[COMMITTEE PRINT]

SUMMARY OF TESTIMONY ON LEGISLATIVE ACTIVITIES ("LOBBYING") BY CERTAIN TAX-EXEMPT ORGANIZATIONS (H.R. 13720 AND RELATED BILLS)

AT

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HELD BY THE

COMMITTEE ON WAYS AND MEANS

PREPARED BY THE STAFF

OF THE

JOINT COMMITTEE ON INTERNAL REVENUE TAXATION

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Under present law, one of the requirements for exemption under section 501(c)(3) of the Internal Revenue Code of 1954 and qualification to receive deductible charitable contributions under section 170(c)(2) of the Code is that "no substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting, to influence legislation."

H.R. 13720 would permit an electing "public" charitable tax-exempt organization to spend up to 20 percent of its annual charitable disbursements on "influencing legislation." Within this limit, the proposal specifically allows expenditures on legislative matters which directly affect any purpose for which the organization is organized and operated, communications with any member or employee of a legislative body or with any other Government official or employee who may participate in the formulation of the legislation, and direct communications of information between the organization and its members where the legislative matters directly affect a charitable purpose of the organization. Within the general 20-percent rule, an amount up to 5 percent of the charitable disbursements may be used to influence any legislation not directly related to a charitable purpose of the organization or may be used in attempts to affect the opinion of the general public or any part of the general public—so-called "grass roots" lobbying.

Private foundations are not permitted, under the bills, to elect to have these rules apply. The organizations which may elect to come under the new provision are those commonly referred to as "public" charitable organizations, i.e., churches and conventions or associations or churches, educational institutions, hospitals and medical research organizations, organizations supporting government schools, governmental units, organizations publicly supported by charitable contributions, organizations publicly supported by admissions, sales, etc., and organizations supporting certain types of public charities.

The proposal also would provide that a charitable tax-exempt organization's lobbying is not to be treated as including making available the results of nonpartisan analysis, study, or research, providing technical assistance to a governmental body or committee upon written request, or appearing before (or communicating to) any legislative body (or committee) with respect to possible decisions that may affect the existence of the organization, its tax-exempt status, or the deduction of contributions to it. Further, the proposal would deny the section 170 charitable deduction for contributions in the form of expenditures made directly by the donor "for the use of" such a charitable organization (i.e., where the contribution is made directly on behalf of the organization and does not go through the organization's books) if made for the purpose of influencing legislation.

Testimony was received before the Committee on Ways and Means from Members of Congress, the administration, and the general public at public hearings on May 3, 4, and 5, 1972, on the subject of legislative activities ("lobbying") by certain tax-exempt organizations (on H.R. 13720 and related bills). Summarized below are the statements of the witnesses appearing during the public hearings, as well as written statements submitted to the Committee on Ways and Means.

(A) COMMENTS OF THOSE FAVORING THE PROVISIONS OF H.R. 13720 TO PERMIT A STATED PERCENTAGE OF TAX-EXEMPT ORGANIZATION EXPENDITURES TO BE MADE IN INFLUENCING LEGISLATION

Honorable Russell E. Train, Chairman, Council on Environmental Quality (May 3).—Believes that the right of charitable organizations to testify on matters affecting their purposes without the requirement of invitation and to communicate with members and staffs of legislatures and with other government officials (without fear of loss of tax-exempt status) should be confirmed. States that H.R. 13720 goes far toward correcting an inequality under which business and administrative agencies have open access to the legislature, but section 501(c)(3) organizations have felt themselves stifled by the present substantiality test.

Honorable Mortimer M. Caplin, Attorney, Washington, D.C., and former Commissioner of Internal Revenue (May 3).—Indicates support of H.R. 13720 on behalf of National Audubon Society, the National Health Council, and the National Assembly for Social Policy and Development. Considers present law concerning legislative activities of public charities to be unduly restrictive, difficult to administer due to uncertain interpretation and application, and highly discriminatory (especially in view of the 1962 legislation giving businesses income tax deductions for costs of lobbying activities).

Approves especially those features of the bill that (1) limit the new rules to "public charities" and do not make them available to private foundations, (2) make the new rules elective and not mandatory, (3) provide the 20-percent and 5-percent lobbying limits described above, and (4) leave unaltered the present law absolute ban on electioneering.

Andrew Heiskell, Co-Chairman of National Urban Coalition (May 3).—Notes that Common Cause and the League of Women Voters of the United States associate themselves with the statement in support of H.R. 13720. Considers the uncertainties of present law to seriously limit the ability of organizations to participate in legislative action in its charitable areas, and to discriminate in favor of business lobbying expenditures. Notes also that exempt organizations other than those described in section 501(c)(3) are permitted to attempt to influence legislation without the restrictions of the substantiality test.

Charles H. Callison, Executive Vice-President, National Audubon Society (May 3).—Notes that the following national conservation and environmental organizations have asked to be associated with the statement of support of H.R. 13720: American Forestry Association, the Garden Club of America, the National Recreation and Park Association, the Nature Conservancy, the New York Zoological Society,

Rachael Carson Trust for the Living Environment, Trout Unlimited, the Wilderness Society, and Wildlife Management Institute.

Believes that the bill would clarify the uncertainty regarding the question of "substantiality" in influencing legislation by a charitable organization, as well as partially redressing the imbalance with privileges granted to businesses and trade associations under section 162(e) (which does not have any percentage limitation).

Amyas Ames, Chairman of the Board, Lincoln Center for the Performing Arts, Inc. (*May 3*).—Notes that the following arts institutions concur in support of H.R. 13720: American Association of Museums, Opera America, the American Association of Dance Companies, the League of Resident Theaters, and the related organizations of the Lincoln Center for the Performing Arts, Inc. (the Repertory Theater of Lincoln Center, Inc., the Library & Museum of the Performing Arts, the Chamber Music Society of Lincoln Center, Inc., the Metropolitan Opera Association, the Film Society of Lincoln Center, Inc., New York Philharmonic, the Juilliard School, and the City Center of Music & Drama).

Maintains that the *de minimis* test allowed in the bill for grass-roots lobbying is important to the continued existence of the arts institutions across the country in obtaining support for the organizations from the general public. Contends that the present law is uncertain and ambiguous with regard to what constitutes "substantial" lobbying.

John H. Myers, Attorney, Washington, D.C. (*May 3*).—Notes that H.R. 13270 applies only to "public charities", not to private foundations. Maintains that present law's vagueness leads to unintentional selective enforcement; that "the clarification proposed is very reasonable and rational." Notes that conflict with business interests will happen very, very seldom because "we are talking about legislative activity to carry out our exempt purposes, and only that kind of legislative activity."

Rosemary Higgins Cass, President, National Assembly for Social Policy and Development, (*May 3*).—Notes that the following organizations concur in support of H.R. 13720: American Foundation for the Blind, American Social Health Association, Big Brothers of America, Child Welfare League of America, Community Council of Greater New York, Community Services of Pennsylvania, Council of Jewish Federations and Welfare Funds, Inc., Council on Social Work Education, Family Service Association of America, Goodwill Industries of America, International Social Service, American Branch, National Accreditation Council for Agencies Serving the Blind and Visually Handicapped, National Association for Statewide Health and Welfare, National Association of Housing and Redevelopment Officials, National Association of Social Workers, National Council of Homemaker-Home Health Aide Services, Inc., National Council of Jewish Women, National Council of Young Men's Christian Associations of the U.S.A., National Council on Alcoholism, Inc., National Council on Crime and Delinquency, National Council on the Aging, Inc., National Federation of Settlements and Neighborhood Centers, National Jewish Welfare Board, National Legal Aid and Defender Association, National Recreation and Park Association, National Society for the Prevention of Blindness, National Study Service, National Urban League, Inc., Ohio Citizens Council for Health and Welfare, The Salvation Army, National Office, State Association

for Community Service (New York), State Communities Aid Association (New York), Travelers Aid Association of America, United Seamens Service, United Service Organizations, and Wisconsin Welfare Council.

Believes that the proposed percentages limits will remove ambiguity and uncertainty for charitable organizations, that the 20-percent and 5-percent rules represent "a reasonable limitation on legislative activity", that the bill's definition of "influencing legislation" is appropriate, and that the election procedure adds a desirable degree of flexibility for publicly supported organizations.

Honorable Benjamin Reifel, First Vice President, National Easter Seal Society for Crippled Children and Adults and former Member of Congress; and Mrs. Virginia Armistead, Easter Seal Society for Crippled Children and Adults of Arkansas, on behalf of the National Health Council, Inc. (May 3).—Note that the American Psychiatric Association joins in this testimony.

Consider the proposed legislation vital to health agencies in pursuit of their functions in the public interest, since it will provide guidelines as to what constitutes legislative activity and remove the undefined "substantiality" test. Endorse the provision that no restriction be placed on sharing of nonpartisan research and technical advice to governmental representatives, the bill's definition of "legislation", and the election option.

United Way of America, Bayard Ewing, Chairman of Board of Governors (May 3).—Believes H.R. 13720 will improve the quality and effectiveness of health and welfare services because the organizations to which the bill applies have valuable information to contribute in formulating public policy, including legislation. Maintains that the bill would help clarify the present confusion and reduce the threat to the freedom of charitable agencies.

The National Association for Mental Health, Inc., Jeannette Rockefeller, Past President (May 3).—Considers the provisions of H.R. 13720 a decided improvement over current law. Notes that the term "substantial" is nowhere defined in the Code or in the regulations to give guidance to charities. Asserts that this contributes to uncertainty as to legislative activities of such organizations, as well as putting a damper on socially useful legislative efforts by many public charities. Maintains that current law discriminates unfairly against public charities "since business and trade associations are permitted unlimited expenditures in contacting legislators to promote their own interests."

Honorable John B. Anderson, Member of Congress, Illinois (May 4).—Endorses the goal of H.R. 13720 (and cosponsors an indentical bill, H.R. 14243) to more clearly define the allowable legislative activity of publicly supported "501(c)(3)" tax-exempt organizations, especially in view of the existing allowance of tax-deductible lobbying expenditures by business groups.

George Cooper, Professor of Law, Columbia University (written statement).—Maintains that the present tax treatment of lobbying by tax-exempt organizations is unfair. Considers the proposed bill to be a modest step in correcting the deficiencies in present law. Asserts that businesses have ways of deducting "grass-roots" lobbying to influence general public opinion through expenses on "advertising," "public relations", "legal services", company stockholder reports, and executive salaries used in certain activities.

Contends that there needs to be public interest lobbying to offset business lobbying. States that "With all [its] restrictions, the bill is a most reasonable and limited measure directed toward correcting one of the most unfair and undesirable features of the tax law."

Maurice C. Greenbaum, Attorney, New York City, New York (written statement).—Feels that H.R. 13720 goes a long way toward clarifying an existing difficult administrative problem affecting all organizations exempt under section 501(c)(3) of the Internal Revenue Code. Suggests that the constitutional aspects of possible infringement of free speech and petition under section 501(c)(3) be examined more fully by the Committee, but that this "should not act as a deterrent to passage of the present bill which would make a dramatic improvement in the present chaotic situation."

American Association of School Administrators, James R. Kirkpatrick, Associate Secretary (written statement).—Believes that H.R. 13720 would provide a clear and needed definition relating to the degree which organizations exempt under section 501(c)(3) may involve themselves in the legislative process.

American College of Obstetricians and Gynecologists, Michael Newton, M.D., Director (written statement).—Considers H.R. 13720 to be a needed clarification of permissible legislative activity by removing the uncertainty of the present undefined "substantial" test.

American College of Surgeons, C. Rollins Hanlon, Director (written statement).—Maintains that H.R. 13720 will, within proper limits, permit publicly supported charitable organizations to make information available to legislative bodies without fear of loss of tax exemption, as is the case under the present uncertain definition of "substantial".

Suggests that language be added to the bill after the words "technical advice" (line 9, p. 5): "(including the organization's opinion as to whether the proposed legislation will accomplish its stated purposes and whether it should be enacted)."

American Council on Education, John F. Morse, Director of Commission on Federal Relations (written statement).—Believes that the proposed bill would clarify what public charities may do in relationship to the Government, while also precluding "the possibility of their becoming or being established to become organizations whose chief function would be lobbying."

American Heart Association, Ross Reid (Chairman of the Board) and Stacy H. Dobrzensky (Chairman, Legislative Advisory Committee) (written statement).—Support H.R. 13720 in its efforts to provide an operationally unambiguous definition of "substantiality".

American Library Association, Germaine Krettek, Director, Washington Office (written statement).—Believes that the bill would provide a meaningful and necessary clarification of the extent to which section 501(c)(3) organizations may participate in those aspects of the legislative process directly affecting the objectives they serve. Maintains that at present with the undefined "substantial" test, educational organizations are at the mercy of *ad hoc* interpretations of the Internal Revenue Service, which may not be consistent from region to region.

American Occupational Therapy Association, Leo C. Fanning, Executive Director (written statement).—Feels that H.R. 13720 would clarify the extent to which tax-exempt organizations may communicate with legislative bodies without jeopardizing their tax status.

American Psychological Association, Kenneth B. Little, Exceutive Officer (written statement).—Maintains that the ambiguity of the current regulations regarding the legislative activity of section 501(c)(3) organizations leaves most in a chronic state of mild apprehension concerning communications with legislators, and that H.R. 13720 "appears to provide the appropriate clarification."

American Symphony Orchestra League, Richard H. Wangerin, President (written statement).—Feels that clarification of the legally allowable limits of legislative activity would be most helpful to the League in efforts to protect the interests and to further the cause of member symphony orchestras.

Association of American Colleges, Frederic W. Ness, President (written statement).—Feels that H.R. 13270 would be helpful in clarifying the nature and extent of legislative activities for public charities, as well as providing a more specific definition of what constitutes legislation.

Association of American Medical Colleges, John A. D. Cooper, M.D., President (written statement).—Agrees with the position of the American Council on Education (see above). Believes that H.R. 13720 would provide significant and helpful clarification of the appropriate relationships of nonprofit organizations to the branches of the Federal Government.

Arizona Wildlife Federation, John J. Levy, President (written statement).—Maintains that Congress needs the views expressed by conservation groups to make proper policy decisions.

California Institute of Technology, R. B. Gilmore, Vice President for Business and Finance (written statement).—Maintains that the bill would "make more realistic" and define "with a great deal more preciseness" the permissible activities of educational institutions, such as the California Institute of Technology, in the legislative process.

Community Services of Pennsylvania, Harrisburg, Pennsylvania (written statement).—States that "H.R. 13720 will remedy this situation [the difficulty of Community Services of Pennsylvania 'to speak where it counts'] by relaxing present restrictions and by establishing specific and understandable limitations on legislative activity of tax exempt organizations."

Council for Financial Aid to Education, Curtis E. Frank, President (written statement).—Maintains that the legislative processes at all levels of government would be enhanced if it were easier for "publicly supported 501(c)(3) organizations" to communicate with the Congress. Believes that H.R. 13720 will close the gap between organizations exempt under section 501(c)(3), and organizations exempt under other parts of section 501(c) (which are under no restraints regarding legislative activities).

Council of Jewish Federations and Welfare Funds, Inc., New York, N.Y., Max M. Fisher, President (written statement).—Supports Committee action "to report favorably to the Congress at this session a liberalized measure that will clarify the law and permit greater participation by these non-profit agencies in dealing with proposed legislation affecting their fields of interest."

League of Women Voters, Mrs. Bruce B. Benson, President (written statement).—Considers it vital that present restrictions on legislative and informational activities of education and charitable organizations be clarified and relaxed as proposed in H.R. 13720. Claims that the

existing law denies the right of organizations exempt under section 501(c)(3) to initiate contacts with the legislative branch and causes them to become overcautious, thereby tending to inhibit the exercise of the constitutional right of free speech. Contends that uncertainty as to the meaning of the law can have a limiting impact on financing of certain organizations which depend on tax deductible contributions.

Maintains that the section 162(e) allowance of business deductions for lobbying expenses is discriminatory.

Medical Library Association, Inc., Jacqueline W. Felter, Chairman, Committee on Legislation (written statement).—Believes that the bill "would provide a meaningful and necessary clarification of the extent to which organizations enjoying the exemption under Section 501(c)(3) of the Internal Revenue Code may participate in those aspects of the legislative process directly affecting the objective they serve."

Federation of Western Outdoor Clubs, Kathryn Karjala, Assistant to Northwest Conservation Representative (written statement).—Maintains that present law "is clearly biased in favor of big business interests" (because of 1962 legislation permitting trade or business lobbying deductions). States that H.R. 13720 "would clear up the imprecise nature of existing laws on this subject" and would permit public interest groups to provide a necessary input to the functioning of the legislature.

Milwaukee County Conservation Alliance, Inc., Robert A. Lachmund, President (written statement).—States that passage of H.R. 13720 "would give every one an equal voice in legislative matters", while present law provides advantage for business lobbying.

National Congress of Parents and Teachers, Mrs. Walter G. Kimmel, Coordinator of Legislative Activities (written statement).—Understands that the bill "would make it possible for organizations such as ours to enjoy the same participation in legislative action as the trade associations and business groups."

National Tuberculosis and Respiratory Disease Association, Robert J. Anderson, M.D., Managing Director (written statement).—Indicates that under current law, "501(c)(3) organizations" are unable to assure their officers that legislative activities can be indulged in without loss of exemption, and that the ambiguity of the term "substantial" makes it impossible for a national organization to give sound guidance to affiliated organizations.

National Wildlife Federation, Thomas L. Kimball, Executive Vice President (written statement).—Points out that the "substantiality" limitation on legislative activity does not apply to the business community, and considers this to be discriminatory and to place tax-exempt organizations at a disadvantage concerning influencing legislation.

Sierra Club, Michael McCloskey, Executive Director (written statement).—Considers H.R. 13720 to be an improvement over existing law, since the vagueness of the term "substantial" has had a severely inhibiting effect on charitable organizations because of the threat of a loss of tax exemption. Contends that the section 162(e) allowance of a business deduction for lobbying expenses discriminates against the views of nonprofit organizations in legislative matters.

Trout Unlimited, William P. Horn, Counsel, Washington, D.C. (written statement).—Believes that H.R. 13720 would "rectify current inequities" in that the Code now allows deductions for business

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lobbying and permits noncharitable exempt organizations to lobby without a "substantiality" limit.

Kamehameha Schools/Bernice Pauahi Bishop Estate, Richard Lyman, Jr., Chairman of the Board (written statement).—Supports H.R. 13720 to reduce taxpaying organizations' lobbying advantage under present law (sec. 162(e)). Feels that the 20-percent limit would "enable exempt public charitable organizations to undertake a reasonable but limited amount of lobbying activities with the certainty that such activities will not adversely affect their tax-exempt status."

States that "Of equal importance" is the bill's provision "that an exempt public charitable organization, upon a written request by a legislative body, may present technical advice and assistance to such legislative body without being treated as having attempted to influence legislation."

American Council of Learned Societies, Frederick Burhardt, President (written statement).

Michael Anderson, Vice President, Anderson Archery Corporation, Grand Lodge, Michigan (written statement).

Gerard J. Cerny, Rome, New York (written statement).

Council of Community Services, Albany, New York, James P. Heron, Executive Director (written statement).

Epilepsy Foundation of America, Paul E. Funk, Executive Vice President (written statement).

Florida Wildlife Federation, John C. Jones, Executive Director (written statement).

Garden Club of America, Mrs. Thomas M. Waller, National Affairs Chairman (written statement).

Garden Club of America—Zone 11, Francis T. Horne (written statement).

Illinois Wildlife Federation, Ralph W. Smith (written statement).

Michigan United Conservation Clubs, Paul J. Leach, Executive Director (written statement).

National Music Council, Leonard Feist, President (written statement).

National Trust for Historic Preservation in the United States, Roger J. Holt, Assistant for Legal Services, Department of Field Services (written statement).

Nevada Wildlife Federation, A. S. Burnett, President (written statement).

State Association for Community Services, New York, Lowell Iberg, Executive Secretary (written statement).

State Communities Aid Association, New York, Gordon E. Brown, Executive Director (written statement).

United Cerebral Palsy Associations, Inc., Earl H. Cunerd, Executive Director (written statement).

United Way of Dutchess, Poughkeepsie, New York, Albert H. Schaubhut, President (written statement).

American Optometric Association, Donald F. Lavanty, Director, National Affairs Division (written statement).

Greater Portland Arts Council, Portland, Maine, Peter S. Plumb, President (written statement).

(B) COMMENTS OF THOSE GENERALLY FAVORING THE PROVISIONS OF H.R. 13720, BUT SUGGESTING CERTAIN MODIFICATIONS

Honorable Edwin S. Cohen, Assistant Secretary of the Treasury for Tax Policy (May 3).—Indicates concern "about ambiguities and problems in the existing law and [sympathy] to some of the objections that have been voiced against it."

Urges that the law be amended to permit unlimited "presentation of views to legislative bodies in public hearings * * * whether or not by invitation of the committee."

Recommends balancing treatment of charitable organizations against business deductions (sec. 162(e)). Accordingly, suggests that the bill should permit direct lobbying and communications with members only if (1) matter is "of direct interest" to charitable organization and (2) matter "is also 'of direct interest' to competing nonbusiness charitable interests". Would prohibit income tax advantages for grassroots lobbying, since business organizations are not permitted to deduct expenses of grassroots lobbying as business expenses.

Indicates that "Where lobbying on political or quasi-political matters [such as laws governing the conduct of primaries and elections, the drawing of legislative districts, and the eligibility of voters] is involved, the Committee may want to consider the size of the donations that may be deductible to particular contributors."

Suggests that the bill's proposed percentage limits would permit organizations to which the bill applies to spend as much as $6 billion on lobbying, of which as much as $1.5 billion could be spent on grassroots lobbying.

Notes that private foundations could support lobbying activities by grants to "publicly supported" charities so long as the private foundations did not earmark the grants for lobbying purposes.

Suggests that the "Committee may want to consider some provision for public recording of all legislation that the [charitable] organization is supporting or opposing."

Honorable Jerome R. Waldie, Member of Congress, California (*May 4*).—Hopes that the provisions of H.R. 14463 can be incorporated into H.R. 13720, which he supports. Under H.R. 14463, no limits would be placed on an exempt organization appearing before, submitting statements to, or sending communications to members or committees of legislatures, or communicating with members of the organization, as to matters "of direct interest to the organization."

American Bar Association, Mac Asbill, Jr., Chairman, Section on Taxation, and William J. Lehrfeld, Chairman, Committee on Exempt Organizations (*May 4*).—Support H.R. 13720 as a first step in granting public charitable organizations greater freedom to engage in legislative activity. Believe that such organizations should be allowed to communicate on matters which directly affect the organization's exemption, the deductibility of contributions to it, or matters which directly affect any exempt purpose or any exempt function of the organization, that this would permit publicly supported charities to "provide, in the legislative arena, a countervailing presence to that of business."

Indicate that H.R. 13720 differs from the ABA proposal in four areas: (1) the ABA proposal would permit private foundations to

engage in unlimited legislative activities with respect to matters directly affecting their exemption and deductibility of contributions to them (but not concerning other matters affecting their exempt purposes); (2) the ABA proposal would not be elective; (3) the ABA provision would have no quantitative limitations with regard to matters of direct interest in communications with legislative bodies; and (4) the ABA proposal would not impose a specific limit on the "grass-roots" activity, but would leave such activity subject to the "no substantial part" limitation of present law.

Sees no good reason for imposing a quantitative limit on the extent to which a public charity is permitted to appear before or submit statements to legislative bodies. Expresses concern that the elective feature of the proposed section 501(f)(3) in conjunction with the percentage limitations in proposed section 501(f)(1)(A) and (B) might cause the Internal Revenue Service to develop a more severe quantitative test for non-electing organizations.

Stuart H. Johnson, Jr., Attorney, Washington, D.C. (*May 4*).—Supports the objective of H.R. 13720 to provide public charities some guidelines as to permissible legislative activity without the life-or-death consequences of present law withdrawal of tax exemption. Considers public charities to be denied equal protection of the laws as compared to the section 162(e) allowance of deductibility for certain business lobbying expenses. Believes that section 501(c)(3) operates now opposite to the way its sponsors originally intended with respect to public charities.

Suggests that the definition of "influencing legislation" in section 501(f)(5)(B) not include communications with executive branch government officials, as this goes beyond the existing understanding of the term in section 501(c)(3) and it may dilute the meaningfulness of the 20-percent limit if such communications are considered as "influencing legislation." Urges that section 2 of H.R. 13720 be deleted and maintains that donors should receive deductions for contributions for legislative activity so long as the charity is operating within the permitted limits.

Recommends adding a savings clause to the bill (as in S. 3063): "Nothing in this subsection shall be construed to limit or reduce the level of activities otherwise permitted an organization under paragraph (3) of subsection (c)[501(c)(3)] or any other applicable provision of this title."

Stanley S. Weithorn, Attorney, New York, New York (*May 4*).—Hopes that H.R. 13720 will be adopted in essentially its present form. Suggests the following clarifications to be included in the legislative history of the bill: (1) an organization electing under new section 501(f)(3) should suffer no consequences more adverse than if it had continued its same activities under present law; (2) election should be permitted to be made on an additional line of Form 990 (and be deemed to have been made prior to the end of year for which the form is filed); (3) election should be revocable, under section 501(f)(4)(B)(i), only by the organization, and without penalty, on an annual basis; (4) the scope of "directly affecting," under section 501(f)(5)(B), should be broadly defined; (5) the denominator of the percentage-test fraction should exclude only expenditures for unrelated business activities of the organization; (6) the concept of "normally" should follow the approach in the regulations under section 170(b)(1)(A)(vi) (a four-

year average); (7) the definition of "members" should include both organizational and individual members; and (8) the disallowance of contributions to influence legislation should relate only to amounts expended directly by persons "for the benefit of" an organization so that such amounts are not able to be recorded on the books of the donee organization.

Regarding churches, recommends that the report make it clear that (1) nothing in the bill should be interpreted to require filing, by electing churches, of any information returns not now required under section 6033; (2) nothing should be interpreted to permit examination of churches beyond the scope now provided for in section 7605(c); and (3) the "members" of a church, under section 501(f)(5)(c) added by the bill, should be defined to include all individual members of the congregations affiliated with that church as well as the organizational members in the church structure.

Martin A. Larson, Tax Policy Consultant, on behalf of Liberty Lobby and Americans United for Separation of Church and State (May 5).—Hopes that Congress will rewrite section 501(c)(3) so that every exempt organization will know precisely where it stands without difficulty or question and so that nothing will be left to the subjective judgment of a nonelected government official to withdraw tax exemption without a hearing or trial or without precise standards to judge whether something has been violated.

Suggests that section 501 needs basic revision to remove inequities between treatment of, for example, "(c)(3)" organizations (which have restrictions on political activities) and other exempt organizations, such as those exempt under section 501(c)(5) (which includes labor unions) and (c)(8) (which includes fraternal organizations and lodges), which can engage in political activities without limit. States that "(c)(4)" organizations should be more clearly defined.

Lawrence M. Stone, Professor of Law, University of California at Berkeley (written statement).—Points out that lobbying expenses incurred by businesses are fully deductible if the legislation "directly affects" the business. Suggests that charitable organizations other than private foundations be permitted to spend up to 33⅓ percent on lobbying, since the word "substantial" has been held in another context under the Code to mean at least one-third.

Asserts that the nation needs more "grass roots" lobbying by exempt organizations, and concludes that there should be no distinction between direct lobbying and grass roots lobbying by such organizations.

Maintains that contributions to nonqualifying organizations should be deductible to the same extent as are political contributions to political parties.

American Society of Association Executives, James P. Low, Executive Vice President (written statement).—Urges that if the "grass roots" provision of the bill is adopted, then similar treatment be accorded to section 501(c)(6) organizations (business leagues, chambers of commerce, etc.) and that also a similar amendment be made to section 162.

Michael G. Beemer, Attorney, Chicago, Illinois (written statement).—Makes the following suggestions: (1) insert the words "or incurred" after the word "paid" in line 8 on page 2 of the bill; (2) the word "normally" presumably should be defined as in the proposed regu-

lations under section 509; (3) the new provisions should not be elective, if possible, as this will cause delays in new regulations and be confusing; (4) the bill should not treat as lobbying any communications with persons in the executive branch even though they "participate in the formulation of legislation"; (5) the bill should make clear that "nonpartisan analysis, study, or research" "may include as a part thereof the recommendation of a particular position or viewpoint"; and (6) the provisions which disallow certain deductions if made for influencing legislation should be deleted, as this appears to involve ascertaining the motive of the donor (if it remains, perhaps insert the word "primary" before the word "purpose" in line 20 on page 6 and in line 10 of page 8 on the bill).

Westchester Council of Social Agencies, Inc., New York (written statement).—Contends that because of the uncertainties of present law, there is a constant fear of loss of tax exemption, which has become a paralyzing inhibition upon the energy and resolve of tax-exempt organizations. Indicates that the 5-percent limitation in influencing general public opinion seems unduly restrictive. Suggests that there be a re-examination of the underlying philosophy of tax exemption and legislative activity. Believes that open and visible activities with respect to "influencing legislation" should not lessen the merits of tax-exempt status.

Believes "that this bill is an important clarification of the rights of the private sector to function in the field of public policy."

C. COMMENTS REGARDING CONSTITUTIONALITY OF LIMITATIONS ON LEGISLATIVE ACTIVITIES OF CERTAIN TAX-EXEMPT ORGANIZATIONS

National Jewish Community Relations Advisory Council, Paul S. Berger, Counsel (May 3).—Notes that three of the NJCRAC's 101 member organizations (the Union of American Hebrew Congregations, the United Synagogue of America, and the Union of Orthodox Jewish Congregations of America) abstain from the Council's testimony. These three organizations maintain that, as associations of churches, they oppose any restrictions of legislative activity of *bona fide* religious organizations (both in the proposed bill and in present section 501(c)(3)) as possibly infringing upon the free exercise of religion under the First Amendment. They believe, however, that other tax-exempt organizations should be given greater opportunity to engage in legislative activity in the public and social interest, and so do not oppose the bill.

The Council supports H.R. 13720. It states that participation by public charities in the legislative process enables them more effectively to carry out their purposes, provides legislative bodies with valuable assistance, and furthers the American tradition of pluralism and free public discussion. Contends that the present law is uncertain and ambiguous as to what is "substantial" or "attempts to influence legislation." Feels that part of the problem is the distinction drawn between "education" and "advocacy" and the application of this approach beyond the context of educational organizations to charitable and religious organizations (see Treas. Regs. 45, art. 517 in 1919, which attempted to clarify "educational" as not including "controversial or partisan propaganda"). Asserts that the new private

foundations provision (sec. 4945(d)(1)) and proposed regulations have injected somewhat different definitional concepts into consideration, with the relationship between similar terms in section 4945(d)(1) and section 501(c)(3) remaining unclear.

Feels that the present section 501(c)(3) restriction on legislative activities may impinge on the constitutional freedom of religion to express views of their religious tradition affecting various aspects of community life, and maintains that no such burden (i.e., as a condition for tax exemption or tax deductibility) may be placed on exercise of a First Amendment constitutional right (see *Speiser v. Randall.* 357 U.S. 513 (1958)). Considers present section 501(c)(3) to suffer from vagueness, and that such vagueness has a chilling effect on such organizations as to "permissible legislative activity." Also maintains that such vagueness "facilitates, and even invites, arbitrary and discriminatory administration", which is especially dangerous when the law has "any impact on expression."

Contends that present law may unconstitutionally discriminate among religious organizations by substantially inhibiting those religions that encourage acting in the public sphere, through legislation as well as exhortation, while leaving untouched other religions that are interpreted by their adherents to generally require abstention from such matters.

Indicates that H.R. 13720 would not eliminate the constitutional problems, but feels that most exempt organizations would be better able to carry on their exempt activities and as a practical matter exercise their constitutional rights.

National Council of Churches of Christ in the U.S.A., William P. Thompson (May 4).—Notes that two of the member denominations of the National Council of Churches—the General Synod of the United Church of Christ and the Board of Christian Social Concerns of the United Methodist Church—have asked to be recorded as endorsing this testimony. Believes that public charities should have the full right to express concern about public policy, and that it is a constitutional right for religious organizations to have a free exercise on matters of public policy, including legislation, and to exercise these rights without disabilities under the tax laws.

Feels that it was not the intention of the originator of the language in section 501(c)(3) to apply as a restriction on genuine public charities but rather only to private organizations set up for a wealthy person's interests. Considers it ironic that section 162(e) permits businesses to deduct costs of lobbying, which are to advance their own *private* interests.

Recommends that the phrase in section 501(e)(3) "no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation" be deleted from the Code.

American Civil Liberties Union, Hope Eastman, Acting Director, Washington Office (May 4).—Believes that the restriction on legislative activity in section 501(c)(3) violates the First Amendment's guarantees of freedom of speech and right to petition the government, and places an unconstitutional restriction on the free exercise of religion. Contends that there is no "compelling governmental interest" which would warrant abridging the right of charitable organizations to communicate with their representatives.

Views the existing uncertainty and vagueness of the present substantiality test as the equivalent of a "constitutionally prohibited prior restraint" on public charities because of the "chilling" effect on First Amendment rights resulting from the organizations not knowing the limits of permissible activities. Indicates that this lends itself to unconstitutional discretionary power to public officials for potential selective, judgmental enforcement.

Considers H.R. 13720 and S. 3063 to be improvements over the ambiguity and uncertainty of current law. Prefers the provisions of S. 3063, since it allows a greater percentage for expenditures on legislative activity. Believes, however, that any restriction violates the Constitution; urges that the Congress delete the prohibition in section 501(c)(3) entirely.

National Association of Railroad Passengers, Anthony Haswell, Chairman (May 5).—Gives qualified support to H.R. 13720, but believes that Congress should eliminate legislative activity as a consideration in determining the tax-exempt status of any charitable organization. Contends that the key consideration should be whether or not the purpose and activities are furthering its tax-exempt cause as distinct from the private benefit of any member or contributor.

Maintains that any limitation on legislative activity is inconsistent with the constitutional guarantees of free speech, equal protection, and the right to petition the government for a redress of grievances. Considers the business deduction for lobbying expenditures to be unfair competition for the organization.

Indicates that H.R. 13720 is vague in its treatment of which expenditures would come under the percentage limitations (such as overhead expenses), and as to how to distinguish between attempts to influence members of the organization and the general public in a given case. Asks what is "non-partisan analysis", "technical advice", etc. Opposes the provision requiring written invitation to supply such advice, as well as the proposed amendments to sections 170(f), 2055(e), and 2522(c), which would deny a deduction if the contribution was "for the use of an organization described in section 170" and was made to "influence legislation."

Thomas F. Field, Executive Director, Taxation With Representation (May 5).—Contends that present law discriminates in favor of lobbying by private economic interests and against groups advocating a public interest. Maintains that businesses can also make tax-deductible expenditures to influence "grass roots" public opinion, provided they label these activities as "institutional advertising" (and also through quarterly and annual reports). Considers this situation to tend toward biased testimony before Congress, heavily weighted by business testimony on economic and tax matters, and to be an affront to the Constitutional guarantees of free speech and petition by groups representing general public interests. "What is needed is an evenhanded approach to the tax treatment of lobbying—an approach which will treat all citizens in the same way, whether they are corporate citizens defending their pocketbooks or individual citizens defending the public interest."

Suggests that consideration be given to allowing a deduction (say, up to $100) for citizen contributions to lobbying groups. Indicates that another route to provide equal treatment would be removal of the restrictions on the lobbying activities of all groups exempt under 501(c).

Asserts that H.R. 13720 does not move very far in the direction of equality, as the principal beneficiaries appear to be churches, "think tanks," and universities, and does not benefit public interest groups such as Taxation With Representation or Common Cause.

Maintains that the percentage limitations in the bill will cause serious administrative difficulties: for example, what standard will be used for determining whether legislation "directly affects" an exempt "purpose"; and what accounting standards are to be applied to segregate lobbying from nonlobbying expenditures. (Notes that one of the reasons cited by Congress in 1962 for allowing deduction for *all* business lobbying expenses was "the difficulty in segregating and classifying such expenses.")

Doubts whether the Congress is entitled, under the Constitution, to pick and choose between groups as to the permissible lobbying activities with respect to tax favors or tax penalties. Suggests, however, if Congress does this, that certain criteria should be applied in deciding which groups receive tax favors, such as: (a) nonpartisan status regarding elections or candidates; (b) permits dissent within the group; (c) accounts to its membership on funds and lobbying; and (d) publicly supported.

Baptist Joint Committee on Public Affairs, John W. Baker, Acting Executive Director (written statement).—Maintains that limitations on the extent to which churches may engage in lobbying is an unconstitutional violation of the right of free exercise of religion because it discriminates between those religions that "believe that their religious faith commits them to a complete withdrawal from the secular world" and those that are "compelled by their faith into an active participation in nearly every aspect of that secular world." Also, government is constitutionally prohibited from defining "for the churches their religious purposes and their mission."

Maintains also that government has not shown the necessary "compelling interest" to justify imposing limitations on free speech and the right to petition governments on organizations exempt under section 501(c)(3). Similar limits are not placed on other organizations.

Agrees that "The provisions of H.R. 13720 are an improvement over current regulations" but that the bill and current law both are unconstitutional in penalizing lobbying.

Franklin C. Salisbury, Attorney, Washington, D.C. (written statement).—Indicates that while H.R. 13720 appears to be an improvement over existing law, it contains the seeds of similar controversies over constitutional freedoms of "free exercise of religion, speech and petition of government" that the present section 501(c)(3) engenders. Maintains that the restrictions in section 501(c)(3), and its vagueness, constitute an oppressive tool for the Internal Revenue Service to regulate the extent to which different groups may exercise their rights of free speech and religion.

Recommends elimination of the "substantiality" clauses from existing sections 170 and 501(c)(3).

Board of Christian Social Concerns of the United Methodist Church, Jack Elliott Corbett, Director of Church/Government Relations (written statement.)—Suggests that the First Amendment right to freedom of religion "is denied if limitations are placed on church lobbying in areas affecting the church's purpose in society." Maintains that the church should be free (without Government penalty) to speak out

on public policy questions and seek to influence the formation of public policy, and that the denial of such right threatens religious liberty under the Constitution. Expresses concern over the provision in the bill to limit the amount of resources which can be spent on "direct communication of information between such organization and . . . its members." Believes that churches should not be involved in lobbying to seek special privileges for themselves.

Questions why public interest groups should be curbed in their legislative activities while businesses are permitted to engage in substantial lobbying in pursuing their special interests under section 162(e). Indicates that the definitions under the proposed bill are vague, as to what is directly associated with the organization's purposes. Feels that the Government cannot define what is "religious" and what is "political" for the church, nor can the Government quantify the allowable limits of free exercise of religion.

Supports a suggestion made by the National Council of Churches that the lobbying limitation should be deleted from section 501(c)(3).

United States Catholic Conference, The Most Rev. Joseph L. Bernardin, General Secretary (written statement).—Maintains that the bill's provisions would require detailed administrative relationships and determinations as to activities of churches to such an extent as to constitute an "excessive entanglement" between church and State, violating the First Amendment (*Walz* v. *Tax Commission*). Also, restrictions on grass roots lobbying and communications with members would unreasonably and unconstitutionally interfere with proper religious activities of churches.

Contends that denial of tax exemption for exercising First Amendment freedoms of speech and petition would be an unconstitutional penalty on the exercise of First Amendment rights (*Speiser* v. *Randall*).

Maintains that the elective feature of the bill would affect the Service's interpretation of existing law as to those organizations that do not elect to come under the rules of the bill. As a result, it is contended, enactment of the bill would have the above-noted unconstitutional results even as to organizations that choose to remain under present law.

(D) COMMENTS OF THOSE OPPOSING THE ENACTMENT OF H.R. 13720

John O. Harris, on behalf of Honorable George C. Wallace, Governor, State of Alabama (May 4).—Indicates that the proposal "is an attempt to legalize the illegal activities that many of these organizations and foundations have been engaged in during the recent past." Believes that there is an urgent need to redefine the role of privately-controlled charitable foundations and other tax-exempt organizations and require them to bear their proportionate share of the Federal income tax burden. Contends that taxation of such income would allow a reduction in income taxes for the average citizen, as it would reduce the available tax shelters for the "super rich".

Honorable John R. Rarik, Member of Congress, Louisiana (May 4).—Asserts that the proposal would grant further special privilege to tax-exempt organizations. Indicates that the bill would permit tax-exempt organizations to use their tax-exempt or tax-deductible money to lobby for more Federal grant funds for programs they

conduct; and therefore that the average taxpayer would be subsidizing these tax-exempt organizations twice—once through the deduction or exemption and once through the Federal appropriation.

Contends that the proposed 20-percent limit on lobbying expenditures is meaningless because it exempts certain types of lobbying activity from any limit, namely: dissemination of the results of nonpartisan analysis, study, or research; appearances before or communications with a legislative body at the latter's request; and appearances before or communications with legislative bodies regarding matters affecting the organization's existence, powers and duties, or tax status. Notes as additional defects the absence in the bill of any definition of "nonpartisan", "objective", and "normally", all of which are potentially critical terms. "If, for example, [normally] means an average over, say, a 5-year span, then an organization could reasonably expect to spend 10 percent of its budget on lobbying activities for 4 of the 5 years and, within the law, spend 60 percent of its budget for lobbying activities in the fifth year of the span."

Questions the workability of the prohibition of deductible contributions if made for the purpose of influencing legislation. Suggests that either the organization would have to ask that all donations be made for a specific purpose or the contributor would be allowed to deduct only a portion of any unearmarked contribution.

Maintains that the proposal would serve to legalize the pressure activities of the elite minority rule by the ultrawealthy who control these tax-exempt organizations. States that the proposal would further discriminate against taxpayers who have no tax shelter or tax-exempt organization to lobby the legislature.

Urges that, if the committee seriously considers this bill, then it should also allow a 20-percent deduction to taxpayers on account of their lobbying activities.

United States Catholic Conference, The Most Rev. Joseph L. Bernardin, General Secretary (written statement).—Opposes enactment of H.R. 13720 for constitutional reasons (discussed above, under category C). Urges that, if bill is enacted, then churches be exempted from both the new rules of the bill and also the present law's limits on legislative activities by section 501(c)(3) organizations.