, 81.

¹⁷ 43 Stat. 1071 (1925), 2 U.S.C.A. § 242 (1927).

¹⁸ *Ibid.*, at 1070, § 241: "'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable to make a contribution. . . . '[E]xpenditure' includes a payment, distribution, loan, advance, deposit, or gift, or money, or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure."

¹⁹ *Ibid.*, at 1071, § 244.

²⁰ *Ibid.*

²¹ *Ibid.*, at 1072, § 245.

²² 62 Stat. 723 (1948), as amended, 2 U.S.C.A. § 610 (1950).

²³ 43 Stat. 1073 (1925), 2 U.S.C.A. § 248 (1927). Also note that "[m]oney expended by a candidate . . . for his necessary personal, traveling, or subsistence expenses, or for stationery, postage, writing, or printing (other than for use on billboards or in newspapers), for distributing letters, circulars, or posters, or for telegraph or telephone service, shall not be included in determining whether his expenditures have exceeded the sum fixed." *Ibid.*

subsidiary of a national organization may not collect or expend more than \$3,000,000 during any calendar year.²⁴ A \$5,000 limitation also is imposed on individual contributions made in support of the nomination or election of a candidate for federal office or in support of a political party.²⁵ Aside from these stipulations of expenditure limitations, federal statutes explicitly prohibit employees of the executive branch, and such employees of state governments connected with activities financed "in whole or in part" by loans or grants made by the United States, from active political participation and from "using their official authority" in influencing elections.²⁶

Even a most cursory analysis of the various state corrupt practices statutes dealing with the structure of campaign finance, reveals significant differences in the scope of elections covered, in the type of financial reporting required, and in the form and level of money limitations specified for the various offices and committees. Thirty-two out of the forty-eight states have some kind of limit upon federal and major state candidacies.²⁷ Different forms of maxima are employed: specified dollar limitations per office,²⁸ percentages based on the annual salary for the office,²⁹ or base figures to be multiplied by the number of votes cast at the last preceding election.³⁰ In six states the limitations affect the primaries only; nine states require a statement from the candidate only, whereas thirty-three states require statements of campaign receipts and disbursements from both candidates and political committees. Eighteen states apply campaign limitations to general and primary elections separately;

²⁴ 62 Stat. 723 (1948), 18 U.S.C.A. § 609 (1950).

²⁵ *Ibid.*, at § 608. Senator Hatch wanted these specific limitations, which were offered as an amendment by Senator Bankhead, to be rigidly construed as all inclusive totals. "[W]hen the bill was considered in the House, it was amended to exempt the State committees and others, which does give, and probably legally, the right for an individual to make as many \$5,000 contributions to different committees as he desires. I say 'probably legally'—I don't think it was the intention of the original act." Hearings before Senate Subcommittee on Privileges and Elections, 78th Cong. 2d Sess. 6 (1944).

²⁶ 56 Stat. 986, 18 U.S.C. § 61 (a, g, n, s, u) (1942), amended by 62 Stat. 720 (1948), 18 U.S.C.A. § 595 (1950). For a recent study consult Nelson, *Public Employees and the Right To Engage in Political Activity*, 9 Vand. L. Rev. 27 (1955). There are additional laws against the solicitation of civil servants in sixteen states. *Ibid.*, at 33.

²⁷ Ford, *Regulation of Campaign Finance* 3 (1955). These tabulations, revised and corrected, are based on some earlier data published in Bottomley, *Corrupt Practices in Political Campaigns*, 30 B.U.L. Rev. 331 (1950), and in the publication by the Council on State Governments, *op. cit. supra* note 9.

²⁸ For the gubernatorial candidate it may range from \$50,000 in Alabama to \$2,000 in Idaho. Ford, *op. cit. supra* note 27, at 33.

²⁹ For the gubernatorial office the range is from fifty per cent of the annual salary in Iowa and South Dakota to ten per cent in Kansas. *Ibid.*

³⁰ For example in Michigan the limitation is \$20 for each 1,000 votes cast for the office of governor, but with a minimum fixed at twenty-five per cent of the annual salary. *Ibid.*, at 34.

thirty-one states prohibit contributions by corporations and five states extend this to labor unions specifically. Although limiting contributions by individuals, corporations, or labor unions, Delaware, Florida, Louisiana, and Nebraska impose no limit at all on campaign expenditures for their gubernatorial or federal candidates.³¹

Stipulated expenditure limitations such as \$5,000 for United States Representative, \$25,000 for United States Senator and \$3,000,000 for national or inter-state committees, do not appear very realistic in the light of some of the recent campaign expenditure compilations.³² A forty-eight-state survey by the *New York Times* in 1952 revealed that campaign spending by all the parties, political organizations, independent committees, and candidates came to an estimated total of \$32,155,251.³³ *Congressional Quarterly*, on the basis of its own research, gives the following totals of reported spending by parties, committees, and candidates:

1950.....	\$10,901,463 ³⁴
1952.....	\$ 5,584,688 ³⁵
1954.....	\$13,662,414 ³⁶

Of course, variations in report forms and procedures, duplicated expenditure figures (when the national committees transfer funds to their respective state organizational subsidiaries), and incomplete reports³⁷ are only some of the factors that prevent these tabulations from being anything but mere approximations.

Perhaps the peculiar inadequacy of some of the fixed limitations can actually be better illustrated by the expenditures for radio and television, the basic campaign media used by the two presidential candidates and their

³¹ *Ibid.*, at 33-42.

³² In five senatorial contests in the 1954 election, \$50,000 was the minimum reported. The highest expenditure for representative was \$42,639.42 in Ohio's ninth congressional district. 11 Cong. Q. Almanac 722, 723 (1955).

³³ N.Y. Times p. 1, col. 5 (Dec. 1, 1952).

³⁴ 11 Cong. Q. Almanac 725 (1955).

³⁵ *Ibid.* This figure does not include money spent in the presidential campaign.

³⁶ *Ibid.*

³⁷ "Of the . . . 117 organizations which appear to be required to file periodic reports during the calendar year of 1946, only 47 have filed any reports. Of those filing reports, in very few instances have the reports been filed for each period required under the act." House Special Committee Report No. 2739, *supra* note 15, at 39. Also consult Senate Special Committee Report No. 47, *supra* note 15, at 15. With respect to the various state court decisions relating to state filing requirements, Professor Harry Best noted that, "while the courts [will] insist upon a full and sincere obedience to the laws, and will permit no omissions or evasions with respect to essential matters, they are content for the most part to exact compliance only with the material provisions, allowing greater or less latitude in regard to minor details." Sen. Doc. No. 203, 76th Cong. 3d Sess. 33 (1940).

supporters in the 1952 election.³⁸ On the Columbia Broadcasting network for television alone, the Eisenhower supporters spent \$262,736.16 for a total of three hours and thirty minutes. The Stevenson supporters paid \$237,449.76 for their four hours and forty-five minutes. C.B.S. radio showed expenditures of \$136,642.57 for Mr. Eisenhower and \$212,690.53 for Mr. Stevenson.³⁹

Perhaps the most significant factor in the election expenditure picture, aside from the increase in cost, is the notable degree to which spending by political committees has tended to overshadow spending by the candidate. Twenty-seven GOP groups spent \$5,517,826.05 or fifty-three per cent of the total of all reported Republican expenditures. The figure for the Democratic groups was \$2,224,210.93 or twenty-two per cent; to this must be added almost all of the political expenditures by labor groups which, with their \$2,057,613.06, represented twenty per cent of the total spending by groups or organizations.⁴⁰

The particular usefulness of political committees under the Hatch Acts as interpreted should not be surprising when it is recalled that, unless operating nationally or in an inter-state capacity, they need not report federally, that they assist the candidate in staying within legal limits, and that they have in fact become the widely accepted devices by which wealthy supporters and their families may properly diffuse their largess in legal multiple gifts of \$5,000.⁴¹

This decentralization and proliferation⁴² of campaign finance via multiple committees—national, state, and local—represents the major pattern of formal adjustment to the overly rigid and unrealistic limitations of the Hatch Acts. This is not a new phenomenon. Only one year after passage of the first Hatch Act, a Senate committee investigating campaign spending in the 1940 election found:

[T]he Hatch Act has been ineffective in preventing the expenditure of enormous sums of money . . . [t]he \$3,000,000 limitation . . . served to direct the flow of

³⁸ According to Professor Heard's testimony, in 1952 "approximately 16.8% (or \$375,-693.92) of the net expenditures of the Democratic National Committee, and approximately 21.4% (or \$645,125.83) of the net expenditures of the Republican National Committee, went for radio and television costs." Hearings, *supra* note 2, at 105.

³⁹ Testimony of Mr. Richard S. Salant, Vice President, C.B.S. *Ibid.*, at 168.

⁴⁰ 11 Cong. Q. Almanac 729 (1955).

⁴¹ "[I]n 1954, it appears that 10 members of the Rockefeller family gave an aggregate of \$66,000 to various Republican campaign committees." *Ibid.*, at 727. Of course, these gifts are made by wealthy families to both political parties. The Congressional Almanac provides a state by state listing of individual contributions of \$1,000 and over, along with the various recipient party organizations and political committees. *Ibid.*, at 748-56.

⁴² In the 1954 Oregon senatorial contest, for example, former Senator Cordon (R. Ore.) reported no expenses for himself but registered with the Oregon Secretary of State a total expenditure of \$141,264.01 spent on his behalf by not less than thirty state committees and four individuals. Hearings, *supra* note 40, at 726.

campaign funds in excess of that amount into channels other than those of the traditional national party committees, i.e.—[i]ndependent political committees, each of which believed itself legally entitled to spend up to \$3,000,000 . . . State or local committees ostensibly supporting State candidates but actually working for the national party ticket as well . . . individuals desiring to contribute more than \$5,000 found it only necessary to donate or loan any desired sum to a State or local committee, which might spend the money without restriction.⁴³

These conclusions have since been reinforced by volumes of additional testimony and investigations.

To this "vertical" decentralization of control over campaign finance, accentuated by the failure of the federal acts generally to view primaries as integral and indivisible parts of the election process, must then be added a second and perhaps equally significant factor. Judicial decisions, particularly by state courts, have so molded the law of agency, as it relates to the corrupt practices statutes, as to divide nearly completely responsibility over campaign finance between the candidate on one hand, and the political committees organized in his support on the other.⁴⁴ Statutes in eighteen states place the expenditure limitations not only on the candidate alone, but on all those political committees making disbursements on his behalf with his knowledge and consent.⁴⁵ Judicial interpretations, however, have construed the principal-agent relationship to require evidence of direct and specific authority before it is possible to charge the principal (candidate) with any violation of such legal limits, appear to have contributed much in rendering the enforcement of such provisions most difficult.

The political implications flowing from the decentralization and diffusion over the control of campaign finance have not escaped the attention of the national leadership in both major political parties.⁴⁶ Some of the practical

⁴³ Report of Senate Special Committee No. 47, *supra* note 15, at 13.

⁴⁴ *Danniell v. Gregg*, 97 N.H. 452, 91 A. 2d 461 (1952); *Veal v. Thompson*, 287 Ky. 742, 155 S.W. 2d 214 (1941); *Bell Telephone Co. of Pa. v. Pinchot*, 44 Pa. D. & C. 119 (Dist. Ct., 1941); *Kommers v. Palagi*, 111 Mont. 293, 108 P. 2d 208 (1940); *Wheeler v. Marshall*, 280 Ky. 55, 132 S.W. 2d 519 (1939); *Kearney's Account*, 136 Pa. Sup. 78, 7 A. 2d 159 (1939); *Gallagher v. Campbell*, 267 Ky. 370, 102 S.W. 2d 340 (1937); *Dyche v. Scolville*, 270 Ky. 196, 109 S.W. 2d 581 (1937); *Trones v. Olson*, 197 Minn. 21, 265 N.W. 806 (1936); *Mariette v. Murray*, 185 Minn. 620, 242 N.W. 331 (1932); *Hicks v. Frazer*, 118 Cal. App. 777, 1 P. 2d 1096 (1931); *Hardin v. Horn*, 184 Ky. 548, 212 S.W. 573 (1919); *Rees v. Nash*, 142 Minn. 260, 171 N.W. 781 (1919); *Harrison v. Nimocks*, 119 Minn. 535, 137 N.W. 972 (1912); *Bechtel's Election Case*, 39 Pa. Sup. 292 (1908); *State v. Bland*, 144 Mo. 534, 46 S.W. 440 (1898). Also see *Newberry v. U.S.*, 256 U.S. 232 (1921); although this case did not center primarily around this question, a majority of the court apparently did conceive the principal-agent relationship between Mr. Newberry and his supporters very much in line with the above cases. Also consult Sen. Doc. No. 203, *supra* note 37, at 21.

⁴⁵ *Ford*, *op. cit.* *supra* note 27, at 33-35.

⁴⁶ According to the chairman of the Republican National Committee, the process "has weakened party responsibility and discipline." Hearings before Senate Subcommittee on

consequences arising out of this "horizontal" and "vertical" decentralization are occasionally revealed most dramatically in the hearings of congressional campaign investigating committees. The following "bi-partisan" illustrations are submitted in the belief that they may help to indicate something of the degree to which failure in the control over finances, and, to an important extent, over the entire campaign, may be traced back directly to this divorce between the candidate and his supporters.

The first "exhibit" is taken from the 1950 senatorial campaign in Ohio in which Mr. Joseph Ferguson unsuccessfully opposed Mr. Robert A. Taft, the incumbent.

Sen. Margaret Chase Smith: What control did you [Mr. Ferguson] have over your campaign? . . . Who planned the radio programs, the television, the itinerary, and the literature? Who decided when and where to spend the money and in what amounts, and when did the campaign against Mr. Taft begin?

Mr. Ferguson: Well, you know when you don't have any money to spend, you don't have to do any planning, so I didn't have any money to spend so I didn't have any planning to do.

Now if you are talking, Mrs. Smith, about who arrived at the decision to print the funny books and some of the other literature, that was printed by, I think, the CIO. I am not sure. Of course, they didn't ask me anything about it. It wasn't any of my money. I didn't have any control.

If somebody wanted to go out and spend \$100 for me, they would probably go and do it. I wouldn't know anything about it. . . .

Sen. Smith: Did you make the plans for the radio and the literature?

Mr. Ferguson: No I didn't have any money to make radio plans and anything like that. I didn't make any plans for those. My committee made those plans, I think, but I didn't have any money personally. I was out campaigning. I was out hitting the sticks. . . .

Sen. Smith: I just wondered where the decisions were made. It seems that someone has to make decisions and plans.

Mr. Ferguson: I always conduct my own campaign. Now, when people spent money in my behalf, if you are referring to the funny book and those things, I didn't have anything to do with making those up.

Sen. Smith: Yet that was a part of your campaign.

Mr. Ferguson: I wouldn't say it was a part of my campaign. It was to this extent: That they [the people who spent money on his behalf] were campaigning to beat Mr. Taft. I was campaigning to beat Mr. Taft, too, but I was campaigning on the limited amount of expenses I had available to me personally.

Sen. Smith: Then there were actually two parts to your campaign?

Mr. Ferguson: Yes.

Privileges and Elections, 82d Cong. 1st and 2d Sess. 69 (1952). Mr. Boyle, speaking as chairman of the Democratic National Committee testified that instead of the money coming into the national committees of the parties, "it has led to those funds being spread out to different types of unknown committees, unsponsored committees . . . these committees have no real responsibility either to the national committee of the Republican Party or the Democratic Party." *Ibid.*, at 7.

Sen. Smith: Your own activities and the activities of the other group.

Mr. Ferguson: I would say that this is probably a correct answer.⁴⁷

The second illustration is taken from another bitterly fought 1950 senatorial campaign, the contest in Maryland between the present junior senator from that state, Mr. John Marshall Butler, and the then incumbent, Mr. Tydings.

Mr. McDermott [Chief Counsel]: What is that again, this short-circuiting business?

Mr. Jonkel [Mr. Butler's campaign manager]: Well, you call it a technique. I would call it an expediency.

If a check came in, instead of sending it to Mr. Mundy [campaign treasurer to Mr. Butler], and Mr. Mundy depositing it, and then we would have to draw back to pay somebody, instead of doing that if Mr. Fedder [owner, National Advertising Co., Baltimore, Md.] came in, or any other person, I don't know who they were, they were ad infinitum, and if they insisted that if they did not have some money they would not mail things that were ready to be mailed, or we would not get things to be given to the workers, or we would go off the air, I would give them checks as a partial payment to keep them off my neck, frankly.

Mr. McDermott: So some of the campaign funds which were received in Mr. Butler's campaign headquarters were not transmitted to the official campaign treasurer; is that correct?

Mr. Jonkel: That is right. . . .

Sen. Hennings: Were any books kept in your office at all?

Mr. Jonkel: I don't think so, other than the kind of these transmittal letters [occasional acknowledgments]. You see the money, Senator, really should have gone to the treasurer, but our treasurer was never active in the campaign. [These short-circuited funds totalled between \$21,000-\$27,000.]⁴⁸

Sen. Hennings: So that some checks were sent to Mr. Mundy for official recording by the campaign treasurer and other checks were not sent to him, nor was any notice given to him of their receipt, is that true?

Mr. Jonkel: Well, as it turned out; yes sir. If these people didn't receive notice or an acknowledgement from anybody else they did not get one from me, then they have not, nobody has ever told them about it, to the best of my knowledge. . . .

Sen. Smith: Whom did you discuss them [the contributions] with?

Mr. Jonkel: When?

Sen. Smith: Any time.

Mr. Jonkel: I say, I may have told Senator Butler about it. The people in my office knew about it. I mean, the people that I paid the bills to. . . . I don't remember actively or actually discussing it with anyone. I may have told Senator Butler. I probably did say, "Mr. Butler, we had a good deal. We got some money today."⁴⁹

⁴⁷ Hearings before Senate Subcommittee on Privileges and Elections to Investigate the 1950 Ohio Senatorial Campaign, 82d Cong. 1st and 2d Sess. 123-24 (1952).

⁴⁸ Hearings, *infra* note 49, at 196, 204.

⁴⁹ Hearings before Senate Subcommittee on Privileges and Elections, 82nd Cong. 1st Sess. 205, 208-9 (1951).

Mr. Jonkel was indicted, tried and found guilty for failure to report properly contributions and expenditures in the Butler campaign.⁵⁰ Yet despite Mr. Jonkel's proven violation of law, a Senate investigating committee found that there was no specific evidence that candidate John Marshall Butler had "full knowledge" that his campaign manager, whom he had given blanket authority, had "committed these acts," and that in this campaign "[i]t was a matter of the campaign manager and the campaign headquarters directing candidate Butler rather than candidate Butler directing the campaign manager and the campaign headquarters."⁵¹

III

Under the provisions of S. 636 which specifically deal with the "centralization" issue,⁵² (1) primaries, presidential preferential primaries, and elections to party caucus and conventions as well as the general elections are all made subject to federal control;⁵³ (2) all political committees organized for the support of a candidate would be required to file a report with the Clerk of the House of Representatives (the Secretary of the Senate in some cases), as well as with the Clerk of the U.S. District Court;⁵⁴ (3) candidates would be given complete control as well as individual responsibility over their committee's financial campaign activities:

No contribution shall be accepted, and no expenditures made, by or on behalf of a political committee for the purpose of supporting the candidacy of a candidate until the candidate (or a representative designated by him in writing) has authorized in writing the political committee to support his candidacy and has filed a copy of such authorization with the Clerk of the House of Representatives.⁵⁵

Constitutionally the concurrence of federal-state jurisdiction with respect to elections rests on rather explicit sources governing the office of president⁵⁶

⁵⁰ Sen. Rep. No. 647, 82d Cong. 1st Sess. 3 (1951).

⁵¹ *Ibid.*, at 5.

⁵² No effort has been made to deal with such various other important provisions of Sen. 636 as the raising of the legal expenditure limitations to a maximum of \$250,000 and that for a representative to \$25,000; the additional duties of enforcement and publicity given to the Clerk of the House; new requirements as to the filing of reports by the candidate and by those contributing more than \$100; and the new maximum \$10,000 limit for individual contributions.

⁵³ Sen. 636, 84th Cong. 1st Sess. § 102(1), (2) (1955).

⁵⁴ *Ibid.*, at §§ 205, 206, 202, 201. These financial reports filed periodically by the committee treasurer would have to show in addition to categorized and totalled receipts and disbursements such other items as the names and addresses of persons contributing more than \$100 [§ 202(a)(1)] and those receiving payments of \$10 or more [§ 202(a)(4)]. The purpose of such expenditures would also have to be indicated [§ 202(b)(1)].

⁵⁵ *Ibid.*, at § 201(a)(1). Provision is also made for a formal withdrawal in § 201(a)(2).

⁵⁶ U.S. Const. Art. 2, § 1, and the Twelfth Amendment.

and the election of senators and representatives.⁵⁷ Additional congressional power for legislatively implementing the constitutional provisions may, of course, also be found in the "necessary and proper" clause.⁵⁸ This concurrent federal-state jurisdiction was rather narrowly construed in the *Newberry* case⁵⁹ by Justice McReynolds. In open conflict with four colleagues who for different reasons had concurred in the majority opinion written by him, McReynolds, J., very pointedly refused to acknowledge any congressional power over state primaries or conventions.

This constitutional distinction between primaries and general elections was to be removed explicitly in the *Classic* case⁶⁰ twenty-one years later. There is little doubt now, in view of that decision and a number of similar rulings in other cases,⁶¹ that federal statutes aiming at a so-called vertical integration in control over campaign finance should be able to meet the constitutional test successfully. As a matter of fact, certain types of campaign finance activities in conjunction with primary elections and election to political conventions have already been specifically subjected to federal control by the Labor Management Relations Act of 1947.⁶²

A second and much more complicated set of constitutional questions is posed by provisions in S. 636 that call for what might be labeled "horizontal" or candidate-centered controls over campaign finance. This type of control may, for the purpose of analysis, be divided into two inseparable and interdependent elements, each posing a distinct constitutional problem of its own. First, an outright injunction or prohibition against spending by political committees on behalf of a candidate without the latter's specific approval. Second, a subjecting of all political committees that wish to make contributions or expenditures on behalf of a certain candidate to the requirement of obtaining specific authorization from such a candidate or his treasurer before they may operate within the all-inclusive dollar limitations established for such a candidacy.

In the past it appears that both state and federal courts have tended to uphold rather uniformly those provisions of the corrupt practices statutes that prohibited political campaign contributions, solicitations, or expendi-

⁵⁷ U.S. Const. Art. 1, § 4, and the Seventeenth Amendment.

⁵⁸ U.S. Const. Art. 1, § 8.

⁵⁹ *Newberry v. United States*, 256 U.S. 232 (1921).

⁶⁰ *United States v. Classic*, 313 U.S. 299 (1941).

⁶¹ E.g., *United Public Workers of America v. Mitchell*, 330 U.S. 75 (1947); *Smith v. Allwright*, 321 U.S. 649 (1944); *United States v. Norris*, 300 U.S. 564 (1937).

⁶² 62 Stat. 723 (1948), as amended, 18 U.S.C.A. § 610 (1950). This act, as amended, had extended further the prohibitions against political contributions and expenditures by national banks or corporations so as to include labor unions.

tures by such specific groups of the electorate as corporations⁶³ and civil servants.⁶⁴ In *Oklahoma v. U.S. Civil Service Commission*,⁶⁵ the Hatch Act restrictions on the political activities of federal employees was even extended to those employed by state and local governments who worked on projects partly or entirely supported by federal funds.

Recently, however, when the Labor Management Relations Act of 1947 expanded the prohibitions of the federal Corrupt Practices Acts against political expenditures and contributions to include labor unions,⁶⁶ the Supreme Court took a second sober look and raised some serious doubt as to the constitutionality of such restrictions.⁶⁷ The issue seems to be the distance to which Congress may go in legislatively implementing the constitutional "freedom and purity of election" objective⁶⁸ without, at the same time, unwarrantedly abridging the freedoms guaranteed under the First Amendment. In the *CIO*⁶⁹ case, this was the central issue to Justice Rutledge and three other justices who joined him in the concurring opinion. "The presumption [when legislation in-

⁶³ *United States v. United States Brewers' Ass'n.*, 239 Fed. 163 (W.D. Pa., 1916).

⁶⁴ *United Public Workers of America v. Mitchell*, 330 U.S. 75 (1947); *United States v. Wurzbach*, 280 U.S. 396 (1930); *People v. Murray*, 307 Ill. 349, 138 N.E. 649 (1923); *State v. Fairbanks*, 187 Ind. 648, 115 N.E. 769 (1917); *People v. Gansley*, 191 Mich. 357, 158 N.W. 195 (1916); *Ex parte Curtis*, 106 U.S. 371 (1882). Also consult Essman, *The Hatch Act—A Reappraisal*, 60 Yale L.J. 986 (1951), and Nelson, *op. cit. supra* note 26, at 33.

⁶⁵ 330 U.S. 127 (1947).

⁶⁶ Labor's leadership, of course, contends that there is a tremendous difference between "corporations" and "unions" in structure and purpose, and that it is erroneous to treat them alike with reference to prohibitions against political contributions. "Corporations are private institutions organized for the sake of making a profit. Trade-unions are voluntary associations formed for the purpose of benefiting the economic and social status of their members. . . . Trade-union members expect and instruct their officers to engage in those activities which will achieve the social and economic ends they seek, and these activities have traditionally included advice and information concerning political issues and candidates. . . . These activities are, in turn, subject to the constant scrutiny of trade-union members who have the opportunity to express their disapproval or approval and to revise or reverse their instruction to their officers. Corporation executives are under no similar compulsions and the purposes of their charters . . . differ vastly in their intent and purpose from the constitutions of trade-union organizations." Statement by Jack Kroll, Director, CIO-PAC, Hearings before Special House Committee to Investigate Campaign Expenditures for 1952, 82d Cong. 2d Sess. 219 (1952).

⁶⁷ *United States v. CIO*, 335 U.S. 106 (1948). Also see *United States v. Construction and General Laborers Union No. 264*, 101 F. Supp. 869 (W.D. Mo., 1951); *United States v. Painters Local Union No. 481*, 172 F. 2d 854 (C.A. 2d, 1949).

⁶⁸ U.S. Const. Art. 1, § 4.

⁶⁹ *United States v. CIO*, 335 U.S. 106 (1948). Justice Reed, writing the majority opinion did not, however, feel called upon to rule on the constitutionality of Section 610, insisting that this was unnecessary since the indictment failed to state an offense. He held for the union on the ground that the intent of the framers of this act, as reflected in the debates on the floor of the U.S. Senate, was not to bar the type of political expenditure as represented by the political advertisement in the *CIO News*, inasmuch as this paper was published and paid for largely by the union membership.

terferes with the First Amendment] rather is against the legislative intrusion into these domains. For, while not absolute, the enforced surrender of those rights must be justified by the existence and immediate impendency of dangers to the public interest. . . ."⁷⁰

S. 636 does not enjoin any financial campaign activities by political committees or groups per se. What is prohibited are such activities "on behalf" of a candidate without the latter's specific written authority.⁷¹ Its constitutionality as a regulatory measure would seem to fall into a much more permissive orbit than where it is a matter of an outright prohibition. Its provisions do not seem to destroy what Justice Rutledge called "the expression of organized viewpoints concerning matters affecting their vital interest at the most crucial point [publication] where the expression would become effective."⁷²

To allay further doubts as to the constitutionality of S. 636, Section 201(a) might perhaps be amended to include a provision to the effect that a committee wishing to support a candidate without his approval would be required to point out prominently that its literature or any of its other various forms of campaign activities (1) have not been authorized by the candidate and (2) that the candidate cannot be held to assume any responsibility whatever for its content. This obviously negative endorsement in the highly candidate-centered practice of American politics adds materially to the attractiveness of submitting to a candidate-centered control over campaign finance. It would additionally strengthen the constitutional position of such legislation.

The second constitutional facet of candidate-centered control over campaign finance—a written authorization by him as a condition precedent to such committee activities on his behalf—was presented in a recent Florida case.⁷³ Largely as an outgrowth of the shocking extent of campaign irregularities, revealed before a committee of the Florida legislature, a new corrupt practices act had been passed in 1951.⁷⁴ In addition to an outright prohibition of political contribution and expenditures by certain enumerated economic interests,⁷⁵ the act provided that "[n]o contribution or expenditure of money or other thing of value . . . shall be made, received, or incurred,

⁷⁰ *United States v. CIO*, 335 U.S. 106, 140 (1948).

⁷¹ § 201(a) (1).

⁷² *United States v. CIO*, 335 U.S. 106, 150 (1948).

⁷³ *Smith v. Ervin*, 64 S. 2d 166 (Fla., 1953).

⁷⁴ Fla. L. (1951) c. 26819.

⁷⁵ Persons or corporations holding permits or licenses for dog and horse racing; for the sale of intoxicating beverages; operators of public utilities; members of non-profit cooperative associations. Fla. Stat. (1955) § 99.161(1) (a-c).

directly or indirectly" in support of candidates for state office "except through [a] duly appointed campaign treasurer."⁷⁶

The Florida Supreme Court, in a four-to-two decision, affirmed the lower court's rejection of the contention that the new statute represented an unconstitutional infringement of freedom of speech and press. The statutory requirement by which a citizen, wishing to come to the aid of a candidate with the purchase of advertising and radio time, could be made to seek prior candidate approval for such activities on his behalf, was held by the court to constitute an appropriate exercise of the state's police power.⁷⁷

A central premise of the Florida law was the assumption that the best "enforcement" of reasonable expenditures does not demand fixed dollar limitations but popular scrutiny of frequent, accurate, and widely circulated pre-election publicity⁷⁸ as to the source and extent of a candidate's financial contributions.⁷⁹

While the law certainly could not guarantee an end to all illegal campaign contributions, its actual operation in the 1952 Democratic gubernatorial primary proved highly successful.⁸⁰

S. 636 represents an effort to use the Florida type of candidate-centered control over campaign finance as a technique not for removing the concept of the Hatch Act limitations, but rather for making it possible to hold the

⁷⁶ *Ibid.*, at (4) (a). Also note the very similar Texas provision that "it shall be unlawful for any person, other than a candidate, his campaign manager, or his assistant campaign manager, to make or authorize any campaign expenditure." 9 Tex. Civ. Stat. Ann. (Vernon, 1952) § 14.04(d). A New Jersey campaign finance statute of this candidate-centered type has been relatively ineffective, since under 1 N.J. Rev. Stat. (1937) c. 19, § 3-8, a candidate may blanketly "disavow" all illegal expenditures made on his behalf. For the practical operation of this, see Overacker, *Money in Elections* 330-33 (1932).

Under Section 99.161(7) of the Florida statute, *supra* note 75, there can also be no expenditures on behalf of a candidate without a written order by the treasurer, authorizing such disbursements on a form provided by the state and drawn upon a special account with a properly designated state bank.

⁷⁷ *Smith v. Ervin*, 64 S. 2d 166 (Fla., 1953). But in *State v. Pierce*, 163 Wis. 615, 158 N.W. 696 (1916), a provision prohibiting campaign expenditures by persons other than the candidate, his permanent campaign committee or a party committee, was held unconstitutional as an unreasonable interference with the Declaration of Rights of the Wisconsin Constitution, Art. I, § 3. Consult, Minnesota Corrupt Practices Act: A Critique of the Fixed Campaign Limitations, 40 Minn. L. Rev. 156, 165 (1955).

⁷⁸ Fla. Stat. (1955) § 99.161.

⁷⁹ Candidates for U.S. senator and governor must file weekly reports; all others monthly. *Ibid.* Mr. Gray, Florida Secretary of State, said: "I do not wish to exaggerate, but I frequently had to shove reporters out of the way before I could get the papers filed myself, because they would grab them just as soon as they came in. . . . There was splendid publicity. . . ." Hearings of the House Special Committee to Investigate Campaign Expenditures, 1952, 82d Cong. 2d Sess. 175 (1952).

⁸⁰ Professor Roady concluded that "it might well be used as a model for regulating money in national campaigns." Roady, Florida's New Campaign Expense Law and the 1952 Democratic Gubernatorial Primaries, 48 Am. Pol. Sci. Rev. 465, 476 (1954).

candidate effectively responsible for the bill's newly proposed and more realistic dollar limitations. Constitutionally, the written authorization feature rather than constituting possibly an additional infringement upon the guarantee of the First Amendment, appears to be based upon a combination of elements already deemed by the courts reasonable and necessary for protecting the purity of elections.

IV

Aside from the very obvious complex group of criticisms based on the constitutional and political thought of the traditional states' rights proponents, S. 636 poses with its "centralization" provisions a number of additional problems. Some of the criticisms, to be sure, may tend to be similar to the arguments advanced regularly by those even outside the South, to whom nearly every and any further extension of federal control is nothing but an anathema.⁸¹

Other arguments can be based on the phaseology of the bill itself. It is perfectly possible, for instance, to read S. 636 so as to require of every precinct committee the filing of at least seven separate reports. This requirement, in the judgment of the present chairman of the Republican National Committee, in a state like New York with 10,457 precincts "may discourage activity in politics rather than encourage it."⁸² This, of course, was not the intention of those who wrote the bill.⁸³

It has been suggested that the bill fails to give the candidate effective control over individual contributions not directed to his committee;⁸⁴ that an already tired candidate would be additionally burdened with complex accounting procedures;⁸⁵ that no limitation provisions are imposed on state committees organized in support of a presidential and vice-presidential candidate;⁸⁶ that the bill's definitions of "political committee" and "expendi-

⁸¹ For example, Senator Jenner insists that "[a]ny effort of the Federal government to dictate to the people of the states rules, regulations, and conduct for conducting an election should be regarded with intense anxiety and vigorously resisted." Sen. Doc. No. 81, 82d Cong. 1st Sess. 26 (1951).

⁸² Hearings, *supra* note 2, at 19. Senator Dirksen (R., Ill.) raised similar questions: "I want to put no such burdens upon humble, good people at home who are interested in politics. [Ibid., at 266.] Now, you are dealing with people back home at the grassroots, solid, humble, God-fearing, ordinary citizens, to whom political organization is, among other things, something of a diversion. . . . But one day he is standing on the street of a county seat town visiting this little group, and some local attorney comes along and says, 'Say, I just happened to think of something. You are the treasurer of the county committee. Did you know how many reports you must file under Federal law, and do you know what the penalties are?'" Ibid., at 259.

⁸³ Ibid., at 47, 106, 160.

⁸⁵ Ibid., at 293, 122.

⁸⁴ Ibid., at 290.

⁸⁶ Ibid., at 287, 288.

tures" appear to be so broad as to bring into question bona fide expenditures by such groups as the League of Women Voters⁸⁷ and the publishers of newspapers;⁸⁸ that the bill fails to put an end to the dispersal of contributions by the very wealthy among the various members of their families;⁸⁹ and that the bill's requirement calling for an accurate allocation of campaign expenditures among the various national, state, and local candidates would prove most difficult in practice due to the "party ticket" system.⁹⁰

It may also be noted that there is little indeed in S. 636 that might assist those responsible for the enforcement of the corrupt practices statutes, in their efforts to delineate as to where an organization's "institutional advertising" or "educational" activities merge into outright partisan activities. As so well expressed by a congressional committee twelve years ago, education "very often takes the form of promoting in a 'non-partisan' manner social and economic doctrines clearly associated in the public mind with one major political party or the other. . . . [T]he bulk purchase of literature from pseudo-educational organizations which employ the profit from these sales to distribute more political propaganda, is still another device encountered more than once."⁹¹

⁸⁷ *Ibid.*, at 291.

⁸⁹ *Ibid.*, at 285.

⁸⁸ *Ibid.*, at 203, 305.

⁹⁰ *Ibid.*, at 14, 19, 20, 34, 107.

⁹¹ Report of the House Committee to Investigate Campaign Expenditures, 78th Cong. 2d Sess. 9 (1945). Also consult the testimony by Mr. Rumely, Executive Secretary of the Committee for Constitutional Government, and by Mr. Pettengill, *ibid.*, at 447-85; by Mr. McCurdy, President, United Garment Workers of America, Hearings of the House Committee to Investigate Campaign Expenditures, 79th Cong. 2d Sess. 359-67 (1946); and by Mr. Weisenburger, Executive Vice President, National Ass'n of Manufacturers, *ibid.*, at 196-201.

This issue was raised prominently in the bitterly fought Ohio campaign where 269 corporations contributed \$77,042 to a "Free Enterprise" series. The following testimony is taken from the Hearings, *supra* note 47, at 181:

Sen. Smith: You have the newspaper pages on it. It is an example of the institutional advertising we have been talking about. This first is Americanism versus Communism. Can such an advertisement be hurtful to Mr. Ferguson? Mr. Taft's name is not mentioned in it, republicanism is not listed on it. Can that ad be against Mr. Ferguson?

Mr. Clayman [Secretary-Treasurer, Ohio CIO Council]: In the framework of the Ohio election; yes. . . .

Sen. Smith: You may believe that, but how can you prove that this is true, because certainly Mr. Ferguson is as much for Americanism as Mr. Taft is from anything I have observed.

Mr. Clayman: Oh, Mrs. Smith, surely you are realistic, and I am, too.

Sen. Smith: Yes.

Mr. Clayman: In heaven's name, when you know the campaign, it must be crystal clear, the import of this kind of advertising. Of course, I can't parade before you the people who paid for it and have them admit abjectly, 'Yes, we intended to help Mr. Taft.'

Sen. Smith: I have a list of the people who paid for these, and I can't believe Americanism versus Communism can be charged to the campaign of either man so long as the other man is not mentioned.

To close all of these lacunae in the federal corrupt practices approach, wide as they are, was obviously not the primary objective of the framers of S. 636. Yet more effective "vertical" and "horizontal" centralized controls over campaign finance are certainly sufficiently significant objectives in and of themselves to warrant the most serious legislative attention. Of all the provisions in S. 636, those aiming at the objective of centralization received perhaps the most repeated and impressive expressions of approval by certain segments of the press,⁹² as well as by those political scientists⁹³ and party leaders⁹⁴ whose special comments had been invited by the committee.

A subjecting of the primaries to federal control alone would represent a long overdue and realistic acknowledgment of the tremendous significance of such elections in the entire fabric of American government and politics. It is not known widely that during the last forty years, twenty-two of the states had a political composition where second political parties won less than twenty-five per cent of all presidential, senatorial, and gubernatorial elections.⁹⁵ In this very large group of states it is obviously the primary and not so much the general elections, where the real contests are decided.

Another index of the political import of the primary contests is their relevance to the struggle for legislative power in the congressional area itself. Of the nineteen standing House committees in the 84th Congress, eight chairmen

⁹² N.Y. Times, p. 20, col. 5 (April 8, 1955); Washington Post and Times Herald, p. 12, col. 1 (April 12, 1955); Christian Science Monitor (April 11, 1955). A very strong endorsement was given by America (April 30, 1955), as cited in Hearings, *supra* note 2, at 308, 311.

⁹³ Hearings, *supra* note 2. Those in accord include Professors Austin Ranney, University of Illinois (*ibid.*, at 283); James K. Pollock, University of Michigan (*ibid.*, at 292); Louise Overacker, Wellesley College (although she has some serious reservations about "the practicability of requiring political committees working on behalf of a candidate to secure authorization from him. . . ." *ibid.*, at 290, 291, and Overacker, *op. cit.* *supra* note 10); Robert F. Karsch, University of Missouri (*ibid.*, at 285); Avery Leiersen, Vanderbilt University (*ibid.*, at 286); Cortez A. M. Ewing, University of Oklahoma (*ibid.*, at 288); Peter H. Odegard, University of California (*ibid.*, at 297); Clarence A. Berdahl, University of Illinois (*ibid.*, at 299); and Alfred De Grazia, Stanford University (*ibid.*, at 292).

⁹⁴ *Ibid.*, at 84, 87. Paul M. Butler, chairman, Democratic National Committee, *ibid.*, at 31, 33; Mr. Leonard W. Hall, chairman, Republican National Committee, testified that "the purpose of the bill is good," but he registered serious reservations with respect to the bill's extensive reporting system, candidate-centered approach and its subjecting of primaries, conventions and caucuses to federal control, *ibid.*, at 13-14.

⁹⁵ Ranney and Kendall, *The American Party Systems*, 48 Am. Pol. Sci. Rev. 477, 483 (1954). In this study it was found, rather significantly, that in 12 of these 22 states, the second party usually won a "substantial percentage" of the votes . . . 30 per cent . . . in over 70 per cent of all elections . . . 40 per cent . . . in over 30 per cent of all elections." *Ibid.*, at 484. Consult further, a later study where it was observed that between 1870 and 1950 "[w]ell over half of the states gave the governorship to one party in 70 per cent or more of the elections." Schlesinger, *A Two-Dimensional Scheme for Classifying the States According to Degree of Inter-Party Competition*, 49 Am. Pol. Sci. Rev. 1120, 1123 (1955).

had no major party opposition at all in the general election.⁹⁶ In the same Congress, of the fifteen standing committees of the Senate, seven were chaired by senators who had also no major party opposition in the general election.⁹⁷

The provisions in S. 636 calling for a more candidate-centered or "horizontal" control over campaign finance rank equally in political importance. The candidate, now tragically all too often just a mere member of the crew of a campaign ship, piloted by others, on a course set by others, could now perhaps become the captain of his own ship. After all, to an extent not insignificant, his name, his integrity, and his policies have been largely at the mercy of those technically organized on his behalf, but in practice organized too often in their own behalf. Some of the additional tasks of keeping track of campaign funds, as required in S. 636, onerous as they may well be for an already over-burdened candidate, might be worth the effort if it would help to discourage but a little a resort to scurrilous literature and irresponsible campaign charges by his overzealous supporters.

Then it may be contended, however, that the candidate-focused control over campaign finance might tend to work to the detriment of a more responsible party system. What is needed are not more independently operating candidates, confusing the public with incompatible and undeliverable promises, it may be claimed, but a more mature and issue-centered complexion of American politics brought about more effectively by a better integrated and disciplined major party system.

Moreover, although the interdependence of party and candidate must necessarily vary greatly from situation to situation, the parties' present complicated problems of allocating financial support among the different candidates on the ticket would with S. 636 be made even more complicated.

Yet is it not equally true that there is nothing in the principle of "horizontal" concentration of control, as provided in S. 636, that inherently retards in any way the development of a healthy reciprocity between a more responsible candidate on the one hand and a more responsible party system on the other? In the highly personality-centered framework of American politics, sound political parties need sound candidates as much as, if not more than, the candidates need such parties.

Proposals for subjecting primaries to federal regulations and devising more candidate-centered controls over campaign finance have reappeared

⁹⁶ Based on 13 Cong. Q. 82-85, 270-71 (1955). Included in this committee list are such critical areas as Ways and Means, Foreign Affairs, Veterans Affairs, Post Office and Civil Service, and Armed Services.

⁹⁷ *Ibid.*, at 56-57, 272. This list is similarly impressive, including committees on Foreign Relations, Agriculture and Forestry, Banking and Currency, Finance, Government Operations, Post Office and Civil Service, and Armed Services.

with peculiar regularity throughout at least a decade of hearings and investigations of campaign tactics, contests, and expenditures conducted by numerous congressional committees. These objectives have been termed, by various political scientists and practical politicians alike, as indispensable minima. Without them any scheme for greater effectiveness and responsibility in the control over campaign finance seems most doubtful of attainment. Even so, there is still a notable congressional reluctance to enact into law measures incorporating these minimum objectives. As a result of the now famous Case incident in connection with the natural gas bill and its presidential veto, another eight-member Select Committee has recently been established to investigate once again the activities of lobbies and their relationship to legislative and election processes. Perhaps this committee may be able now, in the light of its findings and recommendations, to succeed where its predecessors have failed and at last persuade Congress to adopt such objectives as are recommended in S. 636. To accomplish this it will have to convince the members of Congress that the legitimate and responsible aspirations of groups and lobbies in a pluralistic society are thoroughly reconcilable with legitimate and responsible campaign practices. The central approach incorporated in S. 636, despite its numerous practical problems of organization and enforcement, appear constitutionally and politically sufficiently sound to warrant its recommendation for an intensified congressional scrutiny and debate as serious preliminaries for eventual statutory enactment.