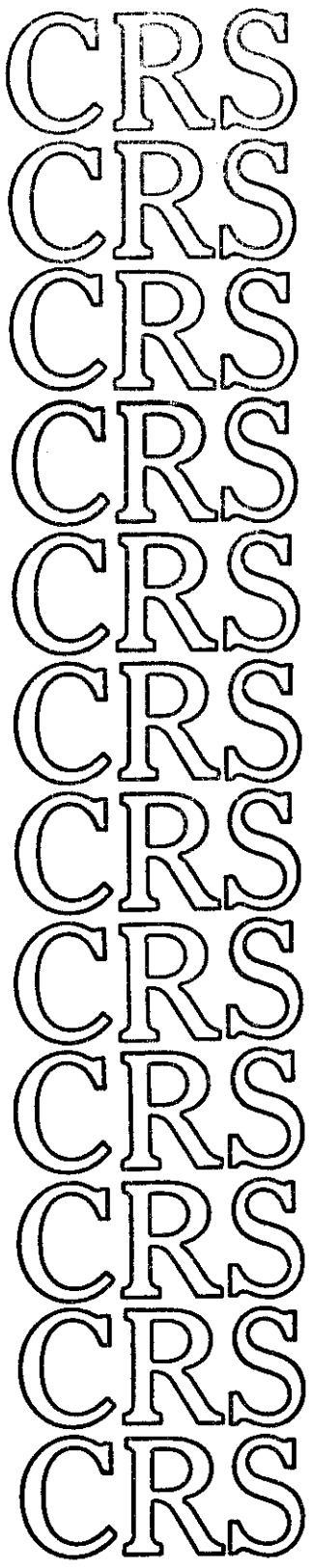

POLITICAL ACTIVITIES BY CONGRESSIONAL EMPLOYEES

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A. General Discussion

1. Political Activity in General

The broad prohibition against political activities by Government employees, known as the "Hatch Act" (title 5 U.S.C. §7321 et. seq.) is not applicable to officers or employees of the legislative branch. With some restrictions, particularly with reference to campaign funds and finances, staff employees of Members of Congress may participate in partisan political activity during their free time to the extent permitted the general public. The professional staff of congressional committees, however, may be subject to more stringent regulation concerning their political activity.

Although there apparently are no specific rulings or statutory prohibitions upon general campaign activities by employees of the legislature, certain provisions may restrict political activity during a staffer's "official" time. Initially, it should be noted that a provision in the United States Code, 31 U.S.C. §628, states that "sums appropriated for various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others." Thus, it may be contended that congressional employees, paid by funds appropriated from the United States Treasury, are compensated for services rendered for public purposes, that is, their official legislative, clerical, or administrative duties, and not for personal campaign activities on behalf of a Member.

Generally, legislative employees come within the provisions of the Code of Ethics for Government Employees, 72 Stat. Pt. 2, B12, which states in part:

> Any person in Government service should:
> (3) Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Further, the duties of staff employee of a Member of the House of Representatives are referred to in Rule 8 of House Rule XLIII:

> A Member of the House of Representatives shall retain no one from his clerk hire who does not perform duties commensurate with the compensation he receives.

Certain restrictions on salary allowances for the official duties of those persons on the "clerk hire" rolls of the House of Representatives may be applicable to the question of permissible campaign activities of such employees. Public Law 89-90, 79 Stat. 281, section 103, incorporated by reference House Resolution 7 of the 89th Congress, and made permanent law the provisions of H. Res. 294, 88th Congress, which states:

> No person shall be paid for any clerk hire allowance if such person does not perform the services for which he receives such compensation in the offices of such Member or Resident Commissioner in Washington, District of Columbia, or in the State or district which such Member or Resident Commissioner represents.

This provision may technically bar an employee on the clerk hire rolls of the House from receiving compensation from the United States Treasury for duties performed on "official time" outside of the District of Columbia or the Member's Congressional district.

As to political activity of professional staff employees of committees, Section 72a(a) of title 2, United States Code, provides for the appointment of professional staff members of standing committees of the Senate and states:

> Professional staff members authorized by this subsection shall be appointed on a permanent basis, without regard to political affiliation, and soley on the basis of fitness to perform the duties of their respective positions. Such professional staff members shall not engage in any work other than committee business and no other duties may be assigned them. (emphasis added)

Similar language with regard to professional staff members of standing committees of the House of Representatives is found in the Rules of the House of Representatives, Rule XI, clause 6(a)(3)(B) and (C):

> (3) The professional staff members of each standing committee --
> (B) shall not engage in any work other than committee business; and
> (C) shall not be assigned any duties other than those pertaining to committee business.

Although no official interpretation of, or ruling upon, these provisions has been found, contentions may arise that the prohibition upon the professional staff engaging in "any work other than committee business" would preclude professional staff employees from engaging in any outside business or political activity in addition to their congressional employment. In light of the intended professional status of these individuals and their employment with a committee rather than an individual Member of Congress, as well as the Senate directive that committees are to employ professional staff "without regard to political affiliation" (2 U.S.C. §72a(a)), questions have arisen as to the propriety of partisan political activity at any time by such staffers on behalf of a particular Member of Congress. Research into the legislative history of these provisions (2 U.S.C. §72a(a); House Rule XI(6)(a)(3)), which originated from the Legislative Reorganization Act of 1946 (60 Stat. 812), however, has failed to uncover specific congressional intent to apply the prohibition in question to off-hours employment or activity by professional committee staffers. Rather, it appears that the prohibition was intended to insure that professional staff members of committees would work exclusively on committee business during their congressional working hours, as opposed to performing "other congressional office duties" (Report of the Joint

Committee of the Organization of Congress, pursuant to H. Con. Res. 18, "Organization of Congress," 79th Congress, 2d Sess, S. Rept. No. 1011, March 4, 1946, p. 10; see also: Senate Rept. 1015, 90th Congress, 2d Session, pp. 4-5). This was apparently to insure a continuing full time professional staff of experts for the congressional standing committees (see: 92 Cong. Rec., p. 6442, 79th Cong., 2d Session, June 6, 1946). Thus, although these provisions would appear to strictly prohibit political activity by professional staff employees of committees during normal working hours, arguments which would extend this prohibition to evening and weekend off-hours political activity, similar to "Hatch Act" prohibitions, appear to have less validity in light of the legislation history of the provisions in question and the absence of official determinations of that nature.

As to the question of permissible campaign activities of staff employees of Members of Congress during "normal" working hours, the House Committee on Standards of Official Conduct offered certain considerations which appeared in the Congressional Record (daily edition), H. 6053, on July 12, 1973. Although these guidelines apply specifically to persons on the clerk hire rolls of the House, the considerations involved may be analogous to comparable positions in Senate. The opinion below, along with the past practices of Members and their staffs, seems to imply, particularly in light of the absence of specific rulings or statutes to the contrary, that campaign activity by staff employees of Members of Congress should be restricted to the staffer's "free-time", although such "free-time" may arise in what would be considered "conventional" work hours. The Committee stated:

> As to the allegation regarding campaign activity by an individual on the clerk hire rolls of the House it should be noted that, due to the irregular time frame in which the Congress operates, it is unrealistic to impose conventional work hours and rules on Congressional employees. At sometimes, these employees may work more than double the usual work week - at others, some less. These employees are expected to fulfill the clerical work the Member requires during the hours he requires and generally are free at other periods. If, during the periods he is free, he voluntarily engages in campaign activity, there is no bar to this. There will, of course, be differing views as to whether the spirit of this principle is violated, but this Committee expects Members of the House to abide by the general proposition.

It has been noted that in some instances Members of Congress who are also political candidates have chosen to remove legislative staffers and aides working on political campaigns from the congressional payroll and pay them from campaign funds for a period of time covering the staffer's political activity in an apparent attempt to resolve the problem of distinguishing between "official" and "free" time of such employees. A discussion of this practice appeared recently in the press. (see: The Washington Post, Sunday, January 25, 1976, p. A2.)

The campaign activity permitted staff employees of Members of Congress includes running for partisan elective office. Thus, a congressional staff employee is not prohibited by statute or rule from running for delegate to a national or state party convention, or for elective state, local or even Federal office. The considerations discussed above concerning electioneering or campaigning during "free time", as opposed to "working hours" for which

compensation is derived from the U.S. Treasury, would apply to running for elective office as well as to campaign activity in general.

Although congressional employees are not expressly prohibited from running for elective office, they may effectively be barred from simultaneously holding an elective office and retaining their congressional employment. Concerning a Federal elective office, certain Federal statutes such as those dealing with dual pay and dual employment (5 U.S.C. §§5531 et seq.) and precedents with regard to "incompatable offices" appear to eliminate the possibility of holding two, full-time paid positions or offices with the Federal Government. As far as State, local, or any other outside positions, various Senate and House Rules concerning outside employment, the duties and work of professional committee staffers, compensation being commensurate with duties performed, place of employment, and statutes regarding one's giving a full day's labor for a full day's pay, may severely restrict, and effectively prohibit, a congressional employee from holding an outside, full-time position. Additionally, State and local statutes and regulations should be examined, as those provisions often expressly prohibit an elected or appointed officer of the jurisdiction from simultaneously holding Federal office or employment.

2. Campaign Funds and Finances

Certain political activity by congressional employees with regard to campaign finances and contributions is specifically prohibted:

a.) 18 U.S.C. §602

Under Federal statute, 18 U.S.C. §602, congressional employees,

and Members of Congress, are prohibited from soliciting or receiving campaign contributions from any Government employee. This statute has been interpreted as not prohibiting Members of Congress from soliciting or receiving campaign contributions from other Members of Congress, even within congressional offices. (See: Cannon's Precedents of the House of Representatives, Vol. VI, §401.) Also, solicitations which are directed to the general public which may unintentionally reach Government employees within the area solicited, would not be considered a violation of section 602. (See: 113 Congressional Record p. 25073, Sept. 11, 1973.)

Relevant court cases involving such contributions include those discussed below.

Ex Parte Curtis, 106 U.S. 371 (1882).

This case involved Section 6 of the Act of August 15, 1876, which prohibited certain "executive officers or employes of the United States ... from requesting, giving to, or receiving from, any other officer or employee of the government, any money or property or other thing of value for political purposes." The Supreme Court held that the prohibition did not unconstitutionally interfere with rights of employees to participate in politics.

United States v. Wurzbach, 280 U.S. 396 (1930).

This case involved former Section 208, Title 18, U.S.C., which contained a prohibition nearly identical to that in current Section 602, Title 18, U.S.C., regarding solicitation or receipt of political contributions from those paid with " money derived from the Treasury of the United States". The Supreme Court upheld the constitutional validity of the prohibition, even when applied in connection with a primary election campaign.

Brehm v. United States, 196 F. 2d 769 (C.A.D.C., 1952) certiorari denied 344 U.S. 838 (1952).

This case also involved former Section 208, Title 18, U.S.C. Aside from various technical matters discussed in the opinion, the Court held that an employee-donor (in the actual case it was a Member's clerk) need not know that the contribution would be used for political purposes. It is sufficient to warrant conviction if the recipient (in the case, a Representative) knows the money will be used for political purposes.

b. 18 U.S.C. §607

A congressional employee, under 18 U.S.C. §607, is prohibited from contributing money or anything of value for a political purpose to an officer or employee of the Government or to a Senator or Representative in Congress.

The prohibition of 18 U.S.C. §607 bars congressional employees from giving political contributions "directly or indirectly" to any Member of Congress or Government employee. Thus, it would appear that this prohibition, in addition to prohibiting contributions directly to a Congressman, would prohibit contributions to an agent or representative of the Congressman, or to the personal campaign committee of the Congressman. The statute, however, apparently does not prohibit political contributions by congressional employees to national, state, or local political party committees; or to the Republican or Democratic Congressional or Senatorial Campaign Committees or the like; or to independent political committees. Factual questions may arise concerning the degree of control or direction a Congressman has over a particular committee as to whether a contribution to such a committee would be an "indirect" contribution to the Congressman. Caution should be exercised, therefore, in contributing to a

political committee which exclusively supports a particular candidate for re-election to Federal office. In any event, a contribution to any party, or congressional or senatorial, campaign committee which is specifically "earmarked" for transmittal to a designated Congressman or other Federal official would seemingly be an "indirect" contribution to such person, and so a violation of 18 U.S.C. §607.

It should be noted that no judicial interpretation of 18 U.S.C. §607 has been found. It also appears that no criminal prosecution, which may have assisted in assessing the scope of the statute, has been instigated by the Department of Justice under this statute. The provisions of the present 18 U.S.C. 607 were originally enacted as part of the Pendleton Act, 22 Stat. 403, 407, enacted in 1883. The floor debate preceding the enactment of that statute sheds little light upon specific questions concerning political contributions by congressional employees in the context of the complex organizational and financial structures of a present-day political campaign. The debate implies, however, that the statute prohibited contributions to the Congressman and his agent or representative, and not to other groups not under the control or direction of the Congressman. The relevant debate on the Pendleton Act begins at 14 Congressional Record, p. 600. Additionally, the Senate in 1967 considered a bill to revise the provisions of Federal law dealing with contributions from Government employees (S. 1880, 90th Congress, 1st Session). Although the debate on that bill focused primarily upon 18 U.S.C. §602, that is, the prohibition upon soliciting from Government employees, the discussion of the "loopholes" within the law further suggests that there are no prohibitions upon congressional employees contributing to national, state, or local campaign committees, or to committees which are not the

personal campaign committees of the Congressman. (Debate on S.1880 appears at 113 Congressional Record 25049, 25070, 25089, 25116, 25150, 25166, 25168).

In an informal opinion by the Department of Justice concerning the criminal prohibitions of 18 U.S.C. §607 and §602, dated August 12, 1974, from Thomas J. McTiernian, Chief, Fraud Section, questions of actual prosecution for violations of 18 U.S.C. §607 and §602 as to contributions to political committees were discussed:

> As you will note, the language of Section 607 appears to prohibit the making of a political contribution by a Federal employee to a fund-raising or campaign committee supporting an incumbent candidate for Congress. However, we would not view such a contribution as a prosecutable violation of Section 607 where it is received by a political committee in the normal course of its operation and where the facts and circumstances surrounding its making suggest that it was not its donor's intent to accomplish any corrupt purpose thereby.

As to the receipt of contributions from Federal officers or employees under 18 U.S.C. §602, the opinion stated:

> As was the case with Section 607, the language of Section 602 may appear to prohibit the receipt of a contribution made by a Federal employee. However, we would not view such a receipt as a prosecutable violation of the Section where the contribution is completely voluntary in nature and where it is received by a political committee in the normal course of its operation.

c. Senate Rule XLIII

As to political fund activity by officers and employees of the Senate in particular, Senate Rule XLIII provides:

Political Fund Activity by Officers and Employees

> 1. No officer or employee whose salary is paid by the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election of any individual to be a Member of the Senate or to any other Federal Office. This prohibition does not apply to any assistant to a Senator who has been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who is compensated at a rate in excess of $10,000 per annum if such designation has been made in writing and filed with the Secretary of the Senate. The Secretary of the Senate shall make the designation available for public inspection.

There is no comparable prohibition which appears in the Rules of the House of Representatives.

3. Political Activity Within a Congressional Office

If political activity is to be conducted within a congressional office, other warnings should be observed. The initial consideration is a Federal statute, 18 U.S.C. §603. That statute provides:

> §603. Place of solicitation.
>
> Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or arsenal, solicits or receives any contribution of money or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than three years or both. (June 25, 1948, ch. 645, 62 Stat. 722: Oct. 31, 1951, ch. 655. §20 (b), 65 Stat. 718).

As for solicitation of contributions this statute has thus far not been construed by the courts to prohibit the solicitation of campaign contributions from a congressional office directed to the public at large by means of telephone or letter. This interpretation is apparently based upon the legislative

history and intent of the forerunner of §603, the Pendleton Act, which intended to prohibit the solicitation of campaign contributions from Federal employees while such employees are within a Federal building. (See: Congr. Rec., Vol. 14, P. 865, Jan. 4, 1883) This original intent has not as yet been reversed by Congress in the derivation of 18 U.S.C. §603. (See: 35 Stat. 1110, section 119, 3/4/09; House Rpt. No. 304, 80th Congress, 1st Session, P. A 51; House Rpt. No. 462, 82nd Congress, 1st Session) In 1908 the Supreme Court had occassion to interpret the statute which was the predecessor of §603. The decision of the Court in the case of U.S. v. Thayer, 209 U.S. 39 (1908) stated that the act of "solicitation" is completed, and therefore arises, at the location where the request for a contribution is received by the person to whom the request is made. The Court stated: "...the solicitation was in the place where the letter was received." (209 U.S. at 44) This interpretation would arguably permit solicitations from a congressional office to the public at large so long as the persons solicited were not in a Federal building.

If any solicitation of contributions is to be conducted from a congressional office, other Federal statutes must be considered. Title 39 U.S.C. §3210(a) (5) (c) expressly prohibits sending under the frank any "mail matter which specifically solicits political support for the sender or any other person or any political party, or a vote or financial assistance for any candidate for any public office." Similarly, other provisions in the United States Code, providing for reimbursements or payments to Members of Congress for telephone or office supplies, etc., specify that such payments or reimbursements are for the use of those items on "official" or "strictly official" business. (See, for example, 2 U.S.C. §46g [telephones, telegraph, and radiograph];

2 U. S. C. 46-g1 [telephone allowance in district]; 2 U. S. C. §58 [mail, telegraph, telephone, stationary, office supplies and expenses for Senators].) These provisions apparently prohibit the use of such facilities or supplies, those for which reimbursements or payments are received, for political or campaign purposes rather than for "official business."

As to the receipt of campaign funds in a congressional office, even though the legislative intent of 18 U. S. C. §603 was apparently to prohibit only the solicitation and receipt of funds in a Federal building from Government employees, the statute does appear on its face to prohibit the receipt of any political contribution in a Federal building, and discretion should be exercised concerning the acceptance of campaign contributions within a congressional office. Although no official, written opinion is available, authorities on congressional ethics in both the House and Senate strongly advise against conducting general campaign financing activities from a congressional office.

It is not unusual, however, and is often unavoidable that unsolicited campaign contributions will be received through the mail, or a contribution by a supporter will be tendered in person, within a congressional office. When this situation occurs it has been advised that the congressional employee accept the contribution only as a transmittal for subsequent forwarding, as soon as practical, to appropriate campaign personnel outside of the congressional office for actual receipt and acknowledgement of the contribution. When contributions are offered in person within a congressional office, it is further advised to suggest, when practical, that the contribution be tendered instead to the appropriate campaign committee outside of the Federal office.

B. Quick-Reference List of Campaign Activities of Congressional Staff Employees Which Are Not Permitted.

Do Not:

(1) Promise to use support or influence to obtain Federal employment for anyone in return for a political contribution (18 U.S.C. 211);

(2) Promise employment or any other benefit provided for or made possible by any Act of Congress as reward for political activity or support (18 U.S.C. 600);

(3) Deprive, attempt to deprive, or threaten to deprive anyone of employment or any other benefit, provided for or made possible by any Act of Congress appropriating relief funds because of that person's political activities (18 U.S.C. 601);

(4) Solicit or receive political contributions from any "person receiving any salary or compensation for services from money derived from the Treasury of the United States" (18 U.S.C. 602) [Note: unintentional solicitation of Government employees resulting from a general public appeal, for instance through a mass-mailing to a Member's constituency, where no attempt is made to single-out such employees has been interpretted not to violate this statute; see Congressional Record, Vol. 113, Pt. 19, p. 25073 (Sept. 11, 1967).];

(5) Solicit or receive political contributions in a Federal building (18 U.S.C. 603);

(6) Solicit or receive political contributions from persons known to be entitled to or to be receiving relief payments under any Act of Congress (18 U.S.C. 604);

(7) Furnish, disclose, or receive for political purposes the names of persons receiving relief payments under any Act of Congress (18 U.S.C. 605);

(8) Intimidate any "officer or employee" mentioned in 18 U. S. C. 602 to secure political contributions (18 U. S. C. 606);

(9) Make a political contribution to any Member of Congress (18 U. S. C. 607) [Note: a contribution to a Member's personal campaign committee may constitute an "indirect" contribution to the Member and a technical violation of the statute. However, a contribution to a political party's senatorial or congressional campaign committee has not been interpretted to violate this statute. Furthermore, the rendering of voluntary, uncompensated services by House staff personnel during their "free time" has been construed by the House Committee on Standards of Official Conduct not to violate this statute; see Congressional Record (Daily Ed.), Vol. 119, p. H 6073 (July 12, 1973).];

(10) Knowingly accept contributions in excess of limitations under Federal law of $1000 from any person and $5000 from "committees" (18 U. S. C. 608 (b)(h), added by P. L. 93-443);

(11) Accept or receive any "unlawful" contribution from a national bank, corporation, or labor organization (18 U. S. C. 610) [Note: contributions from a separate, segregated fund established by a corporation or labor organization for political purposes and financed with voluntary contributions from employees or members are not "unlawful"; see 18 U. S. C. §610, as amended by P. L. 92-225 and P. L. 93-443);

(12) Knowingly solicit contributions from Government contractors (18 U. S. C. 611, as amended by P. L. 93-443);

(13) Willfully publish or distribute any political advertisement which does not identify the persons or groups responsible for its publication or distribution, including, in the case of groups, the names of the officers of the group (18 U. S. C. 612);

(14) Solicit, accept, or receive a contribution from a foreign national (18 U.S.C. 613, as amended by P.L. 93-443);

(15) Knowingly accept a contribution made by one person in the name of another person (18 U.S.C. 614);

(16) Misrepresent oneself as speaking or acting on behalf of a candidate (18 U.S.C. 617);

(17) If you are an "officer or employee whose salary is paid by the Senate", receive, solicit, be custodian of, or distribute any campaign funds unless you are an assistant to a Senator, you have been designated by that Senator to perform any such function, you are compensated at a rate in excess of $10,000 per annum, and the Senator's designation has been made in writing and filed with the Secretary of the Senate (Rule XLIII, standing Rules of the Senate (1973)).

(18) To the extent that a congressional employee may make political contributions or expenditures as discussed above, the employee may not:

a. Make a cash contribution in excess of $100 (18 U.S.C. 615);

b. Make contributions in excess of $1000 to any candidate or make contributions aggregating over $25,000 in any calendar year (18 U.S.C. 608(b));

c. Make a contributions in the name of another (18 U.S.C. 614);

d. If contributions or expenditures are made in excess of $100 other than by contribution to a committee or candidate, a report must be filed by person with the Federal Election Commission meeting requirements of reports set out in 2 U.S.C. §434 (2 U.S.C. §434(e));

(19) Send out political material under the frank (39 U.S.C. §3210 (a)(5)(c)).

APPENDIX A

TEXT OF RELEVANT STATUTORY PROVISIONS

18 U.S.C. §211

§ 211. Acceptance or solicitation to obtain appointive public office

Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

18 U.S.C. §600

§ 600. Promise of employment or other benefit for political activity

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §601

§ 601. Deprivation of employment or other benefit for political activity

Whoever, except as required by law, directly or indirectly, deprives, attempts to deprive, or threatens to deprive any person of any employment, position, work, compensation, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity, support of, or opposition to any candidate or any political party in any election, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §602

§ 602. Solicitation of political contributions

Whoever, being a Senator or Representative in, or Delegate or Resident Commissioner to, or a candidate for Congress, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, directly or indirectly solicits, receives, or is in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person, shall be fined not more than $5,000 or imprisoned not more than 3 years or both.

18 U.S.C. §603

§ 603. Place of solicitation

Whoever, in any room or building occupied in the discharge of official duties by any person mentioned in section 602 of this title, or in any navy yard, fort, or arsenal, solicits or receives any contribution of moneys or other thing of value for any political purpose, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

18 U.S.C. §604

§ 604. Solicitation from persons on relief

Whoever solicits or receives or is in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose from any person known by him to be entitled to, or receiving compensation, employment, or other benefit provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §605

§ 605. Disclosure of names of persons on relief

Whoever, for political purposes, furnishes or discloses any list or names of persons receiving compensation, employment or benefits provided for or made possible by any Act of Congress appropriating, or authorizing the appropriation of funds for work relief or relief purposes, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager; and

Whoever receives any such list or names for political purposes, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §606

§ 606. Intimidation to secure political contributions

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

18 U.S.C. §607

§ 607. Making political contributions

Whoever, being an officer, clerk, or other person in the service of the United States or any department or agency thereof, directly or indirectly gives or hands over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of or Delegate to Congress, or Resident Commissioner, any money or other valuable thing on account of or to be applied to the promotion of any political object, shall be fined not more than $5,000 or imprisoned not more than 3 years, or both.

18 U.S.C. §608

§ 608. Limitations on contributions and expenditures [2]

(a) *Personal funds of candidate and family.*

(1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year for nomination for election, or for election, to Federal office in excess of, in the aggregate—

18 U.S.C. §608 (con't.)

(A) $50,000, in the case of a candidate for the office of President or Vice President of the United States;

(B) $35,000, in the case of a candidate for the office of Senator or for the office of Representative from a State which is entitled to only one Representative; or

(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner, in any other State.

For purposes of this paragraph, any expenditure made in a year other than the calendar year in which the election is held with respect to which such expenditure was made, is considered to be made during the calendar year in which such election is held.

(2) For purposes of this subsection, "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

(3) No candidate or his immediate family may make loans or advances from their personal funds in connection with his campaign for nomination for election, or for election, to Federal office unless such loan or advance is evidenced by a written instrument fully disclosing the terms and conditions of such loan or advance.

(4) For purposes of this subsection, any such loan or advance shall be included in computing the total amount of such expenditures only to the extent of the balance of such loan or advance outstanding and unpaid.

(b) *Contributions by persons and committees.*

(1) Except as otherwise provided by paragraphs (2) and (3), no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

(2) No political committee (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $5,000. Contributions by the national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States shall not exceed the limitation imposed by the preceding sentence with respect to any other candidate for Federal office. For purposes of this paragraph, the term "political committee" means an organization registered as a political committee under section 433, Title 2, United States Code, for a period of not less than 6 months which has received contributions from more than 50 persons and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held.

(4) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate, in writing,

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to accept contributions on his behalf shall be considered to be contributions made to such candidate; and

(B) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(5) The limitations imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(6) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(c) *Limitations on expenditures.*

(1) No candidate shall make expenditures in excess of—

(A) ten million dollars, in the case of a candidate for nomination for election to the office of President of the United States, except that the aggregate of expenditures under this subparagraph in any one State shall not exceed twice the expenditure limitation applicable in such State to a candidate for nomination for election to the office of Senator, Delegate, or Resident Commissioner, as the case may be;

(B) twenty million dollars, in the case of a candidate for election to the office of President of the United States;

(C) in the case of any campaign for nomination for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) eight cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) one hundred thousand dollars;

(D) in the case of any campaign for election by a candidate for the office of Senator or by a candidate for the office of Representative from a State which is entitled to only one Representative, the greater of—

(i) twelve cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) one hundred fifty thousand dollars;

(E) seventy thousand dollars, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Representative in any other State, Delegate from the District of Columbia, or Resident Commissioner; or

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(F) fifteen thousand dollars, in the case of any campaign for nomination for election, or for election, by a candidate for the office of Delegate from Guam or the Virgin Islands.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for the purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(3) The limitations imposed by subparagraphs (C), (D), (E), and (F) of paragraph (1) of this subsection shall apply separately with respect to each election.

(4) The Commission shall prescribe rules under which any expenditure by a candidate for presidential nomination for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(d) *Adjustment of limitations based on price index.*

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the per centum difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (c) and subsection (f) shall be increased by such per centum difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year 1974.

(e) *Expenditures relative to clearly identified candidate.*

(1) No person may make any expenditure (other than an expenditure made by or on behalf of a candidate within the meaning of subsection (c)(2)(B) relative to a clearly indentified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000.

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(2) For purposes of paragraph (1)—

(A) "clearly identified" means—

(i) the candidate's name appears;

(ii) a photograph or drawing of the candidate appears; or

(iii) the identity of the candidate is apparent by unambiguous reference.

(B) "expenditure" does not include any payment made or incurred by a corporation or a labor organization which, under the provisions of the last paragraph of section 610 of this title, would not constitute an expenditure by such corporation or labor organization.

(f) *Exceptions for national and State committees.*

(1) Notwithstanding any other provisions of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (g)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) two cents multiplied by the voting age population of the State (as certified under subsection (g)); or

(ii) twenty thousand dollars; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(g) *Voting age population estimates.* During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July

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next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(h) *Knowing violations.* No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(i) *Penalties.* Any person who violates any provision of this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

18 U.S.C. §610

§ 610. Contributions or expenditures by national banks, corporations or labor organizations

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $25,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both; and if the violation was willful, shall be fined not more than $50,000 or imprisoned not more than 2 years or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

As used in this section, the phrase "contribution or expenditure" shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.

18 U.S.C. §611

§ 611. Contributions by Government contractors

Whoever—

(a) entering into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of—

(1) the completion of performance under; or

(2) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings;

directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(b) knowingly solicits any such contribution from any such person for any such purpose during any such period;

shall be fined not more than $25,000 or imprisoned not more than 5 years, or both.

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation or labor organization for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 610 of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund.

For purposes of this section, the term "labor organization" has the meaning given it by section 610 of this title.

18 U.S.C. §612

§ 612. Publication or distribution of political statements

Whoever willfully publishes or distributes or causes to be published or distributed, or for the purpose of publishing or distributing the same, knowingly deposits for mailing or delivery or causes to be deposited for mailing or delivery, or, except in cases of employees of the Postal Service in the official discharge of their duties, knowingly transports or causes to be transported in interstate commerce any card, pamphlet, circular, poster, dodger, advertisement, writing, or other statement relating to or concerning any person who has publicly declared his intention to seek the office of President, or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to Congress, in a primary, general, or special election, or convention of a political party, or has caused or permitted his intention to do so to be publicly declared, which does not contain the names of the persons, associations, committees, or corporations responsible for the publication or distribution of the same, and the names of the officers of each such association, committee, or corporation, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

18 U. S. C. §613

§ 613. Contributions by foreign nationals

Whoever, being a foreign national, directly or through any other person, knowingly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or

Whoever knowingly solicits, accepts, or receives any such contribution from any such foreign national, shall be fined not more than $25,000 or imprisoned not more than 5 years or both.

As used in this section, the term "foreign national" means—

(1) a foreign principal, as such term is defined by section 1(b) of the Foreign Agents Registration Act of 1938 (22 U.S.C. § 611(b)), except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(20)).

18 U. S. C. §614

§ 614. Prohibition of contributions in name of another

(a) No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

(b) Any person who violates this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

18 U. S. C. §615

§ 615. Limitation on contributions of currency

(a) No person shall make contributions of currency of the United States or currency of any foreign country to or for the benefit of any candidate which, in the aggregate, exceed $100, with respect to any campaign of such candidate for nomination for election, or for election, to Federal office.

(b) Any person who violates this section shall be fined not more than $25,000 or imprisoned not more than 1 year, or both.

18 U. S. C. §617

§ 617. Fraudulent misrepresentation of campaign authority

Whoever, being a candidate for Federal office or an employee or agent of such a candidate—

(1) fraudulently misrepresents himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or

(2) willfully and knowingly participates in or conspires to participate in any plan, scheme, or design to violate paragraph (1);

shall, for each such offense, be fined not more than $25,000 or imprisoned not more than 1 year, or both.

2 U. S. C. §434

§ 434. Reports [1]

(a) *Receipts and expenditures; completion date, exception.*

(1) Except as provided by paragraph 2, each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the Commission reports of receipts and expenditures on forms to be prescribed or approved by it.

The reports referred to in the preceding sentence shall be filed as follows:

(A) (i) In any calendar year in which an individual is a candidate for Federal office and an election for such Federal office is held in such year, such reports shall be filed not later than the 10th day before the date on which such election is held and shall be complete as of the 15th day before the date of such election; except that any such report filed by registered or certified mail must be postmarked not later than the close of the 12th day before the date of such election;

(ii) such reports shall be filed not later than the 30th day after the date of such election and shall be complete as of the 20th day after the date of such election.

(B) In any other calendar year in which an individual is a candidate for Federal office, such reports shall be filed after December 31 of such calendar year, but not later than January 31 of the following calendar year and shall be complete as of the close of the calendar year with respect to which the report is filed.

(C) Such reports shall be filed not later than the 10th day following the close of any calendar quarter in which the candidate or political committee concerned received contributions in excess of $1,000, or made expenditures in excess of $1,000, and shall be complete as of the close of such calendar quarter; except that any such report required to be filed after December 31 of any calendar year with respect to which a report is required to be filed under subparagraph (B) shall be filed as provided in such subparagraph.

(D) When the last day for filing any quarterly report required by subparagraph (C) occurs within 10 days of an election, the filing of such quarterly report shall be waived and superseded by the report required by subparagraph (A) (i).

Any contribution of $1,000 or more received after the 15th day, but more than 48 hours, before any election shall be reported within 48 hours after its receipt.

2 U. S. C. §434 (con't)

(2) Each treasurer of a political committee which is not a principal campaign committee shall file the reports required under this section with the appropriate principal campaign committee.

(3) Upon a request made by a presidential candidate or a political committee which operates in more than one State, or upon its own motion, the Commission may waive the reporting dates set forth in paragraph (1) (other than the reporting date set forth in paragraph (1)(B)), and require instead that such candidate or political committee file reports not less frequently than monthly. The Commission may not require a presidential candidate or a political committee operating in more than one State to file more than 12 reports (not counting any report referred to in paragraph (1)(B)) during any calendar year. If the Commission acts on its own motion under this paragraph with respect to a candidate or a political committee, such candidate or committee may obtain judicial review in accordance with the provisions of chapter 7 of title 5, United States Code.

(b) *Contents of reports.* Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $100, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender, endosers, and guarantors, if any, the date and amount of such loans;

(6) the total amount of proceeds from—

(A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event;

(B) mass collections made at such events; and

(C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period, together with total receipts less transfers between political committees which support the same candidate and which do not support more than one candidate;

2 U.S.C. §434 (con't)

(9) the identification of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the identification of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;

(11) the total sum of expenditures made by such committee or candidate during the calendar year, together with total expenditures less transfers between political committees which support the same candidate and which do not support more than one candidate;

(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the commission may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the commission may require until such debts and obligations are extinguished, together with a statement as to the circumstances and conditions under which any such debt or obligation is extinguished and the consideration therefore; and

(13) such other information as shall be required by the Commission.

(c) *Cumulative reports for calendar year; amounts for unchanged items carried forward; statement of inactive status.* The reports required to be filed by subsection (a) of this section shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

(d) *Members of Congress, reporting exemption.* This section does not require a Member of the Congress to report, as contributions received or as expenditures made, the value of photographic, matting, or recording services furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives and who furnishes such services as his primary duty as an employee of the Senate or House of Representatives, or if such services were paid for by the Republican or Democratic Senatorial Campaign Committee, the Democratic National Congressional Committee, or the National Republican Congressional Committee. This subsection does not apply to such recording services furnished during the calendar year before the year in which the Member's term expires.

(e) *Contributions or expenditures by person other than political committee or candidate.* Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a poltical committee or candidate, in an aggregate amount in excess of $100 within a calendar year shall file with the Commission a statement containing the information required by this section. Statements required by this subsection shall be filed on the dates on which reports by political committees are filed but need not be cumulative.

Senate Rule XLIII

RULE XLIII

POLITICAL FUND ACTIVITY BY OFFICERS AND EMPLOYEES

1. No officer or employee whose salary is paid by the Senate may receive, solicit, be the custodian of, or distribute any funds in connection with any campaign for the nomination for election, or the election of any individual to be a Member of the Senate or to any other Federal office. This prohibition does not apply to any assistant to a Senator who has been designated by that Senator to perform any of the functions described in the first sentence of this paragraph and who is compensated at a rate in excess of $10,000 per annum if such designation has been made in writing and filed with the Secretary of the Senate. The Secretary of the Senate shall make the designation available for public inspection.

2. This rule shall take effect sixty days after adoption.

Cannon's Precedents of House of Representatives, Vol. 6, §401.

401. Provisions of the statute relative to solicitation of contributions for political purposes do not apply to such solicitations by one Member of Congress from another.

A committee to which a resolution had been committed, having submitted a report making no recommendations thereon and proposing another resolution neither germane to nor recommended as a substitute for the original resolution, was permitted to withdraw it and file an amended report recommending the proposed resolution as a substitute.

A committee to which a resolution providing for an investigation was referred, itself conducted the investigation and reported, in lieu of the resolution, its findings on the subject.

On September 18, 1913,[3] Mr. James R. Mann, of Illinois, presented, as privileged, the following:

Whereas the act to codify, revise, and amend the penal laws of the United States, approved March 4, 1909, provides in section 118 that no Senator or Representative * * * shall directly or indirectly solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever * * * from any person receiving any salary or compensation from moneys derived from the Treasury of the United States; and

Whereas it is provided in section 119 of said act that no person shall in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in the preceding section * * * solicit, in any manner whatever, or receive any contribution of money or other thing of value for any political purpose whatever; and

Whereas it is alleged that the Democratic national congressional committee, composed in chief part of Members of this House, has directed to be sent, and it is alleged there has been sent, to the Democratic Members of this House, a letter stating that an assessment has been levied upon the Democratic Members of this House soliciting contributions from such Members for political purposes, and it is alleged that said letter has been signed by a Member of this House and delivered to other Members of this House in the Capitol Building and in the House Office Building, which letter is alleged to read as follows:

"SEPTEMBER 15, 1913.

"At a meeting of the Democratic national congressional committee, August 28, 1913, the following resolution presented by Senator Thomas, of Colorado, was unanimously adopted:

"'*Resolved*, That an assessment of $100 be made on each Democratic Member of the House of Representatives and the United States Senate, to be paid to the chairman of the congressional committee as follows: $25 at once; $25 on or before January 1, 1914; balance on or before July 1, 1914.'

"The committee is in debt to the extent of nearly $4,000 and has no money in the treasury. The object of the foregoing resolution is to secure funds with which to pay the debts of the committee and begin the work of the approaching campaign.

"Checks should be made payable to Hon. William G. Sharp, treasurer, and handed to ———, member of the committee from your State, who will make return thereof to the treasurer. The entire amount may be paid at once or in installments provided by the resolution.

"Trusting that you will favor the committee with an early payment, I beg to remain,

"Very sincerely, yours,

"FRANK E. DOREMUS, *Chairman.*"

And whereas section 122 of said act provided that whoever shall violate any provision of section 118 or section 119 shall be fined not more than $5,000 or imprisoned not more than three years, or both: Therefore

Resolved, etc., That a committee of seven Members shall be appointed by the Speaker to investigate and report to this House whether any Members of this House have been guilty of violating any of the provisions of the Criminal Code by soliciting or receiving or by being in any manner concerned in soliciting or receiving any assessment, subscription, or contribution for any political purpose whatever from any person receiving any salary or compensation from moneys derived from the Treasury of the United States, and particularly from Members of this House, to the end that it may be ascertained whether the Members of this House, constituting in part the lawmaking branch of the Government are above the law.

On motion of Mr. Charles R. Crisp, of Georgia, the resolution was referred to the Committee on Election of President, Vice President, and Representatives in Congress, which submitted the following report[1] thereon:

Your committee is firmly of opinion that congressional committees or members thereof may lawfully solicit and receive contributions for political purposes from Senators and Representatives in Congress; that such solicitation or receipt of contributions from Senators or Representatives may be lawfully made and had in offices assigned Senators and Representatives, and therefore recommends the adoption of the following resolution:

"*Resolved*, That it is no violation of section 118 of the Criminal Code of the United States for a Senator or Member of the House to solicit or receive assessments or contributions for political purposes from other Senators or Members of the House.

"*Resolved*, That it is no violation of section 119 of the Criminal Code of the United States for a Senator or Member of the House to solicit contributions for political purposes from other Senators or Members of the House by letters written in his office in the Senate or House Office Building."

Mr. Mann made the point of order that the report was not in fact a report on the resolution referred to the committee, as it made no recommendations either favorable or adverse thereon, and that while it included a recommendation for the passage of another resolution appended at the end of the report, it was not germane to the resolution originally referred to the committee and was not reported as a substitute therefor.

The Speaker[2] sustained the point of order, and Mr. William W. Rucker, of Missouri, from the Committee, by unanimous consent, withdrew the report and filed an amended report[3] which presented the following conclusions:

If a Member of Congress cannot receive campaign contributions from another Member, then members of the same political belief will be prohibited from organising and supporting a committee of their own members for the purpose of promoting their own reelection or the success of their political party. This would give the statute an effect bordering on absurdity. It is inconceivable that Congress intended any such effect. No reason in morals can be assigned in support of such intention; no demand by the public can be pleaded as its justification; no question of public policy can be urged in its behalf.

Cannon's Precedents of House of Representatives, Vol. 6, §401 (con't.)

We conclude that this is a case where the letter of the law must yield to reason and the intendment of Congress, and that therefore sections 118 and 119 of the Criminal Code should not be construed to prohibit one Senator or Member of Congress from soliciting campaign contributions from another Senator or Member of Congress or from making such solicitation in the office furnished such Senator or Member of Congress in a Government building.

Section 119 of the Criminal Code was also taken from "An act to regulate and improve the civil service of the United States," approved January 1, 1883.

If the foregoing conclusion is correct, of course it follows by the same reasoning that section 119 does not prohibit a Member of Congress from mailing requests from his office in the House Office Building to other Members of Congress for campaign contributions.

The committee, after a full consideration of the facts and of the sections of the Criminal Code referred to in the resolution (H. Res. 256), is firmly of opinion that congressional committees or members thereof may lawfully solicit and receive contributions for political purposes from Senators and Representatives in Congress; that such solicitation or receipt of contributions from Senators and Representatives may be lawfully made and had in offices assigned Senators and Representatives in Government buildings; that the appointment by the Speaker of a committee of seven Members of the House to investigate and report upon the matters contained in and referred to in the resolution (H. Res. 256) is wholly useless and unnecessary because they are fully covered by this report.

In accordance with this finding the committee recommended the adoption of the following as a substitute for the original resolution:

In accordance with the facts herein reported and the conclusions herein expressed, your committee reports back to the House the resolution with recommendations that the House adopt, as a substitute therefor, the following resolutions:

"*Resolved*, That it is no violation of section 118 of the Criminal Code of the United States for a Senator or Member of the House to solicit or receive assessments or contributions for political purposes from other Senators or Members of the House.

"*Resolved*, That it is no violation of section 119 of the Criminal Code of the United States for a Senator or Member of the House to solicit contributions for political purposes, from other Senators or Members of the House, by letters written in his office in the Senate or House Office Buildings."

The report was called up on the following day [1] and after extended debate, the resolution recommended as a substitute was agreed to, yeas 178, nays 80. The resolution as amended was then agreed to without division.[2]

APPENDIX B

(Texts of Relevant Court Cases)

Ex Parte Curtis, 106 U.S. 371 (1882).

EX PARTE CURTIS.

The sixth section of the act of Aug. 15, 1876, c. 287, prohibiting, under penalties therein mentioned, certain officers of the United States from requesting, giving to, or receiving from any other officer money or property or other thing of value for political purposes, is not unconstitutional.

PETITION for a writ of *habeas corpus*.

The sixth section of the act of Aug. 15, 1876, c. 287, entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the government," provides "that all executive officers or employés of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employé of the government, any money or property or other thing of value for political purposes; and any such officer or employé who shall offend against the provisions of this section, shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars."

Curtis, the petitioner, an employé of the United States, was indicted in the Circuit Court for the Southern District of New York, and convicted under this act for receiving money for political purposes from other employés of the government. Upon his conviction he was sentenced to pay a fine, and stand committed until payment was made. Under this sentence he was taken into custody by the marshal, and on his application a writ of *habeas corpus* was issued by one of the justices of this court in vacation, returnable here at the present term, to inquire into the validity of his detention. The important question presented on the return to the writ so issued is whether the act under which the conviction was had is constitutional.

The case was argued by *Mr. Edwin B. Smith* in favor of the petition, and by *The Solicitor-General* in opposition thereto.

MR. CHIEF JUSTICE WAITE, after stating the case, delivered the opinion of the court.

The act is not one to prohibit all contributions of money or property by the designated officers and employés of the United States for political purposes. Neither does it prohibit them altogether from receiving or soliciting money or property for such purposes. It simply forbids their receiving from or giving to each other. Beyond this no restrictions are placed on any of their political privileges.

That the government of the United States is one of delegated powers only, and that its authority is defined and limited by the Constitution, are no longer open questions; but express authority is given Congress by the Constitution to make all laws necessary and proper to carry into effect the powers that are delegated. Art. 1, sect. 8. Within the legitimate scope of this grant Congress is permitted to determine for itself what is necessary and what is proper.

The act now in question is one regulating in some particulars the conduct of certain officers and employés of the United States. It rests on the same principle as that originally passed in 1789 at the first session of the first Congress, which makes it unlawful for certain officers of the Treasury Department to engage in the business of trade or commerce, or to own a sea vessel, or to purchase public lands or other public property, or to be concerned in the purchase or disposal of the public securities of a State, or of the United States (Rev. Stat., sect. 243); and that passed in 1791, which makes it an offence for a clerk in the same department to carry on trade or business in the funds or debts of the States or of the United States, or in any kind of public property (id., sect. 244); and that passed in 1812, which makes it unlawful for a judge appointed under the authority of the United States to exercise the profession of counsel or attorney, or to be engaged in the practice of the law (id., sect. 713); and that passed in 1853, which prohibits every officer of the United States or person holding any place of trust or profit, or discharging any official function under or in connection with any executive department of the government of the United States, or under the Senate or House of Representatives, from acting as an agent or attorney for the prosecution of any claim against the United States (id., sect. 5498); and that passed in 1863, prohibiting members of Congress from practising in the Court of Claims (id., sect. 1058); and that passed in 1867, punishing, by dismissal from service, an officer or employé of the government who requires or requests any workingman in a navy-yard to contribute or pay any money for political purposes (id., sect. 1546); and that passed in 1868, prohibiting members of Congress from being interested in contracts with the United States (id., sect. 3739); and another, passed in 1870, which provides that no officer, clerk, or employé in the government of the United States shall solicit contributions from other officers, clerks, or employés for a gift to those in a superior official position, and that no officials or clerical superiors shall receive any gift or present as a contribution to them from persons in government employ getting a less salary than themselves, and that no officer or clerk shall make a donation as a gift or present to any

official superior (id., sect. 1784). Many others of a kindred character might be referred to, but these are enough to show what has been the practice in the Legislative Department of the government from its organization, and, so far as we know, this is the first time the constitutionality of such legislation has ever been presented for judicial determination.

The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service. Clearly such a purpose is within the just scope of legislative power, and it is not easy to see why the act now under consideration does not come fairly within the legitimate means to such an end. It is true, as is claimed by the counsel for the petitioner, political assessments upon officeholders are not prohibited. The managers of political campaigns, not in the employ of the United States, are just as free now to call on those in office for money to be used for political purposes as ever they were, and those in office can contribute as liberally as they please, provided their payments are not made to any of the prohibited officers or employés. What we are now considering is not whether Congress has gone as far as it may, but whether that which has been done is within the constitutional limits upon its legislative discretion.

A feeling of independence under the law conduces to faithful public service, and nothing tends more to take away this feeling than a dread of dismissal. If contributions from those in public employment may be solicited by others in official authority, it is easy to see that what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the power of removal as a breach of some supposed duty, growing out of the political relations of the parties. Contributions secured under such circumstances will quite as likely be made to avoid the consequences of the personal displeasure of a superior, as to promote the political views of the contributor, — to avoid a discharge from service, not to exercise a political privilege. The law contemplates no restrictions upon either giving or receiving, except so far as may be necessary to protect, in some degree, those in the public service against exactions through fear of personal loss. This purpose of the restriction, and the principle on which it rests, are most distinctly manifested in sect. 1546, *supra*, the re-enactment in the Revised Statutes of sect. 3 of the act of June 30, 1868, c. 172, which subjected an officer or employé of the government to dismissal if he required or requested a workingman in a navy-yard to contribute or pay any money for political purposes, and prohibited the removal or discharge of a workingman for his political opinions; and in sect. 1784, the re-enactment of the

Ex Parte Curtis, 106 U.S. 371 (1882) (continued)

act of Feb. 1, 1870, c. 63, "to protect officials in public employ," by providing for the summary discharge of those who make or solicit contributions for presents to superior officers. No one can for a moment doubt that in both these statutes the object was to protect the classes of officials and employés provided for from being compelled to make contributions for such purposes through fear of dismissal if they refused. It is true that dismissal from service is the only penalty imposed, but this penalty is given for doing what is made a wrongful act. If it is constitutional to prohibit the act, the kind or degree of punishment to be inflicted for disregarding the prohibition is clearly within the discretion of Congress, provided it be not cruel or unusual.

If there were no other reasons for legislation of this character than such as relate to the protection of those in the public service against unjust exactions, its constitutionality would, in our opinion, be clear; but there are others, to our minds, equally good. If persons in public employ may be called on by those in authority to contribute from their personal income to the expenses of political campaigns, and a refusal may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in. So, too, if a part of the compensation received for public services must be contributed for political purposes, it is easy to see that an increase of compensation may be required to provide the means to make the contribution, and that in this way the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage. Political parties must almost necessarily exist under a republican form of government; and when public employment depends to any considerable extent on party success, those in office will naturally be desirous of keeping the party to which they belong in power. The statute we are now considering does not interfere with this. The apparent end of Congress will be accomplished if it prevents those in power from requiring help for such purposes as a condition to continued employment.

We deem it unnecessary to pursue the subject further. In our opinion the statute under which the petitioner was convicted is constitutional. The other objections which have been urged to the detention cannot be considered in this form of proceeding. Our inquiries in this class of cases are limited to such objections as relate to the authority of the court to render the judgment by which the prisoner is held. We have no general power to review the judgments of the inferior courts of the United States in criminal cases, by the use of the writ

of *habeas corpus* or otherwise. Our jurisdiction is limited to the single question of the power of the court to commit the prisoner for the act of which he has been convicted. *Ex parte Lange*, 18 Wall. 168; *Ex parte Rowland*, 104 U. S. 604.

The commitment in this case was lawful, and the petitioner is, consequently,

Remanded to the custody of the marshal for the Southern District of New York.

MR. JUSTICE BRADLEY dissenting.

I cannot concur in the opinion of the court in this case. The law under which the petitioner is imprisoned makes it a penal offence for any executive officer or employé of the United States, not appointed by advice of the Senate [an unimportant distinction, so far as the power to make the law is concerned], to request, give to, or receive from any other officer or employé of the government any money, or property, or other thing of value, for political purposes; thus, in effect, making it a condition of accepting any employment under the government that a man shall not, even voluntarily and of his own free will, contribute in any way through or by the hands of any other employé of the government to the political cause which he desires to aid and promote. I do not believe that Congress has any right to impose such a condition upon any citizen of the United States. The offices of the government do not belong to the Legislative Department to dispose of on any conditions it may choose to impose. The legislature creates most of the offices, it is true, and provides compensation for the discharge of their duties: but that is its duty to do, in order to establish a complete organization of the functions of government. When established, the offices are, or ought to be, open to all. They belong to the United States, and not to Congress; and every citizen having the proper qualifications has the right to accept office, and to be a candidate therefor. This is a fundamental right of which the legislature cannot deprive the citizen, nor clog its exercise with conditions that are repugnant to his other fundamental rights. Such a condition I regard that imposed by the law in question to be. It prevents the citizen from co-operating with other citizens of his own choice in the promotion of his political views. To take an interest in public affairs, and to further and promote those principles which are believed to be vital or important to the general welfare, is every citizen's duty. It is a just complaint that so many good men abstain from taking such an interest. Amongst the necessary and proper means for promoting political views, or any other views, are association and contribution of money for that purpose, both to aid discussion and to disseminate information and sound doctrine. To deny

to a man the privilege of associating and making joint contributions with such other citizens as he may choose, is an unjust restraint of his right to propagate and promote his views on public affairs. The freedom of speech and of the press, and that of assembling together to consult upon and discuss matters of public interest, and to join in petitioning for a redress of grievances, are expressly secured by the Constitution. The spirit of this clause covers and embraces the right of every citizen to engage in such discussions, and to promote the views of himself and his associates freely, without being trammelled by inconvenient restrictions. Such restrictions, in my judgment, are imposed by the law in question. Every person accepting any, the most insignificant, employment under the government must withdraw himself from all societies and associations having for object the promotion of political information or opinions. For if one officer may continue his connection, others may do the same, and thus it can hardly fail to happen that some of them will give and some receive funds mutually contributed for the purposes of the association. Congress might just as well, so far as the power is concerned, impose, as a condition of taking any employment under the government, entire silence on political subjects, and a prohibition of all conversation thereon between government employés. Nay, it might as well prohibit the discussion of religious questions, or the mutual contribution of funds for missionary or other religious purposes. In former times, when the slavery question was agitated, this would have been a very convenient law to repress all discussion of the subject on either side of Mason and Dixon's line. At the present time any efficient connection with an association in favor of a prohibitory liquor law, or of a protective tariff, or of greenback currency, or even for the repression of political assessments, would render any government official obnoxious to the penalties of the law under consideration. For all these questions have become political in their character, and any contributions in aid of the cause would be contributions for political purposes. The whole thing seems to me absurd. Neither men's mouths nor their purses can be constitutionally tied up in that way. The truth is, that public opinion is oftentimes like a pendulum, swinging backward and forward to extreme lengths. We are not unfrequently in danger of becoming purists, instead of wise reformers, in particular directions; and hastily pass inconsiderate laws which overreach the mark they are aimed at, or conflict with rights and privileges that a sober mind would regard as indisputable. It seems to me that the present law, taken in all its breadth, is one of this kind.

Ex Parte Curtis, 106 U. S. 371 (1882) (continued)

The legislature may, undoubtedly, pass laws excluding from particular offices those who are engaged in pursuits incompatible with the faithful discharge of the duties of such offices. That is quite another thing.

The legislature may make laws ever so stringent to prevent the corrupt use of money in elections, or in political matters generally, or to prevent what are called political assessments on government employés, or any other exercise of undue influence over them by government officials or others. That would be all right. That would clearly be within the province of legislation.

It is urged that the law in question is intended, so far as it goes, to effect this very thing. Probably it is. But the end does not always sanctify the means. What I contend is, that in adopting this particular mode of restraining an acknowledged evil, Congress has overstepped its legitimate powers, and interfered with the substantial rights of the citizen. It is not lawful to do evil that good may come. There are plenty of ways in which wrong may be suppressed without resorting to wrongful measures to do it. No doubt it would often greatly tend to prevent the spread of a contagious and deadly epidemic, if those first taken should be immediately sacrificed to the public good. But such a mode of preventing the evil would hardly be regarded as legitimate in a Christian country.

I have no wish to discuss the subject at length, but simply to express the general grounds on which I think the legislation in question is *ultra vires*. Though as much opposed as any one to the evil sought to be remedied, I do not think the mode adopted is a legitimate or constitutional one, because it interferes too much with the freedom of the citizen in the pursuit of lawful and proper ends. If similar laws have been passed before, that does not make it right. The question is, whether the present law, with its sweeping provisions, is within the just powers of Congress. As I do not think it is, I dissent from the opinion of the majority of the court.

United States v. Thayer, 209 U. S. 39 (1908)

UNITED STATES *v.* THAYER.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

No. 290. Argued February 25, 1908.—Decided March 9, 1908.

A man may sometimes be punished in person where he has brought consequences to pass, although he was not there in person. *In re Palliser*, 136 U. S. 257.

A solicitation of funds for campaign purposes made by letter in violation of § 12 of the Civil Service Act of January 16, 1883, c. 27, 22 Stat. 403, is not complete until the letter is delivered to the person from whom the contribution is solicited, and if the letter is received by one within a building or room described in § 12 of the act the solicitation is in that place and the sender of the letter commits the prohibited offense in the prohibited place.

154 Fed. Rep. 508, reversed.

THE facts are stated in the opinion.

The Attorney General and *Mr. Assistant Attorney General Cooley* for plaintiff in error:

The act of mailing the letter soliciting a contribution for political purposes, was, under the circumstances of this case, one which Congress intended to prohibit, and the court will place such reasonable construction on the statute of Congress as tends to give effect to that intention. *United States* v. *Lacher*, 134 U. S. 624, 628; *Johnson* v. *United States*, 196 U. S. 1.

The act of mailing the letter is also within the letter of the statute. There is nothing in § 12 making the physical presence of the person soliciting within the Federal building an essential element of the offense. The act of soliciting was completed when the letter was received and read by the person to whom it was addressed and to whose mind the demand for money therein contained was addressed. Wharton, Conflict of Laws, §§ 825, 826; Hobart's Rep. (1st Am. ed.) p. 152; *Clutterbuck* v. *Chaffers*, 1 Starkie, 471; *The King* v. *Burdett*, 4 B. & A. 95; *The King* v. *Johnston*, 7 East, 65, 68; *In re Palliser*, 136 U. S. 257, and cases cited; *Horner* v. *United States*, 143 U. S. 207, 214; *Burton* v. *United States*, 202 U. S. 344; *People* v. *Rathbun*, 21 Wend. 509, 529; *Simpson* v. *State*, 92 Georgia, 41, 43; *People* v. *Adams*, 3 Denio, 190, 207; *State* v. *Grady*, 34 Connecticut, 118, 130.

The general effect of these numerous decisions is that the offense is committed at the place where the unlawful act takes effect. If, as seems clear, Congress intended to prohibit the demand of political assessments in Federal buildings, it is a

matter of no consequence whether the defendant in making his demands for contributions to the Republican campaign fund was actually in the building or not. He willfully and knowingly set in motion an agency which resulted in a demand on a Government officer in a Government building, and on well-settled principles it must be held that he committed the offense on forbidden ground.

Mr. J. M. McCormick, with whom *Mr. F. M. Etheridge* was on the brief, for defendant in error:

The legislative history of the act of Congress in question herein, shows that it was not the intention to prohibit the writing by a private citizen of a letter soliciting a political contribution, which is by him enveloped, stamped, addressed and deposited in the United States mail with an intent that the addressee shall read the same in a public building. Cong. Rec., vol. 14, 650, 866.

The intent of Congress in enacting § 12 is the law. And before a violation thereof can arise, there must be acts contravening this intent, which are so clearly forbidden by it as to charge notice to the citizen that they are unlawful. The section under discussion creates a crime theretofore unknown to the law. Laws which create crime ought to be so explicit that all men subject to their penalties may know what acts it is their duty to avoid. *United States* v. *Sharp*, Pet. C. C. 118; *United States* v. *Brewer*, 139 U. S. 288. See also *United States* v. *Wiltberger*, 5 Wheat. 76; *United States* v. *Morris*, 14 Pet. 464; *American Fur. Co.* v. *United States*, 2 Pet. 358, 367; *United States* v. *Winn*, 3 Sumner, 209, 211.

The words of § 12, taken in connection with the other sections of the law and the statutes *in pari materia* are not so precise and clear as to compel the construction contended for by the Government which would lead to an absurd consequence. *Commonwealth* v. *Kimball*, 24 Pick. 371.

If the physical presence of the defendant, or his agent or servant in the building at the time the letters containing the solicitations respectively were read, was necessary, then the Government's case falls for the reason that the postal employés are in law deemed the agents of the addressee, and not of the sender of a letter. *Commonwealth* v. *Wood*, 142 Massachusetts, 462, and see also *Regina* v. *Jones*, 4 Cox C. C. 198.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is an indictment for soliciting a contribution of money for political purposes from an employé of the United States in a post office building of the United States occupied by the

employé in the discharge of his duties. By the Civil Service Act of January 16, 1883, c. 27, § 12, 22 Stat. 403, 407, "No person shall, in any room or building occupied in the discharge of official duties by any officer or employé of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of any value for any political purpose whatever." By § 15 a penalty is imposed of fine, imprisonment, or both. The indictment is in eleven counts, and charges the sending of letters to employés, which were intended to be received and read by them in the building and were so received and read by them in fact. It is admitted that the defendant was not in the building. There was a demurrer, which was sustained by the District Court on the ground that the case was not within the act. 154 Fed. Rep. 508. The only question argued or intended to be raised is whether the defendant's physical presence in the building was necessary to create the offense.

Of course it is possible to solicit by letter as well as in person. It is equally clear that the person who writes the letter and intentionally puts it in the way of delivery solicits, whether the delivery is accomplished by agents of the writer, by agents of the person addressed, or by independent middlemen, if it takes place in the intended way. It appears to us no more open to doubt that the statute prohibits solicitation by written as well as by spoken words. It forbids all persons to solicit "in any manner whatever." The purpose is wider than that of a notice prohibiting book peddling in a building. It is not, even primarily, to save employés from interruption or annoyance in their business. It is to check a political abuse, which is not different in kind, whether practiced by letter or by word of mouth. The limits of the act, presumably, were due to what was considered the reasonable and possibly the constitutional freedom of citizens, whether officeholders or not, when in private life, and it may be conjectured that it was upon this ground that an amendment of broader scope was rejected. If the writer of the letter in person had handed it to the man addressed, in the building without a word, and the latter had read it then and there, we suppose that no one would deny that the writer fell within the statute. We can see no distinction between personally delivering the letter and sending it by a servant of the writer. If the solicitation is in the building the statute does not require personal presence, so that the question is narrowed to whether the solicitation alleged took place in the building or outside.

The solicitation was made at some time, somewhere. The time determines the place. It was not complete when the letter was dropped into the post. If the letter had miscarried or had been burned, the defendant would not have accomplished a solicitation. The court below was misled by cases in which, upon an indictment for obtaining money by false pretenses, the crime was held to have been committed at the place where drafts were put into the post by the defrauded person. *Commonwealth* v. *Wood*, 142 Massachusetts, 459, 462; *Regina* v. *Jones*, 4 Cox C. C. 198. But these stand on the analogy of the acceptance by mail of an offer and throw no light. A relation already existed between the parties, and it is because of that relation that posting the letter made the transaction complete. See *Brauer* v. *Shaw*, 168 Massachusetts, 198, 200. Here a relation was to be established, just as there is at the first stage of a contract when an offer is to be made. Whether or not, as Mr. Langdell thinks, nothing less than bringing the offer to the actual consciousness of the person addressed would do, Contr. § 151, certainly putting a letter into a post office is neither an offer nor a solicitation. "An offer is nothing until it is communicated to the party to whom it is made." *Thomson* v. *James*, 18 Ct. of Sess. Cas. (2d Series), 1, 10, 15. Therefore, we repeat, until after the letter had entered the building the offense was not complete, but, when it had been read, the case was not affected by the nature of the intended means by which it was put into the hands of the person addressed. Neither can the case be affected by speculations as to what the position would have been if the receiver had put the letter in his pocket and had read it later at home. Offenses usually depend for their completion upon events that are not wholly within the offender's control and that may turn out in different ways.

No difficulty is raised by the coupling of solicitation and receipt in the statute. If receipt required personal presence, it still would be obvious that "solicit in any manner whatever" was a broader term. But the cases that have been relied upon to establish that the solicitation did not happen in the building, although inadequate for that, do sufficiently show that the money might be received there without the personal presence of the defendant. If, in answer to the defendant's letter, the parties addressed had posted money to him in the building where they were employed, the money undoubtedly would have been received there. To sum up, the defendant solicited money for campaign purposes, he did not solicit until his letter actually was received in the building, he did solicit

when it was received and read there, and the solicitation was in the place where the letter was received. We observe that this is the opinion expressed by the Civil Service Commission in a note upon this section, and the principle of our decision is similar to that recognized in several cases in this court. *In re Palliser*, 136 U. S. 257, 266; *Horner* v. *United States*, 143 U. S. 207, 214; *Burton* v. *United States*, 202 U. S. 344, 387, *et seq*. We do not cite them more at length, as the only dispute possible is on the meaning of the particular words that Congress has used.

We may add that this case does not raise the questions presented by an act done in one jurisdiction and producing effects in another which threatens the actor with punishment if it can catch him. Decisions in that class of cases, however, illustrate the indisputable general proposition that a man sometimes may be punished where he has brought consequences to pass, although he was not there in person. They are cited in *In re Palliser*, *supra*. Here the defendant was within and subject to the jurisdiction of the United States to the extent of its constitutional power, and the power is not in dispute. *Ex parte Curtis*, 106 U. S. 371; *United States* v. *Newton*, 9 Mackey (D. C.), 226.

Judgment reversed.

United States v. Wurzbach, 280 U. S. 396 (1930)

UNITED STATES *v.* WURZBACH.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

No. 66. Argued January 20, 1930.—Decided February 24, 1930.

1. A representative in Congress who receives or is concerned in receiving money from officers and employees of the United States for the political purpose of promoting his nomination at a party primary, as a candidate for reëlection, is guilty of the offense defined by § 312 of the Federal Corrupt Practices Act. U. S. C., Title 18, § 208. P. 398.
2. Congress may provide that officers and employees of the United States neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their kind, while they retain their office or employment. *Id.*
3. Neither the Constitution nor the nature of the abuse to be checked requires that the words of the Act be confined to political purposes within the control of the United States. P. 399.
4. A representative in Congress, being of a class specifically named in the statute, has no standing to object to it as being too uncertain in defining other classes to which it applies. P. 399.
5. The term "political purpose" is not so vague as to render the statute invalid. *Id.*
6. The objection that the statute leaves uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is, can be raised when a punishment is to be applied and need not be answered upon an appeal from a judgment quashing the indictment. *Id.*

31 F. (2d) 774, reversed.

APPEAL from a judgment of the District Court quashing an indictment.

Mr. Seth W. Richardson, Assistant Attorney General, with whom *Attorney General Mitchell*, *Solicitor General Hughes* and *Messrs. Oscar R. Luhring*, Assistant Attorney General, *Alfred A. Wheat*, Special Assistant to the Attorney General, and *Harry S. Ridgely* were on the briefs, for the United States.

Mr. Hugh R. Robertson for the appellee.

MR. JUSTICE HOLMES delivered the opinion of the Court.

The respondent was indicted under the Federal Corrupt Practices Act, 1925; Act of February 28, 1925, c. 368, § 312, 43 Stat. 1053, 1073; U. S. Code, Title 18, § 208; on charges that being a representative in Congress he received and was concerned in receiving specified sums of

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money from named officers and employees of the United States for the political purpose of promoting his nomination as Republican candidate for representative at certain Republican primaries. Upon motion of the defendant the District Court quashed the indictment on the ground that the statute should not be construed to include the political purpose alleged, and, construed to include it, probably would be unconstitutional. The United States appealed.

The section of the statute is as follows:

"It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person."

This language is perfectly intelligible and clearly embraces the acts charged. Therefore there is no warrant for seeking refined arguments to show that the statute does not mean what it says, unless there is some reasonable doubt whether, so construed, it would be constitutional—the doubt that was felt by the Court below.

The doubt of the District Court seems to have come from the assumption that the source of power is to be found in Article I, Section 4, of the Constitution concerning the time, place and manner of holding elections, etc.; and from the decision that the control of party primaries is purely a State affair. *Newberry* v. *United States*, 256 U. S. 232. But the power of Congress over the conduct of officers and employees of the Government no more depends upon authority over the ultimate purposes of that conduct than its power to punish a use of the mails for a fraudulent purpose is limited by its inability to punish the intended fraud. *Badders* v. *United States*, 240 U. S. 391. It hardly needs argument to show that Congress may provide that its officers and employees neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their

kind, while they retain their office or employment. If argument and illustration are needed they will be found in *Ex parte Curtis*, 106 U. S. 371, s. c. 12 Fed. 824. See *United States* v. *Thayer*, 209 U. S. 39, 42. Neither the Constitution nor the nature of the abuse to be checked requires us to confine the all embracing words of the Act to political purposes within the control of the United States.

It is argued at some length that the statute, if extended beyond the political purposes under the control of Congress, is too vague to be valid. The objection to uncertainty concerning the persons embraced need not trouble us now. There is no doubt that the words include representatives, and if there is any difficulty, which we are far from intimating, it will be time enough to consider it when raised by someone whom it concerns. The other objection is to the meaning of " political purposes." This would be open even if we accepted the limitations that would make the law satisfactory to the respondent's counsel. But we imagine that no one not in search of trouble would feel any. Whenever the law draws a line there will be cases very near each other on opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash* v. *United States*, 229 U. S. 373.

It is said to be uncertain which of several sections imposes the penalty and therefore uncertain what the punishment is. That question can be raised when a punishment is to be applied. The elaborate argument against the constitutionality of the Act if interpreted as we read it, in accordance with its obvious meaning, does not need an elaborate answer. The validity of the Act seems to us free from doubt.

Judgment reversed.

Brehm v. United States, 196 F. 2d 769 (C. A. D. C., 1952), certiorari denied 344 U. S. 838 (1952)

BREHM v. UNITED STATES.
No. 11178.

United States Court of Appeals
District of Columbia Circuit.

Argued Feb. 18, 1952.

Decided April 24, 1952.

The defendant was convicted in the United States District Court for the District of Columbia for violating statute making it a crime for a Congressman to receive a contribution for a political purpose from any government employee, and he appealed. The Court of Appeals, Prettyman, Circuit Judge, held that evidence sustained conviction.

Affirmed.

Leo A. Rover, Washington, D. C., with whom Clarence G. Pechacek, Washington, D. C., was on the brief, for appellant.

Floyd J. Mattice, Chicago, Ill., of the bar of the Supreme Court of Indiana, and Justinus Gould, Washington, D. C., of the bar of the Court of Appeals of Maryland, Attorneys, Department of Justice, pro hac vice, by special leave of Court, with whom Charles M. Irelan, U. S. Atty. at the time the brief was filed, Washington, D. C., was on the brief, for appellee. George Morris Fay, U. S. Atty. at the time the record was filed, Joseph M. Howard, Asst. U. S. Atty., Nugent Dodds, Sp. Asst. Atty. Gen., and Benjamin F. Pollack, Attorney, Department of Justice, all of Washington, D. C., also entered appearances for appellee.

Before EDGERTON, PRETTYMAN and WASHINGTON, Circuit Judges.

PRETTYMAN, Circuit Judge.

This is an appeal from a judgment of conviction on five counts of a seven-count indictment. In the counts upon which appellant was convicted it was charged that on various dates he, being a Representative in Congress, received from one Emma S. Craven, employed as a clerk in his office, contributions upon various dates and in various amounts for the political purpose of assisting in financing his campaign for reelection as a Representative.

Brehm v. United States, 196 F. 2d 769 (C. A. D. C., 1952), certiorari denied 344 U. S. 838 (1952) (con't.)

The statute under which the indictment was laid was Section 208 (now, as amended, Section 602) of Title 18 of the United States Code and read in pertinent part as follows: "It is unlawful for any * * * Representative in * * * Congress * * * to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any * * * contribution for any political purpose whatever, from any other such officer, employee, or person."

Appellant presents four contentions. His first contention is that the court should have granted his motion for judgment of acquittal, because the Government failed to prove that any of the contributions alleged to have been received by him were, as alleged in the indictment, received for the purpose of assisting in financing his campaign for reelection. The precise dispute of fact was whether the money which Mrs. Craven turned over to Brehm each month for a number of months preceding the election in November, 1948, was to assist Brehm in his own campaign or was to assist the state political campaign committee in other campaigns. Upon the trial the prosecutor conceded that, if the defendant received the money for the political purposes of the national committee or the state committee, that receipt would not be a violation charged in this indictment.

[1] The evidence on the point was conflicting but clearly necessitated submission to the jury, within the principle announced in Curley v. United States.[1] Briefly, Mrs. Craven testified that she was employed in Brehm's office with the understanding that her name would appear on the payroll at a "base salary" of $4,500 a year and that she would donate to "the Republican committee in Ohio" the amount by which that sum exceeded a "base salary" of $2,400. Because of certain increments in the pay of legislative employees, that difference was approximately $210 a month. She testified that she placed cash in that amount in an envelope and handed it to Brehm each payday and that he assured her he would forward it to the committee. In one instance

1. 1947, 81 U.S.App.D.C. 389, 160 F.2d 229, certiorari denied, 1947, 331 U.S. 837, 67 S.Ct. 1511, 91 L.Ed. 1850.

Brehm v. United States, 196 F. 2d 769 (C. A. D. C., 1952), certiorari denied 344 U. S. 838 (1952) (con't.)

she mailed cash to the defendant, who was then in Ohio. Other testimony introduced by the Government showed that the Brehm for Congress Committee, of which Mrs. Craven was nominally Secretary, contributed to the party state campaign finance committee the sum of $100 during the 1948 campaign, and that the Brehm committee in turn received funds from the state committee in the total sum of $2,500 during that campaign.

The Government also presented the testimony of Brehm before the grand jury which indicted him. That testimony was to the effect that Mrs. Craven approached him with a sealed envelope shortly after being employed in his office, and said:

> "I know you got a tough district. I know you haven't got any patronage. I know the Republican Party had been out of power. I like my job. I am so grateful to you for getting me back on the Hill I'd like to do something, help out the party * * *."

Brehm said that he refused to accept the envelope, saying he did not want the money, but that he finally permitted Mrs. Craven to place it in a drawer of his file cabinet in his office and told her: "If you want to keep it in here you can keep it in here and later on if the committee wants it you can give it to me and if we need it or use it * * *." Before returning to Ohio for the 1948 campaign Brehm showed the envelopes to another clerk in his office and instructed her that he might write her to send them to him. Brehm told the grand jury that there had been no call by the state committee for funds, that he had forgotten the envelopes, and that when he returned to Washington he returned all the envelopes unopened to Mrs. Craven. Mrs. Craven denied that any of the money was ever returned to her.

The jury might reasonably have concluded from this evidence that Brehm received the money from Mrs. Craven and that in doing so he had in mind his own campaign for reelection and not some other political purpose unconnected with himself.

Brehm v. United States, 196 F. 2d 769 (C. A. D. C., 1952), certiorari denied 344 U. S. 838 (1952) (con't.)

[2] Appellant's second point is that before there could be a verdict of guilty the jury must find that the giver and the receiver both knew and understood that the contributions were made for the political purpose charged in the indictment. The above-quoted section of the Code makes no reference to the giver but makes it a crime for a Representative to receive a contribution for a political purpose from any Government employee. We had a similar problem in May v. United States[2] and there pointed out that in that case the statutory offense could be committed by the Congressman and, although the offensive act necessarily involved the cooperation of two people, that the part played by one of them alone was made the criminal offense. The same reasoning applies to the present problem. So long as the Representative received the contribution for a political purpose, it is immaterial whether the giver understood that purpose.

[3, 4] Appellant's third point is that the court erred in admitting evidence of offenses not alleged in the indictment and which had no connection with the offenses charged therein. In Count II of the indictment, on which the jury found Brehm not guilty, it was alleged that Brehm had received from one Clara Soliday, a clerk in his office, on or about February 3, 1948, the sum of $140 for the political purpose of assisting in financing his campaign for reelection. The Government was permitted to introduce in evidence testimony that similar contributions were made to the defendant by Mrs. Soliday each month during the years 1945, 1946 and 1947. One of the established exceptions to the rule which forbids evidence of other offenses is that such evidence may be admitted to establish a common scheme or purpose so associated that proof of one tends to prove the other, or if both are connected with a

2. 1949, 84 U.S.App.D.C. 233, 175 F.2d 904, certiorari denied, 1949, 338 U.S. 830, 70 S.Ct. 88, 94 L.Ed. 505.

Brehm v. United States, 196 F. 2d 769 (C.A.D.C., 1952), certiorari denied 344 U.S. 838 (1952) (con't.)

ingle purpose or in pursuance of a single object.[3] We think that evidence concerning other contributions by Mrs. Soliday for the same purpose over the period of time immediately prior to the transaction alleged in the indictment was admissible under this rule.

Appellant's fourth point is that the jury commission which selected the grand jury which returned the indictment, was illegally constituted and that the indictment was accordingly void. We examined this same point, concerning a grand jury drawn by the same jury commission, in Collazo v. United States,[4] and held against the present contentions of the appellant.

The judgment of the District Court must be and is hereby

Affirmed.

3. Bracey v. United States, 1944, 79 U.S. App.D.C. 25, 142 F.2d 85, certiorari denied, 1944, 322 U.S. 762, 64 S.Ct. 1274, 88 L.Ed. 1589.

4. 1952, 90 U.S.App.D.C. —, 196 F.2d 573, certiorari denied, 72 S.Ct. 1065.