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DEPRIVATION OF EMPLOYMENT ON ACCOUNT OF POLITICAL CONTRIBUTION

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HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

LEGISLATION RELATING TO DEPRIVATION OF EMPLOY-
MENT OR OTHER BENEFIT MADE POSSIBLE BY ACT OF
CONGRESS ON ACCOUNT OF POLITICAL CONTRIBUTION,
RACE, COLOR, SEX, RELIGION, OR NATIONAL ORIGIN

OCTOBER 21, 1975

SERIAL NO. 24



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DEPRIVATION OF EMPLOYMENT ON
ACCOUNT OF POLITICAL CONTRIBUTION

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CONTENTS

| Text of— | Page |
|--|--------|
| H.R. 2920..... | 2 |
| H.R. 10336..... | 4 |
| H.R. 10521..... | 6 |
| Witnesses— | |
| Allen, Frank, Deputy Chief, Civil Rights Division, Department of Justice..... | 35 |
| Donsanto, Craig, attorney, Fraud Section, Criminal Division, Department of Justice..... | 35 |
| Eble, Charles F., executive director, Indiana State Employees Association..... | 54 |
| Prepared statement..... | 53 |
| Marshall, James F., national executive director, Assembly of Governmental Employees..... | 48 |
| Prepared statement..... | 46 |
| Milligan, Thomas S., chairman, Indiana Republican State Committee..... | 76 |
| Prepared statement..... | 74 |
| Pauley, Roger, deputy chief, Legislation and Special Projects Section, Criminal Division, Department of Justice..... | 35 |
| Prepared statement..... | 33 |
| Roush, Hon. J. Edward, a Representative in Congress from the State of Indiana..... | 8 |
| Prepared statement..... | 8 |
| Additional material— | |
| "Demos To End Two Per Cent Club If Tax Credits Are OK'd," by Edward Ziegner, political editor..... | 70 |
| "End Archaic Thinking," editorial, Huntington North High School..... | 29 |
| "Former Highway Employees Decry Patronage System," Herald-Argus, August 14, 1974..... | 68 |
| Gates, Robert E., Whitley County Republican Chairman, letter dated January 24, 1972, to those working for the State highway from Whitley county..... | 30, 72 |
| "GOP Fund Drive Under Way," Indianapolis Star, January 16, 1975..... | 69 |
| "GOP's Approve Patronage," Herald-Telephone, October 8, 1975..... | 72 |
| "Indiana GOP Head Says He'd Fire Pledge Balkers," by Gordon Englehart..... | 31, 67 |
| "Jobs Open," Republican News, June-July 1973..... | 69 |
| Jontz, Jim, State representative, Indiana House of Representatives, letter dated October 8, 1975, to Hon. J. Edward Roush..... | 28 |
| Kittredge, Roy E., superintendent, Offices of State Highway Commission, State of Indiana, letter dated February 22, 1974..... | 30, 73 |
| Meadors, Murril, chairman, Washington County Republican Central Committee, letter dated July 5, 1974..... | 31, 73 |
| Mendenhall, Ray, Indiana State Highway Commission, interdepartment memo dated July 6, 1971, to all employees..... | 30, 73 |
| Milligan, Thomas S., State Chairman, Indiana Republican State Central Committee, letter dated December 14, 1973, to Department Heads and Patronage Solicitors..... | 27 |
| "Patronage System Affects Local Employment Hopes," by Gary Schenkel..... | 29 |
| Petersen, Henry E., Assistant Attorney General, Criminal Division, Department of Justice, letter dated May 2, 1974, to Thomas S. Milligan..... | 86 |
| "The Two Per Cent Club: Political Give and Take," Courier-Journal & Times, August 5, 1973..... | 63 |
| Uhlmann, Michael M., Department of Justice, letter dated September, 24, 1975, to Hon. Peter W. Rodino, Jr. chairman House Committee on the Judiciary..... | 36 |

IV

Appendix—

| | |
|--|------------|
| Cohen, David, president, Common Cause, letter dated November 20, 1975, to Hon. William L. Hungate..... | Page 92 |
| Roush, Hon. J. Edward, a Representative in Congress from the State of Indiana, letter dated November 24, 1975, to Hon. William L. Hungate..... | 92 |
| Thornburgh, Richard L., Assistant Attorney General, Department of Justice, letter dated October 29, 1975, to Hon. William L. Hungate..... | 91 |

DEPRIVATION OF EMPLOYMENT ON ACCOUNT OF POLITICAL CONTRIBUTION

TUESDAY, OCTOBER 21, 1975

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
WASHINGTON, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2237, Rayburn House Office Building, the Honorable William L. Hungate [chairman of the subcommittee] presiding.

Present: Representatives Hungate, Holtzman, Russo, Wiggins, and Hyde.

Also present: Thomas W. Hutchison, counsel; and Raymond Smietanka, associate counsel.

Mr. HUNGATE. The subcommittee will be in order. The Subcommittee on Criminal Justice will hear testimony today on H.R. 2920, a bill to amend sections 600 and 601 of title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any act of Congress, on the basis of political activity, and for other purposes. H.R. 2920 is sponsored by our distinguished colleague from Indiana, Ed Roush, and he will be our opening witness.

[Copies of H.R. 2920, H.R. 10336, and H.R. 10521 follow:]

(1)

94TH CONGRESS
1ST SESSION

H. R. 2920

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1975

Mr. ROUSH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 600 and section 601 of title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 600 and section 601 of title 18, United States
4 Code are amended as follows,

5 SECTION 1. Section 601 of title 18, United States Code,
6 is hereby amended:

7 (a) by striking therefrom the words "appropriating
8 funds for work relief or relief purposes" which follow
9 the phrase "made possible by any Act of Congress";
10 and by inserting a comma after the word "Congress";

1 (b) by inserting the words "in whole or in part"
2 following the phrase "made possible".

3 SEC. 2. Sections 600 and 601 of title 18, United States
4 Code, respectively, are amended by striking out "\$1,000"
5 and by inserting in lieu thereof "\$25,000".

H. R. 10336

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 22, 1975

Mr. ROUSH (for himself, Mr. EVANS of Indiana, Mr. HAMILTON, Mr. HAYES of Indiana, and Mr. JACOBS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 600 and section 601 of title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 600 and section 601 of title 18, United States
4 Code are amended as follows,

5 SECTION 1. Section 601 of title 18, United States Code,
6 is hereby amended:

7 (a) by striking therefrom the words "appropriating
8 funds for work relief or relief purposes" which follow
9 the phrase "made possible by any Act of Congress";
10 and by inserting a comma after the word "Congress"

1 (b) by inserting the words "in whole or in part"
2 following the phrase "made possible".

3 SEC. 2. Sections 600 and 601 of title 18, United States
4 Code, respectively, are amended by striking out "\$1,000"
5 and by inserting in lieu thereof "\$25,000".

94TH CONGRESS
1ST SESSION

H. R. 10521

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 3, 1975

Mr. ROUSH (for himself, Mr. SHARP, and Mr. FITHIAN) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 600 and section 601 of title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 600 and section 601 of title 18, United States
4 Code are amended as follows,

5 SECTION 1. Section 601 of title 18, United States Code,
6 is hereby amended:

7 (a) by striking therefrom the words "appropriating
8 funds for work relief or relief purposes" which follow

- 1 the phrase "made possible by any Act of Congress";
- 2 and by inserting a comma after the word "Congress";
- 3 (b) by inserting the words "in whole or in part"
- 4 following the phrase "made possible".

- 5 SEC. 2. Sections 600 and 601 of title 18, United States
- 6 Code, respectively, are amended by striking out "\$1,000"
- 7 and by inserting in lieu thereof "\$25,000".

Mr. HUNGATE. In addition to Representative Roush, we will receive testimony from representatives of various organizations and groups. These are: The U.S. Department of Justice, represented by Mr. Roger Pauley, Deputy Chief of the Legislation and Special Projects Section of the Criminal Division; the Assembly of Governmental Employees, represented by its National Executive Director, Mr. James F. Marshall; the Indiana State Employees Association, represented by its executive director, Mr. Charles Eble; and the Indiana State Republican Committee, represented by its chairman, Mr. Thomas S. Milligan.

I am pleased at this time to welcome to our hearing the distinguished Representative from the Fourth District of Indiana, J. Edward Roush.

TESTIMONY OF HON. J. EDWARD ROUSH, A U.S. REPRESENTATIVE FROM THE FOURTH CONGRESSIONAL DISTRICT OF THE STATE OF INDIANA; ACCOMPANIED BY DR. PHYLLIS O'CALLAGHAN, LEGISLATIVE ASSISTANT TO CONGRESSMAN ROUSH

Mr. HUNGATE. Please proceed. You have a prepared statement. Without objection, it will be made part of the record at this point, and you may go forward as you see fit.

[The prepared statement of the Honorable J. Edward Roush follows:]

STATEMENT OF THE HONORABLE J. EDWARD ROUSH

Mr. Chairman: It is a pleasure to appear before you today to testify in support of my bill, H.R. 2920, a bill to amend sections 600 and 601 of Title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity.

These sections of the law date back to 1939 and are part of the original Hatch Act. They read as follows:

SECTION 600 PROMISE OF EMPLOYMENT OR OTHER BENEFIT FOR POLITICAL ACTIVITY

Whoever, directly or indirectly, promises any employment, position, work, compensations, or other benefit, provided for or made possible in whole or in part by any Act of Congress, 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 any election, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Section 600 of Title 18, USC was amended by PL 92-225, the Federal Election Campaign Act of 1971 (Sec. 202) to add primaries and a few other terms, but the essential meaning remains unchanged. (The additions are italicized.)

SECTION 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 one year, or both.

SECTION 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 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 one year, or both.

Specifically, H.R. 2920 will amend Section 601 of Title 18 USC to make it clear that an individual cannot be deprived of or excluded from employment or benefits provided for or made possible in whole or in part by any Act of Congress, on the basis of political activity.

Under the present wording of Section 601, protection against deprivation of employment due to political activity is restricted to work projects funded by Congress. My intent in the bill is to extend the protection of Section 601 to ANY program or activity receiving Federal financial assistance by eliminating the reference to work relief and by adding "in whole or in part" after the phrase "made possible."

Secondly, Sections 600 and 601 are complementary, the first dealing with promises of employment and the latter with deprivation of employment due to political activity or affiliation. In both I would increase the fine that is presently imposed for violations of either of these two sections of the code from the present minimal and meaningless amount of \$1,000 to \$25,000. In the campaign reform legislation we have been passing of late the \$25,000 figure is common and represents a more accurate and fitting punishment for violation of these acts today.

I am pleased to note that the Justice Department concurs in the need for this legislation. Their letter to you indicates that since Section 601 dealing with the denial of benefits on the basis of political activity is confined to federal "relief" projects (indicating the origin of this act), they do not feel they could apply either of these two sections to situations where non-welfare benefits are involved and therefore prosecution of these sections is difficult, if not impossible, on this score. The changes I propose, namely the increase in the fine; the deletion of certain restricting words; and the addition of language extending the scope of Section 601, would make prosecution of violations of these sections of the law prohibiting political discrimination in the form of promises of or denial of employment based on political activity or the lack thereof possible.

I would like to document for you the reasons why I introduced this legislation, particularly from the abuses of political patronage that exist in Indiana. It is my hope that the Justice Department, which has pursued violators of these sections of the law to the extent that has been possible, will provide examples from other states.

Although my testimony will appear to have a partisan ring from here on out, I want to assure my Republican colleagues on the Subcommittee that Democratic Administrations have not been blameless and that, as I will point out later, it was a Democratic Governor who probably started our infamous "Two Percent Club." The State of Indiana has had, and has, the reputation of having one of the most political state employee hiring policies in the nation.

This has been the practice under administrations of both political parties. When a new governor takes over, virtually every state employee, except those who fall under the merit system, is subject to change. A prime example is the State Highway Commission. Not only is a new chairman of the Commission appointed, but also every district engineer may be replaced, usually on the basis of political loyalty rather than ability. This has on occasion deprived the State of qualified dedicated public servants, because they were of the "wrong" political persuasion.

Indiana is thus well known for its Two Percent Club. I believe that this practice of extracting a portion of an employee's wages as tribute cannot be allowed to continue as a pre-condition to employment or to continuance in employment. Political parties should be allowed to support themselves through voluntary contributions, and government employees should have that freedom of expression available to them just as any other citizen. But they should not be deprived of employment or a portion of their compensation after employment. There is no place in the Courthouse or the Statehouse for the bag man. States must have the very best qualified people they can attract to public service; the people deserve no less. Political loyalty should not be the criterion in hiring public employees nor should lack of political loyalty be the criterion for firing them.

I have long been offended by this practice in Indiana and have stood back and restrained myself for too long. My determination to try to do something was strengthened when I learned that lifeguards, young men and women, at the Indiana reservoirs were required to be of a certain political affiliation in order

to get the job and were required to contribute 2% of their wages to the party in power in order to keep their jobs. I found this distressing and ridiculous.

The reservoir issue brought to mind this legislation. Some of these reservoirs are in my present Congressional district and in the Congressional district I represented before redistricting in Indiana in 1968. Listed below are the reservoir projects in Indiana with both the federal and non-federal financial contribution to them through FY 1974. At the time these young lifeguards were having their problems I was struck with the fact that these reservoirs used a great deal of the taxpayers' dollars and that political employment discrimination should not be possible where federal funds are involved at all. (The figures for the reservoir projects in the State of Indiana follow.)

RESERVOIR PROJECTS IN STATE OF INDIANA
CONSTRUCTION, GENERAL
[Amounts in dollars]

| Project | New work expenditures | | |
|---------------------------|-----------------------|--------------|-------------|
| | Total project | Federal | Non-Federal |
| Brookville Lake..... | \$58,354,000 | \$50,158,000 | \$8,196,000 |
| Cagles Mill Lake..... | 4,256,000 | 4,256,000 | ----- |
| Huntington Lake..... | 20,428,000 | 19,714,000 | \$714,000 |
| Cecil M. Harden Lake..... | 7,272,000 | 6,722,000 | \$550,000 |
| Mississinewa Lake..... | 24,641,000 | 23,822,000 | \$819,000 |
| Monroe Lake..... | 17,078,000 | 7,939,000 | \$9,139,000 |
| Salamonie Lake..... | 17,147,000 | 16,610,000 | \$537,000 |

¹ State will pay initial costs allocated to water supply.

² 1 percent (\$193,000) contribution for low-flow augmentation. Recreation costs (\$521,000) based on a 50 to 50 cost-sharing basis.

³ Recreation costs based on a 50 to 50 cost-sharing basis.

⁴ 1 percent (\$238,200) contribution for low-flow augmentation. Recreation costs (\$580,800) based on a 50 to 50 cost-sharing basis.

⁵ State agreed to pay 54.1 percent of initial project cost for water supply (\$8,015,000). Recreation costs (\$1,124,000) based on a 50 to 50 cost-sharing basis.

⁶ 1 percent (\$163,800) contribution for low-flow augmentation. Recreation costs (\$373,200) based on a 50 to 50 cost-sharing basis.

OPERATION AND MAINTENANCE, GENERAL
[Amounts in dollars]

| | Fiscal year put in operation | Federal expenditures (fiscal years) | | |
|------------------------------------|------------------------------|-------------------------------------|----------|--------------|
| | | 1973 | 1974 | Through 1974 |
| Brookville Lake ¹ | 1974 | ----- | \$57,000 | \$57,000 |
| Cagles Mill Lake..... | 1953 | \$157,000 | 266,000 | 1,553,000 |
| Huntington Lake..... | 1969 | 163,000 | 190,000 | 747,000 |
| Cecil M. Harden Lake..... | 1961 | 147,000 | 152,000 | 1,243,000 |
| Mississinewa Lake..... | 1968 | 155,000 | 183,000 | 931,000 |
| Monroe Lake..... | 1965 | 181,000 | 171,000 | 1,152,000 |
| Salamonie Lake..... | 1967 | 176,000 | 177,000 | 1,118,000 |

¹ Brookville Lake project is still under construction. The Federal cost is the current estimate.

My effort to do something at the Federal level was also stimulated by other events. In July, 1973, the General Accounting Office announced that they were "referring to the Attorney General of the United States the question of whether a patronage collection system in the State of Indiana, which provides financial support to political parties, violates Federal Law."

At the same time the Comptroller General of the GAO called the matter to the attention of the Congress, the Secretary of Transportation, and the Chairman of the Civil Service Commission.

GAO's Office of Federal Elections had made an audit and a field investigation of the Indiana Republican State Central Committee covering the period from April 7 to December 31, 1972. Particularly GAO was concerned with possible violations of Section 600 of Title 18 U.S.C. prohibiting "promises of employment made possible, in whole or in part, by any Act of Congress, as a consideration, favor, or reward for any political activity, or for support of a political party."

At that time GAO found approximately 7,400 of Indiana's 12,000 State employees were patronage employees. I would like at this time to quote extensively from the pertinent parts of that GAO release.

The patronage system has been used for many years by both Republican and Democratic Indiana State administrations; the present administration is Republican. Under the system, patronage employees contribute two percent (2%) of their annual earnings to the political party providing their state jobs.

Patronage contributions in 1972 totaled \$375,000 or 46 percent of the total contributions to the State Central Committee of the Republican Party of Indiana.

The GAO audit of payroll records of a sample of 64 employees of the Indiana State Highway Commission showed that 10 of these employees were compensated from Federal funds provided by the Federal Highway Administration.

The report itself contained the following findings.

REPORT OF THE OFFICE OF FEDERAL ELECTIONS ON THE INDIANA REPUBLICAN STATE CENTRAL COMMITTEE

I. BACKGROUND

This report covers an audit and field investigation undertaken by the Office of Federal Elections and the Cincinnati Regional Office of the United States General Accounting Office, under the authority of section 308(a)(11) of the Federal Election Campaign Act of 1971.

The Indiana Republican State Central Committee (Central Committee) is governed by the rules and regulations of the Republican Party of the State of Indiana. The Central Committee is the permanent body for the coordination of all Republican activities in the State. The officers of the Central Committee during the period of our audit were: James T. Neal, Chairman; Betty Rendel, Vice Chairman; Edwin J. Simcox, Secretary; and John Burkhart, Treasurer. Its headquarters are located in Indianapolis.

The audit covered the period from April 7, 1972, the date the Act came into effect, through December 31, 1972, the closing date for the Committee's January 31 report. During this period the Central Committee reported receipts of \$1,714,202 and expenditures of \$1,704,605.

II. FINDINGS AND CONCLUSIONS

A. Promise of Employment or Other Benefit for Political Activity or Support

Section 600 of title 18 of the United States Code (as amended by section 202 of the Federal Election Campaign Act of 1971) prohibits the direct or indirect promise of employment or compensation, provided for or made possible in whole or in part by any Act of Congress, to any person as a consideration or reward for that person's support of any political party in connection with any primary or general election to any political office.

A patronage system has been in effect for many years in the State of Indiana. At present, approximately 60 percent of the State government's employees, or 7,400 persons, are patronage employees. Under this system patronage employment is primarily dependent upon political party affiliation. It has been used by both Democratic and Republican administrations and changes in party administration have resulted in near complete and abrupt turnover in patronage positions.

Patronage collections are an important source of financing for political parties. The present Governor is a Republican, and we estimate that, during 1972, patronage contributions to the Republican State Central Committee aggregated approximately \$375,000, or 46 percent of the total contributions received by the Central Committee. The Democratic Party also received patronage contributions through offices under the control of that party.

Patronage employees are expected to contribute to the political party at the rate of two percent of their State earnings. Prior to employment, an individual applying for a patronage position must complete a Patronage Clearance Form which, among other data, requires the endorsements of 10 party functionaries ranging from Precinct Vice-Committeeman to the State Chairman. This form also contains the following two questions: (1) "What is your political party affiliation?" and (2) "Would you be willing to contribute regularly to the Indiana Republican State Central Committee?"

Under existing Federal law the administrative expenses of a number of programs administered by States are paid in part from Federal funds. Among these is the Highway program. To establish the relationship between the patronage

payments and Federal funds, we examined the payroll records for a sample of 64 State patronage employees of the Indiana State Highway Commission (Commission) who were regularly contributing money to the Central Committee.

We identified the names and salaries of ten of these 64 employees on vouchers submitted by the Commission to the Federal Highway Administration as support for Federal Highway Administration payments to the Commission of a percentage of the State's cost of highway projects. Based on the vouchers, the Federal Highway Administration made payments to the Commission from the Highway Trust Fund pursuant to specific project agreements authorized under Public Law 85-767.

Under the patronage collection procedures employed by the State Highway Commission, a patronage personnel section in the Commission is directly responsible for interviewing and hiring for patronage positions. This section also maintains comprehensive records of annual employee pledges as well as records of collections based on those pledges. The Director of Patronage Personnel in the State Highway Commission stated that she has the authority to suspend pay increases in cases where employees make inadequate donations. However, she stated that it had been unnecessary to exercise this authority because each employee accepting State employment in a patronage position knows what contributions are expected.

To the extent that these ten employees or other State patronage employees receive compensation "provided for or made possible in whole or in part by any Act of Congress," we believe that the promises of continued employment, compensation, or other benefits made by State officials as consideration for financial support of a political party are in apparent violation of 18 U.S.C. 600.

We recommend a referral of this matter to the Attorney General for his determination whether the facts developed by our audit justify further action, particularly in the light of the broadening amendment of 18 U.S.C. 600 by the Federal Election Campaign Act. Because of their continuing interest and administrative jurisdiction under non-criminal provisions of the Hatch Act (5 U.S.C. 1501 et. seq.), we also recommend forwarding copies of this report to the Secretary of Transportation and the Chairman of the Civil Service Commission.

We further recommend that this matter be brought to the attention of the Congress for consideration whether legislative action may be warranted.

This GAO report offers a clear and unbiased account of how the infamous political kickback system has worked in Indiana.

Following the audit and investigation, the GAO then accepted the recommendation of the director of their Office of Federal Elections and referred the matter to the Attorney General of the United States to determine if legal action was justified, also to the Civil Service Commission, the Department of Transportation, and the Congress "for its consideration as to whether legislative action may be warranted."

No action was forthcoming from the Justice Department, which probably found, as their letter to this Committee indicates in general although not in this specific case, that prosecution was difficult under the present language of Sections 600 and 601. Justice Department representatives are here and can respond to this themselves. The Department of Transportation left the matter up to the discretion of the Civil Service Commission and the Commission undertook an investigation in Indiana. My understanding is that they did not find sufficient evidence to establish a case against an individual, which perhaps has also been a problem the Justice Department has faced.

H.R. 2920 is the response from this particular Indiana Congressman. It is my effort to put an end to this Two Per Cent Club and all that it stands for.

Despite a 1973 Indiana law to the contrary the Two Percent Club in Indiana is alive and well, unfortunately. The 1973 law which became effective July 2 of that year provides that no State employees may solicit or receive by solicitation political contributions, nor could such contributions be required of them. (Indiana Code, Title 60, Section 1314.)

I have a copy of a letter to one of our State officials which one of my constituents wrote and sent to me. This was written last November and describes an active political patronage system. I enclose a copy with proper names deleted.

"I am an employee of the Indiana State Highway Commission, Fort Wayne District, classified as an Equipment Operator II. I have worked for the Highway Commission for 2 years and I'm participating in the Commission's Educational Assistance Plan, attending Purdue Extension on my own time in pursuit of a degree in Civil Engineering Technology.

"This letter is being written with all due respect to you and your administration, but there are some things going on within the Highway Commission that I strongly feel need to be brought to your attention. The other day I was in the gas house at our District Garage when—approached me. He asked me if I had filled out my Educational Assistance application forms for the next semester. When I answered affirmatively, he pointed out to me that I was behind in my 2% patronage payments and that I couldn't plan on him signing them until I paid up some money. Now, to my knowledge, the Educational Assistance Plan is funded by taxpayer's money, not by the Republican State Central Committee; therefore, the fact that I do or don't have my 2% paid up should be immaterial. There is no doubt to the fact that this type of political coercion has been exercised countless times in the past, and I have a witness that will verify this particular instance.

"This type of pressure, to the best of my knowledge, is being exerted throughout Fort Wayne District, and I assume throughout the state. Two employees of Goshen Sub-District were dismissed last week. I believe that it was more than coincidental that they were behind in their 2% as well. You have stated publicly several times that this patronage system is voluntary and no one would be reprimanded for failure to pay this money. I would sincerely appreciate your reassurance that this will not happen to me. In addition, I have an annual raise due to me next month. I'm sure I will be told, as I was last year, that it will not be approved until I have paid my 2% payments.

"I am trying to stress the fact that your subordinates have taken this patronage system far beyond the realm of volunteerism. I do not blame you and have great admiration for your administration. We all appreciated the raise last year. But that was last year and time goes on. We employees that are withholding our 2% in sympathy with the ISEA have no personal objections to you or your administration. We simply do not appreciate being constantly pressured for money, when we have financial problems of our own.

"My ultimate desire is to pursue a career with the Highway Commission. I have a desire to work for the government, but my conscience will not allow me to put up with any undue political coercion. I may even be fired for writing this letter to you. But you have a right to be informed of this situation, and that knowledge is more important to me than the possibility of losing my job. Please take this matter to heart."

That constituent asked that I do something. February 5, 1975 I did so. I introduced this legislation before us today.

There are many examples of the fact that the 2% system still prevails. Just last week a study group designed to find ways to improve the Indiana Republican Party was described in The Indianapolis Star, October 8, as voting to retain the Two Percent Club which, the newspaper noted, "accounted for 26 per cent of the State Central Committee's 1974 budget of nearly \$2 million." This newspaper article further revealed the inoperability of the 1973 Indiana law when it quoted the State GOP Chairman as listing the following increases in contributions each month from the pay checks of state patronage employees: the \$238,000 in 1972 increased to \$438,000 in 1973, thence to \$544,000 in 1974 and to an estimated \$500,000 this year. These were described as "voluntary" contributions. Workers, according to the August 5, 1973 Courier-Journal & Times, have "involuntarily" forked over their 2%.

In an October 12, 1975 article The Indianapolis Star concluded that: "Patronage still is the name of the game in state government and political party financing." This is a long time practice in Indiana and the cloak of voluntarism does nothing to hide it. I would be the first to say that it is a practice common to both political parties, some would even point to a former Democrat as the founder of the Two Percent Club over 40 years ago and the October 12 issue of The Star noted that Democrats only collected about \$621 a month in political patronage—because the Democrats control so few key state positions. I have with me some examples I would like to read that indicate how common the practice still is.

Obviously, then, this legislation, H.R. 2920 is needed. No one can guarantee that it will reach all the offenders, but it will close a loophole that the Justice Department indicates needs to be closed.

As I read this bill I have introduced, it seems to me that it would reach all employees of state and local government who are working on projects receiving any federal funds. The legislation prohibits political discrimination where federal funds are involved "in whole or in part by any Act of Congress." The picture has changed a great deal since the 1930's. Federal funds are a vital and essential element in many state and local programs involving health, education,

law enforcement, manpower training, community development, water pollution control programs. It is my expectation that all those individuals employed by the state in positions where there is a federal-state match or in positions made by the Two Percent Clubs and those hiring these employees will find themselves subject possible in whole or in part by federal funds will find themselves unreachable to fine and/or imprisonment if they make demands regarding political affiliation or contribution. That will be a great day in Indiana and in all other states when contributions to a political party can no longer bear the stigma of "kick-backs" labels because they result from subtle threats of deprivation of employment or compensation from a political party.

Mr. ROUSH. Thank you, Mr. Chairman. I have seated with me Dr. Phyllis O'Callaghan, my legislative assistant, who has been of great help in the preparation of this legislation and the testimony I am about to give, and, Mr. Chairman, my testimony is somewhat lengthy. There will be certain parts which I will omit in my oral presentation. However, I would hope that the entire testimony might be made part of your record.

Mr. HUNGATE. Without objection, it will be so ordered.

Mr. ROUSH. I want to thank the subcommittee for giving me the opportunity of testifying on this piece of legislation this morning, and it is my pleasure to appear to testify in support of H.R. 2920, a bill to amend sections 600 and 601 of title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any act of Congress, on the basis of political activity.

These sections of the law date back to 1939 and are part of the original Hatch Act. They read as follows:

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

Whoever, directly or indirectly, promises any employment, position, work, compensations, or other benefit, provided for or made possible in whole or in part by any Act of Congress, 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 an any election, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Section 600 of title 18, United States Code was amended by Public Law 92-225, the Federal Election Campaign Act of 1971 (sec. 202), and certain terms were added. I will not read that portion, Mr. Chairman. However, that which was added really did not go to the substance of the bill, but merely expanded it somewhat, that is, the substance of law.

Now, section 601 of the present law, "Deprivation of employment or other benefit for political activity," reads as follows:

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 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 one year, or both.

Specifically, H.R. 2920 will amend section 601 of title 18, U.S.C. to make it clear that an individual cannot be deprived of or excluded from employment or benefits provided for or made possible in whole or in part by any act of Congress, on the basis of political activity.

Under the present wording of section 601, protection against deprivation of employment due to political activity is restricted to work projects funded by Congress. My intent in the bill is to extend the

protection of section 601 to any program or activity receiving Federal financial assistance by eliminating the reference to work relief and by adding "in whole or in part" after the phrase "made possible."

Second, sections 600 and 601 are complementary, the first dealing with promises of employment and the latter with deprivation of employment due to political activity or affiliation. In both, I would increase the fine that is presently imposed for violations of either of these two sections of the code from the present minimal and meaningless amount of \$1,000 to \$25,000. In the campaign reform legislation we have been passing of late the \$25,000 figure is common and represents a more accurate and fitting punishment for violation of these acts today.

I am pleased to note that the Justice Department concurs in the need for this legislation. Their letter to you, Mr. Chairman, indicates that since section 601 dealing with the denial of benefits on the basis of political activity is confined to Federal "relief" projects, indicating the origin of this act, they do not feel they could apply either of these two sections to situations where nonwelfare benefits are involved and therefore prosecution of these sections is difficult, if not impossible, on this score. The changes I propose—namely, the increase in the fine, the deletion of certain restricting words, and the addition of language extending the scope of section 601—would make prosecution of violations of these sections of the law prohibiting political discrimination in the form of promises of or denial of employment based on political activity or the lack thereof possible.

I would like to document for you the reasons why I introduced this legislation, particularly from the abuses of political patronage that exist in Indiana. And I might add, Mr. Chairman, if under the law this could happen in Indiana, it could happen in any State in the Union.

It is my hope that the Justice Department, which has pursued violators of these sections of the law to the extent that has been possible, will provide examples from other States.

Although my testimony will appear to have a partisan ring from here on out, I want to assure my Republican colleagues on the subcommittee that Democratic administrations have not been blameless and that, as I will point out later, it was a Democratic Governor who probably started our infamous "Two Percent Club."

The State of Indiana has had, and has, the reputation of having one of the most political State-employee hiring policies in the Nation.

This has been the practice under administrations of both political parties. When a new Governor takes over, virtually every State employee, except those who fall under the merit system, is subject to change. A prime example is the State highway commission. Not only is a new chairman of the commission appointed, but also every district engineer may be replaced, usually on the basis of political loyalty rather than ability. This has on occasion deprived the State of qualified, dedicated public servants, because they were of the "wrong" political persuasion.

Indiana is thus well known for its "Two Percent Club." I believe that this practice of extracting a portion of an employee's wages as tribute cannot be allowed to continue as a precondition to employment or to continuance in employment. Political parties should be allowed

to support themselves through voluntary contributions, and Government employees should have that freedom of expression available to them just as any other citizen. But, they should not be deprived of employment or a portion of their compensation after employment. There is no place in the courthouse or the statehouse for the bagman. States must have the very best qualified people they can attract to public service; the people deserve no less. Political loyalty should not be the criterion in hiring public employees nor should lack of political loyalty be the criterion for firing them.

I have long been offended by this practice in Indiana and I with many others have stood back and I have restrained myself for too long. My determination to try to do something was strengthened when I learned that lifeguards, young men and women, at the Indiana reservoirs were required to be of a certain political affiliation in order to get the job and were required to contribute 2 percent of their wages to the party in power in order to keep their jobs. I found this distressing and ridiculous.

The reservoir issue brought to mind this legislation. Some of these reservoirs are in my present congressional district and in the congressional district I represented before redistricting in Indiana in 1968. And, Mr. Chairman, I have listed the reservoir projects and I was struck with the fact that these lifeguards were having their problems and that much of the money that went into the reservoirs was Federal funds and I have listed for you the various projects in Indiana and you will note the amount of Federal funds that went into construction and the amount of Federal funds that goes into the operation and maintenance of these reservoirs.

I might add, Mr. Chairman, that the reservoir, although constructed primarily with Federal funds, 99 percent, I believe, or 95 percent, have been leased to the State although built with Federal funds, and that is the way the State comes into the picture on this Two Percent Club and on the discriminatory hiring practices.

Now, my efforts to do something at the Federal level were stimulated by other events. In July of 1973 the General Accounting Office announced that they were "referring to the Attorney General of the United States the question of whether a patronage collection system in the State of Indiana, which provides financial support to political parties, violates Federal law."

At the same time the Comptroller General of the GAO called the matter to the attention of the Congress, the Secretary of Transportation, and the Chairman of the Civil Service Commission.

GAO's Office of Federal Elections had made an audit and a field investigation of the Indiana Republican State Central Committee covering the period from April 7 to December 31, 1972. Particularly, GAO was concerned with possible violations of section 600 of title 18, U.S.C., prohibiting "promises of employment made possible, in whole or in part, by any act of Congress, as a consideration, favor, or reward for any political activity, or for support of a political party."

At that time GAO found approximately 7,400 of Indiana's 12,000 State employees were patronage employees. I would like at this time, at least in my written testimony, to quote extensively from the pertinent parts of that GAO release.

It states, among other things:

The GAO audit of payroll records of a sample of 64 employees of the Indiana State Highway Commission showed that 10 of these employees were compensated from Federal funds provided by the Federal Highway Administration.

I would like to quote another paragraph:

Patronage employees are expected to contribute to the political party at the rate of two percent of their State earnings. Prior to employment, an individual applying for a patronage position must complete a Patronage Clearance Form which, among other data, requires the endorsements of 10 party functionaries ranging from Precinct Vice-Committeeman to the State Chairman. This form also contains the following two questions: One "What is your political party affiliation?" and two, "Would you be willing to contribute regularly to the Indiana Republican State Central Committee?"

Under the patronage collection procedures employed by the State Highway Commission, a patronage personnel section in the Commission is directly responsible for interviewing and hiring for patronage positions. This section also maintains comprehensive records of annual employee pledges as well as records of collections based on those pledges. The Director of Patronage Personnel in the State Highway Commission stated that she has the authority to suspend pay increases in cases where employees make inadequate donations. However, she stated that it had been unnecessary to exercise this authority because each employee accepting State employment in a patronage position knows what contributions are expected.

The GAO report, of course, is available to the subcommittee, Mr. Chairman, and if the subcommittee does not have a copy, I have a copy which I will supply for you.

This GAO report offers a clear and unbiased account of how the infamous political kickback system has worked in Indiana.

Following the audit and investigation, the GAO then accepted the recommendation of the Director of their Office of Federal Elections and referred the matter to the Attorney General of the United States to determine if legal action was justified. It also referred the matter to the Civil Service Commission, the Department of Transportation, and the Congress "for its consideration as to whether legislative action may be warranted."

No action was forthcoming from the Justice Department, which probably found, as its letter to this subcommittee indicates in general although not in this specific case, that prosecution was difficult under the present language of sections 600 and 601. Justice Department representatives are here or will be, I understand, Mr. Chairman, and can respond to this themselves. The Department of Transportation left the matter up to the discretion of the Civil Service Commission, and the Commission undertook an investigation in Indiana. My understanding is that they did not find sufficient evidence to establish a case against an individual, which perhaps has also been a problem the Justice Department has faced.

H.R. 2920 is the response from this particular Indiana Congressman. It is my effort to put an end to this Two Percent Club and all that it stands for.

Despite a 1973 Indiana law to the contrary, the Two Percent Club in Indiana is alive and well, unfortunately. The 1973 law, which became effective July 2 of that year, provides that no State merit employees may solicit or receive by solicitation political contributions, nor could such contributions be required of them—Indiana Code, title 60, section 1314.

I have a copy of a letter to one of our State officials which one of my constituents wrote and sent to me. It was written last November and describes an active political patronage system.

I am enclosing a copy and I would like to read that letter at this time, Mr. Chairman, and I am now reading the letter from the constituent, and I have deleted certain names:

I am an employee of the Indiana State Highway Commission, Fort Wayne District, classified as an Equipment Operator II. I have worked for the Highway Commission for two years and I'm participating in the Commission's Educational Assistance Plan, attending Purdue Extension on my own time in pursuit of a degree in Civil Engineering Technology.

This letter is being written with all due respect to you and your administration—this was not written to me—but there are some things going on within the Highway Commission that I strongly feel need to be brought to your attention.

The other day I was in the gas house at our District Garage when _____ approached me. He asked me if I had filled out my Educational Assistance application forms for the next semester. When I answered affirmatively, he pointed out to me that I was behind in my 2 percent patronage payments and that I couldn't plan on him signing them until I paid up some money. Now, to my knowledge, the Educational Assistance Plan is funded by taxpayers' money, not by the Republican State Central Committee; therefore, the fact that I do or don't have my 2 percent paid up should be immaterial. There is no doubt to the fact that this type of political coercion has been exercised countless times in the past, and I have a witness that will verify this particular instance.

This type of pressure, to the best of my knowledge, is being exerted throughout Fort Wayne District, and I assume throughout the State. Two employees of Goshen Sub-District were dismissed last week. I believe that it was more than coincidental that they were behind in their 2 percent as well. You — have stated publicly several times that this patronage system is voluntary and no one would be reprimanded for failure to pay this money. I would sincerely appreciate your reassurance that this will not happen to me. In addition, I have an annual raise due to me next month. I'm sure I will be told, as I was last year, that it will not be approved until I have paid my 2 percent payments.

I am trying to stress the fact that your subordinates have taken this patronage system far beyond the realm of volunteerism. I do not blame you and have great admiration for your administration. We all appreciated the raise last year. But that was last year and time goes on. We employees that are withholding our 2 percent in sympathy with the I.S.E.A. have no personal objection to you or your administration. We simply do not appreciate being constantly pressured for money, when we have financial problems of our own.

My ultimate desire is to pursue a career with the Highway Commission. I have a desire to work for the government, but my conscience will not allow me to put up with any undue political coercion. I may even be fired for writing this letter to you. But you—have a right to be informed of this situation, and that knowledge is more important to me than the possibility of losing my job. Please take this matter to heart.

That constituent in his letter to me asked me to do something.

On February 5, 1975, I did so. I introduced the legislation which is before us today.

There are many examples of the fact that the 2 percent system still prevails. Just last week a study group designed to find ways to improve the Indiana Republican Party was described in the Indianapolis Star, October 8, as voting to retain the Two Percent Club which, the newspaper noted, "accounted for 26 percent of the State central committee's 1974 budget of nearly \$2 million." This newspaper article further revealed the inoperability of Indiana law when it quoted the State GOP chairman—and he is here today, Mr. Chairman—as listing the following increases in contributions each month from the pay checks of State patronage employees: The \$238,000 in 1972 increased to \$438,000 in 1973, thence to \$544,000 in 1974 and to an estimated \$500,000 this year. These were described as "voluntary" contributions. Workers, according to the August 5, 1973 Courier-Journal & Times, have "involuntarily voluntarily" forked over their 2 percent.

In an October 12, 1975 article, the Indianapolis Star concluded that: "Patronage still is the name of the game in State government and political party financing." This is a long-time practice in Indiana and the cloak of voluntarism does nothing to hide it. I would be the first to say that it is a practice common to both political parties. Some would even point to a former Democrat as the founder of the Two Percent Club over 40 years ago, and the October 12 issue of the Star noted that Democrats only collected about \$621 a month in political patronage—because the Democrats control so few key State positions. I have with me some examples I would like to call to your attention to indicate how common the practice still is.

Mr. Chairman, I did not make copies. I think I have perhaps sufficient copies here for all the members in attendance today.

The first exhibit I am referring to, or extraneous matter I am referring to, has a letterhead, Indiana Republican State Central Committee and what it does is to give instructions as to how the 2 percent is to be collected. Then, Mr. Chairman, I have included a letter from a young friend of mine who is now in the Indiana House of Representatives. He refers to this bill and informs me in this letter that, "just the other week I had a call from a State highway employee who was told that he wouldn't be given a raise until he paid his 2 percent."

Another case I had this year was a laborer at a State fish and wildlife area who was refused a pay increase of 11 cents an hour because of "improper attitude toward the department of natural resources," translated to mean failure to pay 2 percent. It goes on to relate his own personal experience and the fact that he lost his job because he had not paid the 2 percent.

I come from a little town in Indiana and we have a rather active high school there. We have some of the finest swimmers in the Nation in my hometown, Mr. Chairman, and many of these young people like to work as lifeguards on the three reservoirs in the area. I have included here an editorial from the school newspaper and a rather impressive story of how one young man went through the political system in order to get a job. He didn't get it, as the article will point out, but I would hope that the members of the subcommittee might read that letter.

I have a copy of another letter and it was written by a friend of mine, Mr. Chairman. He is the Republican county chairman in Whitley County. His father is a former Governor of Indiana. He is very active in local civic affairs as well as political affairs, and he concludes his letter making an appeal for voluntary contributions by saying:

We ask for your cooperation and certainly hope that you are not delinquent when the list is sent to the Governor on February 29.

Now, those are rather old. And then, I have a form here which goes back to 1971.

Patronage payments are due on Monday after pay on Friday. Payments not made by Tuesday noon mean automatic dismissal.

Another one here which is dated March of 1973:

Your application for political clearance has been processed and approved by the Indiana Republican State Central Committee. This card may be used as proof of political clearance.

A letter from the superintendent of the State Highway Commission states:

Gentlemen, when you hired into the State Employment you were informed then, that each and every paycheck you received, two (2) percent was due and payable to the Republican Party.

Now, I did not make this rule, but I have been charged with collecting this two (2) percent and turning it in.

It is not fair for your fellow workmen to pay his share and you letting it go this way. [sic] I am warning you to "shape up or ship out". This must be paid in full by March 11, 1974 or I will be in the process of making out 104's which means letting you go.

I have another handwritten letter from the Washington Country Republican Central Committee and a rather recent article, dated the 8th of September, 1974, in which the Republican State Chairman Thomas S. Milligan—and as I indicated, he is here, Mr. Chairman, so I'm not talking behind his back—is quoted as saying that he would recommend firing State patronage workers who renege on pledges to voluntarily contribute 2 percent of their pay to the party.

Finally, with due credit to a former Republican Governor of Indiana, Mr. Chairman, I have a directive issued back in May of 1971 by then-Governor Whitcomb. It states:

I am directing the department heads of this administration to cease the collection of 2 percent political contributions effective with the May pay period.

Obviously, Mr. Chairman, that is a directive which was never followed.

To me this is legislation which is needed. No one can guarantee that it will reach all offenders, but as the Justice Department in its communication to the subcommittee indicates, it will close a loophole that needs to be closed.

It seems to me that my bill would reach all employees of State and local government who are working on projects receiving any Federal funds. The legislation prohibits political discrimination where Federal funds are involved "in whole or in part by any act of Congress."

The picture has changed a great deal since the 1930's. Federal funds are a vital and essential element in many State and local programs involving health, education, law enforcement, manpower training, community development, water pollution control. It is my expectation that all those individuals employed by the State in positions where there is a Federal-State match or in positions made possible in whole or in part by Federal funds will find themselves unreachable by the Two Percent Club and that those persons hiring these employees will find themselves subject to fine and/or imprisonment if they make demands regarding political affiliation or contribution. It will be a great day in Indiana and in all other States when contributions to a political party can no longer bear the stigma of "kickback" labels because they result from subtle threats of deprivation of employment or compensation from a political party.

Again, Mr. Chairman, I realize I have dwelt on the State of Indiana and on its system, but I think this Two Percent Club amounts to a "kickback." It is an unsavory tribute. It violates the spirit of campaign reform. It is demeaning to politics and the political process, and I would hope, Mr. Chairman, that your subcommittee would give favorable consideration to the bill which I have introduced.

Thank you, Mr. Chairman.

MR. HUNGATE. Thank you, Mr. Roush, for calling this problem to our attention and for the legislative proposal you have presented to us.

The Chair recognizes Mr. Wiggins for 5 minutes.

Mr. WIGGINS. Thank you, Mr. Chairman, for yielding to me first because I must leave and I would like to ask several questions.

At the outset, it must be noted by all the members that section 601 is not limited to a payment of money, but speaks of deprivation of employment by reason of support or lack thereof of a political candidate. It is also to be noted that by its terms, no class of employee is exempt save only that the employee has to benefit directly or indirectly as the result of a Federal program in some way.

Given general revenue sharing and given the pervasive nature of Federal funding in State activities, I think it is safe to conclude that very few State employees, maybe none, could not trace part of their compensation to some Federal matching fund, in some measure.

Now, if that be true, I have a series of questions. You may disagree with the premise, but you did mention that nearly all employees would be covered and I think that would be true.

Could the Governor of a State fire his administrative assistant for failing to support the Governor in a campaign for reelection?

Mr. ROUSH. I cannot see in that instance that we have a Federal Government in any way paying the Governor's salary or running the Governor's office. I can't see that that would be the case there.

Mr. WIGGINS. Well, is it your intention that political officers elected in a State would be prohibited from hiring their principal assistants on the basis of party affiliation?

Mr. ROUSH. I think my intention is that a person could not be deprived of employment because of party affiliation.

Mr. WIGGINS. Would it be inappropriate for a new Governor coming in to inquire of a political affiliation of his principal staff assistants?

Mr. ROUSH. No. I do not think it would be inappropriate to inquire. No, I do not.

Mr. WIGGINS. You don't think the Justice Department could put together a conspiracy case if he hired only Democrats or Republicans, if that were compatible with the State administration?

Mr. ROUSH. No. No, I don't as a matter of fact, in its letter to the subcommittee the Justice Department points out how difficult it is to prosecute a conspiracy case and I'm sure that you as a lawyer and I as a lawyer both know that.

Mr. WIGGINS. Do you think the legislation would be strengthened if we exempted a certain category of employees? I don't know what the analogy would be but I understand there is something called schedule C in the Federal system which represents Presidential appointees and I would gather that under the present administration there is high incidence of Republicans being hired under that schedule and I have no doubt that they are hired in part because of their prior political affiliation. Is there room for such an exemption in the statute to which you propose?

Mr. ROUSH. Well, there is room for it, I think, but I just wonder if that would pertain because the people who are hired at that level are primarily administration officials whose activities do not relate to a Federal act.

Mr. WIGGINS. Assuming that—

Mr. ROUSH. Now, if there is room for it I would have no objection to it. I think a Governor deserves to have a staff that is loyal to him, whether he is Republican or Democrat. What I do object to—well,

I might point out that in Indiana now with our merit system that we don't particularly have this trouble but it is with the nonmerit employees and in fact it is with the employees at the very lowest level that we have the problem.

Mr. WIGGINS [continuing]. Surely, and I appreciate the problem there but the statute is not so limited and I hope that we do not pass a law that will prevent a Governor from assembling a politically compatible staff at the upper echelons and frankly discharging them if they cease to manifest that loyalty in the future.

Mr. ROUSH. Mr. Wiggins, it seems to me if I were a Governor of a State I would be concerned, of course, about the political affiliation of an individual but I would be primarily concerned with the ability of that person to perform in that job, and while political consideration would come into the picture, my concern would rest primarily with his ability and that I would not therefore be depriving him of employment because of his political affiliation. I would be depriving him of employment because he either lacked the ability or I found someone else who had the ability and did fit my political persuasion.

Mr. WIGGINS. I understand those are high-sounding words but I tell you, if my administrative assistant, whom I hired on the basis of his perceived loyalty to me, campaigned for my opponent, I would fire him and I think you would do the same. If you wouldn't you would be foolish.

I just want to raise the problem as an area we ought to consider because the legislation is sweeping and Federal money seems to be infused in almost every corner of a State function nowadays.

Other questions. Is a purely voluntary, unsolicited political contribution to be prohibited?

Mr. ROUSH. Absolutely not.

Mr. WIGGINS. Is the simple solicitation without more, and assume for the purposes of the question that there is no other evidence of coercion, but simple solicitation by a party, nongovernment official inappropriate under the legislation?

Mr. ROUSH. No.

Mr. WIGGINS. Is simple solicitation without more by a government official prohibited by the legislation?

Mr. ROUSH. I'm sorry. I don't understand that question.

Mr. WIGGINS. Could the Governor solicit the State employees, if you had no other evidence of coercion other than the fact that he was a Governor? And confine the answer to solicitation.

Mr. ROUSH. I would assume that that could be the case. I think as in any criminal act you are going to have to find an intent to violate the act.

Mr. WIGGINS. What about collection as well as solicitation? Without more. That is, could the money be paid to your immediate supervisor?

Mr. ROUSH. Well, now, you are getting close to the line.

Mr. WIGGINS. Agreed.

Mr. HUNGATE. The gentleman's time has expired.

Mr. WIGGINS. If you would care to answer for the record later I would appreciate it.

Mr. HUNGATE. You may complete your answer now if you want to.

Mr. ROUSH. As I said, he is close to the line and I think it would be a matter for a Federal prosecutor to determine whether or not the

spirit of the law, rather, the letter of the law, the intent of the law had been violated.

Mr. HUNGATE. Without objection, the extraneous material to which you referred earlier in your testimony will be made a part of the record.

Ms. Holtzman?

Ms. HOLTZMAN. Thank you, Mr. Chairman.

Mr. Roush, I want to compliment you on bringing this serious problem to our attention. I would hope that you would reconsider your answer to the last question because it seems to me that if direct superiors, in fact, make political solicitations you are not really at the line of coercion you are over the line. Direct superiors may make recommendations for promotions. I am sure they make all kinds of discretionary decisions with respect to job evaluation and the like. If a superior is soliciting subordinates for a political contribution, then there certainly is a very clear implication that the subordinate ought to respond and I think that the pressure would be very strong. If the bill is enacted, I would hope that we don't leave hanging the matter of superior's solicitation of political contributions.

Let me ask you a question about State enforcement of State laws respecting this problem, because it seems to me that since, as you indicate, almost every employee in the State would be covered, we are talking about the Federal Government's taking a big step forward with respect to regulation of certain State laws. I gather there is a law in Indiana prohibiting this kind of 2 percent activity?

Mr. ROUSH. That is right. I cited that in my testimony, Ms. Holtzman.

Ms. HOLTZMAN. What is the history of enforcement of that statute?

Mr. ROUSH. Well, as I indicated also by my testimony, there has been very little enforcement, if any, of that State law.

Ms. HOLTZMAN. Has there been any enforcement of the statute?

Mr. ROUSH. Well, I can't answer with authority. I don't know of any time that it was enforced or where people were prosecuted for its violation. But, I can't answer authoritatively and say that prosecutions were not made for violations of the 1973 State law.

Ms. HOLTZMAN. I think it would be helpful to have in the record some indication of why Indiana isn't enforcing its own laws in this respect.

Mr. ROUSH. I would be glad to try to get for the subcommittee a statement from the attorney general of the State of Indiana or any other person who would be charged with the enforcement of that particular section of the Indiana law.

Ms. HOLTZMAN. Thank you very much. I have no further questions.

Mr. HUNGATE. What would be a reasonable length of time in which to obtain that response?

Mr. ROUSH. Well, I shall write the letter today, Mr. Chairman, and I don't know how long.

Mr. HUNGATE. Well, without objection, we will leave the record open for that response for 30 days from today. Is that reasonable?

Mr. ROUSH. And it is quite possible that other witnesses who are scheduled to appear before you are more knowledgeable than I.

Mr. HUNGATE. We may get the answer today.

Mr. ROUSH. It is possible.

Mr. HUNGATE. The gentleman from Illinois, Mr. Hyde, is recognized for 5 minutes.

Mr. HYDE. Well, thank you, Mr. Chairman. I just would briefly state my sympathy with the purposes of the sponsor of this bill. I think compelling financial contributions from people is not appropriate conduct. But I wonder if we aren't killing a fly with a sledge hammer here with this law. I'm very concerned that a person whose political loyalty is important to that post and who could switch his political loyalties for one reason or another could be locked into his job and I want to think about that some more.

For example, if your own administrative assistant were suddenly to vigorously support George Wallace's candidacy—I'm just picking Mr. Wallace as an example of someone I assume you do not support—would you be able to fire him? I don't think so by looking at this law. I really don't.

What about hiring? A pernicious practice in my community in my metropolitan area, is that you don't get these jobs without a letter from some political potentate and this doesn't cover that. Frankly I would like to see it broader in that sense. I would like to see these jobs open to people of any and all political persuasion, race, color, creed, et cetera.

You talk about a person not being deprived of a job for political activity or opposition but what about hiring in the first place? Let's go all the way and let's open these jobs to first come, first serve.

Mr. ROUSH. Well, Mr. Hyde, section 600 rather effectively deals with the promise of employment and it is the deprivation of employment and compensation that we are concerned with here.

Under the present law under section 601, the deprivation provision applies only to work relief programs and does not apply generally as does section 600 which relates to the promise of employment.

Mr. HYDE. I know what 600 does and I don't think it meets the problems of having to get clearance from your precinct captain or your ward committeeman before you are interviewed for the job. Get me a letter from the ward committeeman and then we will interview you. But, OK. Suppose your administrative assistant starts wearing George Wallace buttons around the office. Are you precluded from firing him?

Mr. ROUSH. That would be the day that my administrative assistant would ever wear a George Wallace button. I don't think he would because of personal convictions.

Mr. HYDE. I understand, but if this becomes the law, what can you do about it?

Mr. ROUSH. I must confess to you I have not given that particular point, as I have indicated to Mr. Wiggins, thought and consideration. I think it should be considered. I think that, as I indicated—I think the Governor should have certain leeway in the conduct of his office. I think we should have leeway in the conduct of our office in the selection of our people. I would just have to give it additional thought, Mr. Hyde, to be frank with you. I appreciate what you say.

Mr. HYDE. I don't have an answer either and as I say, I am sympathetic to what you are trying to do. Let's all think about it and maybe we can come up with something.

Thank you. I yield back my time.

Mr. HUNGATE. Thank you, Mr. Hyde.

The Chair recognizes the gentleman from Illinois, Mr. Russo, for 5 minutes.

Mr. Russo. Thank you. Just a comment at this point. I would like to think part of our function as a legislative subcommittee is to see to it that the legislation is drafted with the intent of all parties. I certainly wouldn't stand for legislation that would say that if my administrative assistant should be sympathetic to my opponent that I wouldn't have the right to release him. I think loyalty is very important in any branch of government. I think the problem we are talking about here is something different. I would like to know how many complaints have been filed with the attorney general of the State of Indiana and, if any were filed, what action the attorney general took. If complaints were not filed with the attorney general, where would the proper complaint be filed in Indiana under the law? Reading some of these letters, there arises the possibility of collusion between the State attorney general and members of his political party not to enforce this law. It is obvious to me, from your statement, that the law prohibits the practice of employee kickbacks. The statements made in these letters are a flagrant violation of that law and a challenge to the entire judicial system of the State of Indiana. I think the attorney general, or any local prosecutor, who fails to perform his job in this respect ought to be a possible subject for an indictment. Also, I was wondering why someone in the State of Indiana hasn't proposed legislation for a special prosecutor to step into this particular situation if they are not getting any help from their attorney general.

Maybe the Democrats don't want reform either because they are doing the same thing. I think these are all questions that we ought to have before our subcommittee. We should find out what is going on; why Indiana is not enforcing the law; and why it is necessary for a Congressman to propose a change in the Federal law when the Indiana law itself is very specific and prohibits this.

Mr. ROUSH. Mr. Russo, may I speak to that for a moment?

Mr. Russo. Sure.

Mr. ROUSH. You put your finger on it. I am not in favor with my political party heads right now because of the introduction of this legislation. Right now we sit on the sidelines ready to take over the Governorship of Indiana next year or the year after next, after the election next year. Some years ago when for several years the Democrats controlled the statehouse, my Republican friends sat on the sidelines ready to take over, looking forward to this 2-percent contribution to their party coffers from the State employees, and no one wanted to go ahead.

But, I think we are living in a different era and in a different age than we have been and I think that I might say also to you that while my party heads don't like it and while the Republican Party head doesn't like it, the people like it. They like the idea of cleaning up politics in Indiana and maybe the fact that this even poses a threat will inspire the State legislature to act more forcibly in these matters in the future. I would hope so.

Mr. Russo. I don't know how much more forcibly the State legislature can act other than what they have said, that no State employee may solicit or receive by solicitation political contributions nor could such contributions be required of them. However, according to the GAO report, the employment form contains 2 questions which appear

to violate the law: "one, what is your political party affiliation, and two, would you be willing to contribute regularly to the Indiana Republican State Central Committee" also, these letters from employees and these memos from high officials—"Patronage payments are due on Monday after pay on Friday. Payments not made by Tuesday noon mean automatic dismissal"—indicate flagrant violations of the law.

That is ridiculous. I don't care if it is a Democratic administration or a Republican administration, the law should be enforced.

Mr. ROUSH. I think perhaps—what date is on that one particular one, Mr. Russo?

Mr. RUSSO. July 6.

Mr. ROUSH. That would have been—

Mr. RUSSO. That is a late one.

Mr. ROUSH [continuing]. Prior to 1973.

Mr. RUSSO. This 1974 one isn't much better. I just can't understand—we have such vigorous prosecutors back in my home State. Also, the *Shenklin* case is used quite often in the Federal courts. Maybe that is the reason why you are here, because the Federal courts seem to do a better job than the State prosecutors in these particular cases. But I do not think the Federal Government should become involved in State problems. The State officials ought to do the job. Maybe States can't control the machinery.

I have nothing further, Mr. Chairman.

Mr. HUNGATE. Thank you. You have certainly aroused the interest not only of the subcommittee and the Congress but also, I am sure, the interest of many others in this difficult problem. I yearn for the day when a fellow without any money would have an even chance in a political race with some fellow who has a lot of money. The day when people would get up in the morning and say, "Gee whiz, I have got a good Congressman, so I am contributing \$100 to his campaign." Instead, people seem to wait until they need something, want a job, and then they find party loyalty.

Let me ask about discrimination on grounds of sex. Might we want to put a little sex in the bill. Is the omission of sex discrimination an oversight or is it deliberate?

Mr. ROUSH. Well, I have always favored sex, Mr. Chairman.

Mr. HUNGATE. In moderation.

Mr. ROUSH. Of course. In moderation, of course, and only when appropriate.

Mr. Chairman, what I did, of course, with the help I must say of the Justice Department, was to strike, as you will note, certain words in section 601 of title 18 and then add a couple of words, "in whole or in part" leaving the section standing as it was except for striking the language which restricted its operations to work relief programs.

Mr. HUNGATE. If the subcommittee saw fit to proscribe that form of discrimination, you would have no objection, I take it.

Mr. ROUSH. My personal convictions would, of course, favor such action, but it seems to me that we are dealing with a separate problem here and the thrust of what I'm trying to do is directed to political activity.

Mr. HUNGATE. Some of the questions that have been raised refer to the Governor's chief assistant or top administrative assistant. We all recognize, I guess, the value of loyalty—perhaps due to its scarcity.

Would it be possible to approach this problem if the statute were directed at those persons in nonpolicymaking positions, whatever that means, or if the statute covered persons on the basis of salary level. Would you comment on that?

Mr. ROUSH. Yes. The salary level doesn't particularly favorably strike me, Mr. Chairman.

Mr. HUNGATE. It is simple, though.

Mr. ROUSH. Finding a cutoff such as you suggest at the policymaking level might be appropriate. As I indicated to Mr. Hyde, I must confess that I hadn't given it that much thought. I hadn't given that particular thought, but I'm sure we all want people who are at policymaking levels to be able to conduct their policy freely with people of their own choice and people who are of the same philosophical and political persuasion.

Mr. HUNGATE. I recognize the difficulty—it is rather arbitrary when you pick a salary level. The only thing I see in its favor is the simplicity with which you could administer it. I think the ideal approach may be to exempt persons in policymaking positions, but I'm not sure how we define "policymaking." Any further questions? Once again, Mr. Roush, thank you very much, and I hope that the subcommittee will be able to act on this matter rather promptly. We will keep this record open until the 21st of November for the receipt of any requested documents or materials.

Mr. ROUSH. Mr. Chairman, I want to thank you for the courtesies that have been extended to me here this morning. Thank you.

Mr. HUNGATE. Thank you very much.

[The documents referred to follow:]

INDIANA REPUBLICAN,
STATE CENTRAL COMMITTEE,
Indianapolis, Ind., December 14, 1973.

To Department Heads and Patronage Solicitors:

I would like to thank all of you for your support in attending the December 6 patronage meeting. It is with this type of joint cooperation that Indiana's patronage system will maintain its place as a viable force in this administration and in our Party's structure.

There have been some problems with 2% collections in the past, and we feel that with the slight changes installed in the meeting, the workload will be lessened for all concerned, and the patronage system itself will have a more professional degree of uniformity.

Contrary to what was said at the meeting regarding the collection schedule for 1974, we have decided to yield to numerous complaints and continue to make patronage collections *Every Pay Period*. As you may recall, at the meeting we had decided to make collections every other pay date. It is the consensus that a move of this sort is premature at this time. *Please continue with collections in the same manner you have been—every pay day.*

The other alterations that were made at the meeting were regarding reporting procedures, and will remain as changed. These two alterations are:

1. Collection reports will show the names of all potential 2% contributors as opposed to only those contributing that particular pay period. (Potential contributors will be determined by the Department), and

2. White contributor cards no longer require individual signatures, however, addresses and positions are requested.

For the benefit of all department solicitors, I am enclosing an outline which we feel will serve as a guideline for the 1974 patronage program.

Thank you again for your cooperation and support.

Cordially,

THOMAS S. MILLIGAN,
State Chairman.

1974 PATRONAGE GUIDE

INDIANA REPUBLICAN STATE COMMITTEE

1. White contributor cards for every potential 2% participant are due at State Headquarters no later than the first collection date. The signature is no longer necessary, so all cards may be prepared at once. Home address and position for each individual must be included.

2. 1974 Collection dates will be on every pay day. Note: This is contrary to what was said at the 12/6/73 meeting.

3. 2% donations are determined as follows; 2% of gross minus FICA, PERF, Federal Tax, State Tax, and County Option where applicable. Insurance, bonds, or anything else are not to be subtracted.

When turning 2% collections to State Headquarters, please follow the following steps:

I. COLLECTIONS

- A. Issue receipts for all contributions *when you receive the money*
- B. All receipts must be typed
- C. Give original receipt to contributor
- D. Return pink and yellow receipts to State Headquarters
- E. Retain blue copy for your records

II. RECEIPTS FOR STATE HEADQUARTERS

- A. Separate pink and yellow copies
- B. Arrange both groups in alphabetical order by county and by name within county groupings
- C. Balance money with receipts

III. COLLECTION REPORTS

A. List names of *all* potential 2% members alphabetically by county and by name within county groupings. (NOTE: Make up your collection report from the white cards before the first pay period and make several copies of it—please type. This way you will only have to type in amounts each pay day.)

B. Indicate the amount of contribution by the name.

C. If no contribution, indicate reason, i.e. refusal, vacation, termination of employment, etc.

D. Balance receipts, money, and collection report and bring to State Headquarters. Please try to have all collections turned in to State Headquarters within 48 hours of the collection date.

Thank you for your cooperation.

INDIANA HOUSE OF REPRESENTATIVES,
STATE HOUSE,
Indianapolis, Ind., October 8, 1975.

HON. EDWARD ROUSH,
U.S. Congressman,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN ROUSH: Just wanted you to know I was delighted to read in the Indianapolis paper the other day that you have a bill being considered which would try to deal with the "2%" problem here in Indiana.

Just the other week I had a call from a state highway employee who was told that he wouldn't be given a raise until he paid his 2%. Another case I've had this year was a laborer at a state fish and wildlife area who was refused a pay increase of \$0.11 an hour because of an "improper attitude toward the Department of Natural Resources," translated to mean failure to pay 2%.

My personal experience and dislike for this system goes back to when I was 18 years old and working for the Indiana Department of Natural Resources as a naturalist in the state park system. I had already worked for the DNR for one summer at the same job, and was part way through my second summer, when all of a sudden I was asked to make the "voluntary" 2% contribution. I didn't make it, and fortunately for me a friend in the DNR found me another job.

I had a bill up this past session of the legislature to put all DNR employees (as well as a number of other groups, the most important of which were highway employees) under merit. It didn't survive, but I'm going to try again, and I hope your efforts are successful, too.

Please let me know if there is any way I can be of assistance.

Sincerely,

JIM JONTZ,
State Representative.

[From Huntington North High School]

EDITORIAL.—End ARCHAIC THINKING

Politics. Today that word affects our lives more than just on election day; it pertains to more than who from our party we want to run for an office or who we want to win the election.

In Indiana one's political persuasion can mean the difference between getting a state job or looking elsewhere for work. State jobs include part-time summer work at reservoirs as life guards or maintenance personnel. Included among the ranks of prospective employees for such jobs are high school students who have never voted or registered to vote. In this case, Huntington County Republican Chairman Paul Johnson said the politics of one's family is considered. The CAMPUS believes it is unfair for young people to be judged by their parents' politics let alone their own political beliefs in getting a job.

And, on top of that, those who get the jobs, the people who are "affiliated" with the governor's party, must extract two percent of their wages to support the Indiana Republican State Central Committee.

Congressman J. Edward Roush has drafted a bill, now awaiting review by the House Judiciary Committee, which calls for an end to state political patronage systems such as Indiana's, and he hopes this will likewise put an end to "archaic thinking of Indiana politics."

The CAMPUS believes the political patronage system is an unfair discriminatory action, depriving capable people of jobs. We hope that the House Judiciary Committee passes this legislation to the floor of the House, and we ask you to write to Chairman Peter Rodino, House Judiciary Committee, House of Representatives, Washington, D.C. 20515. As Cong. Roush said, any interest shown would help.

PATRONAGE SYSTEM AFFECTS LOCAL EMPLOYMENT HOPES

(By Gary Schenkel)

Eager to get an outdoor summer job, I trudged through a slushy gravel parking lot to the door of a pale green house which serves as the Salamonie Reservoir office. There I was told by a lady at a typewriter, before applying, I must get a "clearance form" from the Republican county chairman.

What is a "clearance form"? I went to the Huntington County License Bureau to find Republican Chairman Paul Johnson, and I asked a girl at the counter for one. With her bubble gum smile she handed me a stiff three carbon copy form headed by "PATRONAGE CLEARANCE FORM." It asked, as I dreadfully anticipated: "What is your political party affiliation?" And then followed: "Would you be willing to contribute regularly to the Indiana Republican State Central Committee?" I had never voted. I was uncommitted, so no, I was not willing to give money from my salary to the Republican Party.

So when I returned to the license bureau after submitting my application, I found a big "NO" printed at the bottom.

Why? "The purpose of the patronage system is to get people who share the same basic political philosophy. If you started up a business, you would like to have somebody loyal rather than someone who would not like to see you succeed," said Mr. Johnson. In addition, he said that an over abundance of people seek reservoir jobs, so the patronage system narrows down prospective candidates. Salamonie Reservoir Manager Neal Case said that even after applications are reviewed by Mr. Johnson and a board of precinct committeemen, he receives about twice as many applications as there are jobs available.

"Almost every year someone fusses about the patronage system, but nothing is done. The party in power likes it, and the other party thinks they will be elected next year anyway," said Congressman J. Edward Roush.

But he isn't willing to sit back and watch it continue any longer. Presently, a bill he drafted awaits review by Peter Rodino's House Judiciary Committee, a bill which he hopes will wrench from state government what Mr. Johnson referred to us "more or less of a reward system."

Last year before drafting the bill, Roush called for a Judiciary Committee investigation of the Indiana patronage system. The investigators, he indicated, discovered what they believed to be a "loophole in the law."

The congressman said that the federal government put an end to political reward systems through the Civil Service Act in 1883. However, in Indiana, "the most notorious State (for political patronage systems) of all the 50," the state has taken over reservoirs built mainly through federal funds.

"We have declined some workers who have had a history of not contributing (extracting two per cent of one's wages a week for the Indiana Republican State Central Committee)," said Mr. Johnson.

This is one of the major injustices Congressman Roush cited in the political patronage system which was developed by Democrat Governor Paul C. McNutt in the 1930's. "They'll tell you it's not mandatory, but then you don't have a job if you don't pay it."

GATES, GATES & McNAGNY,
ATTORNEYS AT LAW,
Columbia City, Ind., January 24, 1972.

To those working for the State Highway from Whitley County:

Most of you have been continuing to pay to the Whitley County Republican Party as you did before.

We intend to make a full and complete Report to the Office of Governor Whitcomb and to Mr. Lee Rush, District Highway Engineer on February 29, 1972, bringing all months to date for each of you.

I believe that each of you know what we have asked you to send us and we attach six envelopes for each of you—one for each of the months from January through June.

If you have not brought yours to date through December, 1971, we ask that you include this in your January and/or February check.

This money will in turn be delivered to the State and applied to Whitley County's contribution.

We ask for your cooperation and certainly hope that you are not delinquent when the list is sent to the Governor on February 29th.

Very sincerely,

ROBERT E. GATES,
Whitley County Republican Chairman.

STATE OF INDIANA,
INDIANA STATE HIGHWAY COMMISSION,
Indianapolis, Ind., July 6, 1971.

INTER-DEPARTMENT MEMO

To: All employees.

From: Ray Mendenhall, Supt.

Patronage payments are due on Monday after pay on Friday. Payments not made by Tuesday noon mean Automatic Dismissal.

RAY MENDENHALL.

Your application for political clearance has been processed and approved by the Indiana Republican State Central Committee.

This card may be used as proof of political clearance.

STATE OF INDIANA,
OFFICES OF STATE HIGHWAY COMMISSION,
Indianapolis, Ind., February 22, 1974.

GENTLEMEN: When you hired into the State Employment you were informed then, that each and every paycheck you received, two (2) percent was due and payable to the Republican Party.

Now, I did not make this rule, but I have been charged with collecting this two (2) percent and turning it in.

It is not fair for your fellow workmen to pay his share and you letting it go this way. I am warning you to "shape up or ship out". This must be paid in full by March 11, 1974 or I will be in the process of making out 104's which means letting you go.

Sincerely,

ROY E. KITTREDGE,
Superintendent.

WASHINGTON COUNTY REPUBLICAN CENTRAL COMMITTEE,
Salem, Ind., July 5, 1974.

We understand you are behind with your payments to the Party. Our understanding is 2% for State and 1% for County of Salary.

Will you please take care of this matter at once, and pay up your 2% to State and 1% to our County Treasurer, Mr. D. Jack Mahuron at Farmers Citizens Bank in Salem.

When you signed up for the job that was the agreement according to our understanding as it is a political job. And we will be looking forward to your cooperation in this matter, by keeping your payments up to date.

Thanking you, Washington County Representative Central Committee.

MURREIL MEADORS, *Chairman.*

[From the Courier-Journal]

INDIANA GOP HEAD SAYS HE'D FIRE PLEDGE BALKERS

(By Gordon Englehart)

INDIANAPOLIS.—Republican State Chairman Thomas S. Milligan yesterday said he would recommend firing State patronage workers who renege on pledges to voluntarily contribute 2 per cent of their pay to the party.

GOP Gov. Otis R. Bowen, however, when told of Milligan's statement, declared:

"I have said over and over that it is voluntary—and if it's voluntary, you don't fire if they don't contribute, as long as they are performing their job.

"But I suspect that anybody that is ever fired from here on, the accusation will be it's because they didn't pay their 2 per cent, when actually there can be a lot of reasons for firing."

State government's 25,000 employes include about 7,200 patronage workers. Milligan estimates that 5,500 patronage and merit employes voluntarily give 2 per cent of their wages to the GOP State Central Committee under a 40-year-old system followed by both parties.

Charles F. Eble, executive secretary of the Indiana State Employes Association (ISEA), in August urged state employes to refuse to pay the 2 per cent starting with Sept. 20 biweekly paychecks.

On Sept. 27, Eble estimated that 1,000 of the 2,500 state highway patronage workers had stopped paying. He also said "the word is out" that state officials would take no action (dismissal, suspension or demotion) against balkers until after the Nov. 5 election.

Yesterday Milligan said Eble had no basis for his estimate.

GOP State Headquarters had not toted up final figures on the Sept. 20 collection, Milligan said. In some areas, a spotcheck showed that the boycott was effective, but in other places, collections were up, he said.

SOME WORKERS "INDISPENSABLE"

Milligan cited the central office of the Indiana State Highway Department, in the State Office Building, and the Vincennes district as reporting higher collections.

Asked if he would verify Eble's forecast of post-election firings, Milligan replied:

"I'm not going to make that statement. Neither am I going to say no one will be fired after the election."

He stressed that he as GOP state chairman neither hires nor fires state patronage workers but only processes their political clearance.

"It's really a highway department matter, to implement the policy of the governor," he said of possible firings.

Milligan and Charles Cook, executive director of the GOP State Finance Committee, observed that there may be non-paying workers who are indispensable in some departments.

"Each case has to be addressed separately," Milligan said.

Milligan, who is also Wayne County (Richmond) GOP chairman, noted that every applicant for a state patronage job fills out a "patronage clearance form" that must bear the written endorsements of his precinct, county, district and state party officials.

INDIANA GOP CHAIRMAN FAVORS FIRING WORKERS RENEGING ON PARTY PLEDGES

One question on that form reads, "would you be willing to contribute regularly to the Indiana Republican State Central Committee?"

As a county chairman, Milligan said, he would not endorse anyone who did not write, "Yes," to the question.

If the applicant agrees, is hired but later breaks that commitment by refusing to pay, Milligan said, "he has jeopardized his political clearance for a patronage job that requires clearance."

Milligan said he would, at the county level, urge the firing of that worker.

What about statewide, in his capacity as state chairman?

"The policy of clearance is at stake here," Milligan asserted. "I would recommend that a person in a patronage job who does not maintain political clearance be terminated—I don't like the word 'fired.'"

Would he wait to make that recommendation until after the election?

"I recommend it right now," Milligan declared. "I would have said the same thing in July."

Milligan and Cook echoed Bowen in avowing that contributions are voluntary.

Milligan said GOP State Headquarters had contacted the 37 state highway sub-district superintendents and others in other departments responsible for the 2 percent collections, and urged them to seek out balkers and impress on them the desirability of supporting the party structure.

BOWEN STRESSES JOB PERFORMANCE

County chairmen also have been enlisted, Milligan said.

(Eble on Sept. 27 charged that "our members have been threatened directly and indirectly.")

Milligan said Bowen's "reaffirmation of the patronage system" before the ISEA convention Sept. 29 had helped collections in some areas.

Bowen told the convention its paycheck rebellion is "rather a direct slap at my administration" but said this should not be interpreted as "a threat to your status."

The governor was somewhat touchy yesterday when asked to comment on Milligan's remarks.

"You're kind of—I mean this kindly—you're trying to do some divide-and-conquer work here between Tom and me with this type of questioning," he said.

"It has to be a voluntary program," Bowen stressed. "We are approaching it through an appeal to their responsibility to their party and to what we think will be a good government under our administration.

"Their ability to remain on the job depends on their quality of performance."

Certainly, Bowen said, anyone who doesn't contribute, after agreeing in writing to do so, has jeopardized his political clearance.

"But that statement has to be essentially nullified by the other statement that it has to be voluntary and that their quality of performance would be the sole determination of whether they remain," he added.

Bowen said both parties should be devising alternate methods of financing their operations should the patronage system stop.

He said Milligan had made no firing recommendations directly to him.

The governor also said Eble's prediction of reprisals after the election "irritates me a little." No such statement has come from his office, Bowen said.

Milligan and Cook estimated that about 40 percent of the collections are coming from highway workers.

At the present rate, Cook said, the 1974 take should reach \$564,000—an average of \$47,000 a month. The 1972 total was \$237,000.

Cook said the \$564,000 estimate does not take into account the ISEA-inspired boycott—so far involving the Sept. 20 and Oct. 4 paydays. In any event, he said,

the rebellion would not affect GOP funding of the remaining four weeks of the 1974 election campaign.

Eble on Sept. 27 said that withholding by 1,000 employees would cut the GOP's annual collection by \$150,000.

The ISEA is 20 years old. Eble said it has almost 5,000 members—25 per cent of them patronage.

STATE OF INDIANA,
OFFICES OF STATE HIGHWAY COMMISSION,
Indianapolis, Ind., May 14, 1971.

To: All State highway district administrative assistants.

From: Claude Hughes.

Subject: Two-percent contributions.

On April 29, 1971 the Honorable Edgar D. Whitcomb issued the following statement, "I am directing the department heads of this administration to cease the collection of 2% political contributions effective with the May pay period."

Mr. Joe Root, Administrative Assistant to the Governor, has informed me of the following:

1. Collect all back contributions through April.
2. All County Central Committees may collect contributions after May 1, 1971 from their patronage state employees. This is strictly on a voluntary basis.
3. No state employee shall be responsible for this collection.
4. All fund raising activities or participations are strictly voluntary.

Mr. HUNGATE. The next witness will be Mr. Roger Pauley, Deputy Chief, Legislation and Special Projects Section, Criminal Division, U.S. Department of Justice.

You have a prepared statement and, without objection, it will be made part of the record. If you will identify your associates, you may proceed as you see fit. We welcome you.

[The prepared statement of Roger Pauley follows:]

STATEMENT OF ROGER PAULEY, DEPUTY CHIEF, LEGISLATION AND SPECIAL
PROJECTS SECTION, CRIMINAL DIVISION

Mr. Chairman and members of the Subcommittee, I am pleased to appear today to testify concerning the Department's views on H.R. 2920, a bill to amend sections 600 and 601 of Title 18 of the United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity, and for other purposes. I believe you have the Department's comments which are contained in our letter to Chairman Rodino, stating our basic position in favor of the bill. My remarks today will expand upon this basic position as well as develop a few additional points with respect to conforming the language of Section 601 to that of Section 600.

THE BILL

Section 1 of H.R. 2920 would amend Section 601 of Title 18 by striking therefrom its present language which limits its scope to "appropriating funds for work relief or relief purposes," and would also add the words "in whole or in part" in defining the extent to which the benefits need be made possible by an Act of Congress. These changes are consistent with the language of Section 600, the counterpart to Section 601, and serve to close a formidable loophole existing in the present federal law.

Both sections 600 and 601 serve similar purposes: to protect the integrity of federally-funded employment and programs by prohibiting anyone from promising or depriving a person of a federal benefit on the basis of the beneficiary's political activity. Section 600 serves this objective by making it an offense to promise a benefit, provided for or made possible in whole or in part by any Act of Congress, on account of political activity. Section 601 prohibits the deprivation of benefits on the basis of political activity, but in our view is unnecessarily and inexplicably limited to benefits provided for or made possible by any Act of Congress appropriating funds for work relief or relief purposes. This limitation to federally appropriated "relief" benefits operates as a bar to prosecution in cases where non-welfare benefits, which have already been granted to a beneficiary, are taken away from him because of some form of

political consideration. This result, we feel, frustrates the basic purpose which sections 601 and 600 both serve.

A case involving non-welfare benefits has recently been investigated by the Department of Justice, but was subsequently closed in part because of this deficiency in Section 601. Allegations were made that patronage employees engaged in non-policy formulation duties were expected to contribute two percent of their salaries to the political party whose elected representative controlled the executive department in which their positions were located, and that this system generated approximately \$10,000 per month in contributions. A number of positions subjected to this kick-back system were paid in part from federal funds, among them the highway program which employed more than 70% of the state's 7,200 patronage positions. The facts of this case did not fall within the purview of Section 600, since the evidence failed to show that an applicant was required to engage in political activity as a condition precedent to either a promise of employment or appointment. Since the political activity was not required until after the appointment, this matter did not fall within Section 600. It fell exclusively under Section 601. However, the matter could not be considered as a potential violation of that section since these appropriations were from the Department of Transportation, and therefore were not for "work relief or relief purposes."

Clearly, a prosecution of this matter under Section 601 would have furthered the general policy of Sections 600 and 601 if further investigation had confirmed the allegation that these state employees were dismissed, or not promoted, for a failure to make political contributions. The proposed amendment to section 601 would remedy this problem and the Department of Justice is therefore in favor of the enactment of this legislation.

The changes brought about by Section 1 of H.R. 2920 will have the effect of expanding the reach of the federal government into areas from which it is now foreclosed. We believe, however, that the United States has an obligation to insure that none of its appropriations is used as a means of extorting political favors. In addition, when abuses of this nature arise, they are often locally sanctioned or institutionalized so that federal intervention is often the only means of halting a continuing practice. Of course, the enactment of this bill ought not to be construed as pre-empting the prosecutive vehicles which are presently available for particularly aggravated cases of this sort, for example the Hobbs Act and 18 U.S.C. 371.

It should be noted additionally that H.R. 2920, although apparently directed at discriminations in employment based upon political activity, would also affect and enlarge the scope of the "race, creed [and] color" language of amended section 601. As such it would prohibit the deprivation of benefits provided for or made possible in whole or in part by an Act of Congress, on account of race, creed, or color, as well as on the basis of political activity. The inclusion of race, creed, and color discrimination within this section furthers a legislative intent which is reflected in the basic civil rights statutes; in addition, it covers the situation where a person is deprived of a federal benefit on account of race, creed, or color, but there is no showing of a conspiracy, action under color of any law, or force, as is required respectively under Title 18 sections 241, 242, and 245(a)(E). Such a circumstance would present itself, for example, where a contractor receiving federal funds either directly from the federal government or through the state government, dismisses an employee on account of his race, creed, or color. Section 601, as amended by H.R. 2920, would therefore fill a gap which exists in the present civil rights laws.

Section 2 of H.R. 2920 would amend sections 600 and 601 of Title 18 by increasing their penalties from \$1000 to \$25,000. The present one year maximum term of incarceration would be retained under the proposed amendment. The Department favors this proposed revision, which would bring the violations of these sections into line with the penalty for violations of the majority of the misdemeanor statutes contained in chapter 29 of Title 18, as amended by the Federal Election Campaign Act Amendments of 1974.

ADDITIONAL POINTS

I would like to comment upon certain problems arising under section 601 which are not confronted by H.R. 2920.

Section 601 prohibits the deprivation of federal benefits on account of political activity, "except as required by law." The apparent purpose of this phrase is to

cover the situation where a federal or state employee is dismissed for engaging in political activity in violation of the Hatch Act, or a similar state statute. This exception, as so interpreted, is entirely reasonable and appropriate.

However, the phrase is subject to the construction that, if a state or municipality were to enact a statute or ordinance purporting to legalize a system of required payments to a political party as a condition of employment, the conduct of depriving a person of employment for failure to comply with the local law, with respect to jobs made possible in whole or in part by an Act of Congress, would not violate section 601. We do not believe such a result to be desirable or intended by Congress. Therefore, we suggest that the Subcommittee give consideration either to rewriting the exception in a narrower and more precise fashion, or to making clear through the legislative history of this bill that the aforementioned exception is not intended to permit such an absurd loophole.

The Department also recommends an expansion of the types of benefits which may not be deprived under Section 601, so as to include "contract" and "appointment." "Contract" and "appointment" are benefits which often flow from a federal appropriation, and clearly should not be denied on the basis of political activity, race, creed, or color. The express inclusion of these benefits would have the effect of bringing the scope of benefits described under section 600, as amended by the Federal Election Campaign Act of 1971.

Finally, the Department recommends that any existing ambiguities or inconsistencies between the meaning of the term "election" as it is used in section 601 and its sister statute, section 600, be removed. Presently, the definition of "election" which is contained in 18 U.S.C. 591 (a) applies to section 600, but does not apply to section 601. Moreover, as defined in section 591 (a), the concept of "election" clearly reaches any sort of elective context, be it a general election, a primary, a special election, a convention or a political nominating caucus. By amending the prefatory clause to 18 U.S.C. 591 to include section 601, not only would the scope of the two related sections be identical as to the sort of political activity which they reach, but in addition any argument which could conceivably be made that the bare term "election" presently employed in section 601 does not include every type of contest, would be obviated.

TESTIMONY OF ROGER PAULEY, DEPUTY CHIEF, LEGISLATION AND SPECIAL PROJECTS SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY FRANK ALLEN, DEPUTY CHIEF, CRIMINAL SECTION, CIVIL RIGHTS DIVISION, AND CRAIG DONSANTO, ATTORNEY, FRAUD SECTION, CRIMINAL DIVISION

Mr. PAULEY. Thank you, Mr. Chairman. On my right is Mr. Frank Allen, Deputy Chief in the Criminal Section of the Civil Rights Division. On my left is Mr. Craig Donsanto, attorney in the Fraud Section of the Criminal Division which is the section that has enforcement responsibility for the statutes under consideration today.

Mr. Chairman and members of the subcommittee, I am pleased to appear today to testify concerning the Department's views on H.R. 2920, a bill to amend sections 600 and 601 of title 18 of the United States Code, relating to the granting or deprivation of benefits provided for or made possible by an act of Congress, on the basis of political activity, and for other purposes. I believe you have the Department's comments which are contained in our letter to Chairman Rodino, stating our basic position in favor of the bill.

Mr. HUNGATE. Yes. And without objection we will make that a part of the record.

Mr. PAULEY. Thank you.

[The letter referred to follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., September 24, 1975.

HON. PETER W. ROBINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 2920, a bill "To amend sections 600 and 601 of Title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any Act of Congress, on the basis of political activity, and for other purposes".

H.R. 2920 would accomplish two goals:

First, it would close a formidable and inexplicable loophole which presently exists in the Federal Criminal Code in situations where Federal benefits, made possible by the Congress, are withdrawn by state or local authorities on the basis of political activity of the recipient. Presently, 18 U.S.C. 600 reaches situations where such benefits are granted on the basis of political activity. However, the complementary section dealing with the denial of benefits already granted, 18 U.S.C. 601, is presently confined in its scope only to the politically related deprivation of federally appropriated "relief" benefits. Thus, in view of the strict rules of statutory construction which govern where criminal statutes are involved, we do not feel that we could apply either of these two sections to situations where non-welfare benefits are denied an individual because of some form of political activity, for such situations would be governed exclusively by 18 U.S.C. 601, which is limited in scope to relief benefits. As a result, we are forced into an untenable position of either prosecuting such transactions under the general Federal conspiracy statute, 18 U.S.C. 371 (which is frequently difficult or impossible, especially where a course of conduct is not so extensive as to corrupt the administration of an entire Federal program), or attempting to establish whether or not political activity was required as a condition precedent to the granting of some Federal benefit.

As a vehicle for remedying this loophole, H.R. 2920 is satisfactory. Section 1 of this bill would simply amend 18 U.S.C. 601 by expanding its scope to all government benefits. This section would also add the words "in whole or in part" to the text of section 601, thus making its scope virtually identical to that of 18 U.S.C. 600 and eliminating any ambiguity as to the intention of Congress that these two complementary sections should be identical in their scope.

Secondly, the proposed legislation would amend both 18 U.S.C. 600 and 601 by raising the maximum fines for violations from \$1,000 to \$25,000. The present one year term of imprisonment it left unchanged. This revision would bring violations of sections 600 and 601 into line with the penalties for violations of the majority of the misdemeanor statutes contained in Chapter 29 of Title 18, United States Code as amended by Public Law 93-443.

The Department of Justice recommends that H.R. 2920 be enacted.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN.

Mr. PAULEY. My remarks today will expand upon this basic position as well as develop a few additional points with respect to conforming the language of section 601 to that of section 600.

Section 1 of H.R. 2920 would amend section 601 of title 18 by striking therefrom its present language which limits its scope to "appropriating funds for work relief or relief purposes," and would also add the words "in whole or in part" in defining the extent to which the benefits need be made possible by an act of Congress. These changes are consistent with the language of section 600, the counterpart of section 601, and serve to close a formidable loophole existing in the present Federal law.

Both sections 600 and 601 serve similar purposes: to protect the integrity of federally funded employment and programs by prohibiting anyone from promising or depriving a person of a Federal benefit on the basis of the beneficiary's political activity. Section 600 serves this

objective by making it an offense to promise a benefit, provided for or made possible in whole or in part by any act of Congress, on account of political activity. Section 601 prohibits the deprivation of benefits on the basis of political activity, but in our view is unnecessarily and inexplicably limited to benefits provided for or made possible by any act of Congress appropriating funds for work relief or relief purposes. This limitation to federally appropriated "relief" benefits operates as a bar to prosecution in cases where nonwelfare benefits, which have already been granted to a beneficiary, are taken away from him because of some form of political consideration. This result, we feel, frustrates the basic purpose which sections 601 and 600 both serve.

A case involving nonwelfare benefits has recently been investigated by the Department of Justice, but was subsequently closed, in part because of this deficiency in section 601. Allegations were made that patronage employees engaged in nonpolicy formulation duties were expected to contribute 2 percent of their salaries to the political party whose elected representative controlled the executive department in which their positions were located, and that this system generated approximately \$10,000 per month in contributions. A number of positions subjected to this kickback system were paid in part from Federal funds, among them the highway program which employed more than 70 percent of the State's 7,200 patronage positions. The facts of this case did not fall within the purview of section 600, since the evidence failed to show that an applicant was required to engage in political activity as a condition precedent to either a promise of employment or appointment. Since the political activity was not required until after the appointment, this matter did not fall within section 600. It fell exclusively under section 601. However, the matter could not be considered as a potential violation of that section since these appropriations were from the Department of Transportation, and therefore were not for "work relief or relief purposes."

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The changes brought about by section 1 of H.R. 2920 will have the effect of expanding the reach of the Federal Government into areas from which it is now foreclosed. We believe, however, that the United States has an obligation to insure that none of its appropriations is used as a means of discriminating on the basis of political activity. In addition, when abuses of this nature arise, they are often locally sanctioned or institutionalized so that Federal intervention is often the only means of halting a continuing practice. Of course, the enactment of this bill ought not to be construed as preempting the prosecutive vehicles which are presently available for particularly aggravated cases of this sort, for example the Hobbs Act.

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Section 2 of H.R. 2920 would amend sections 600 and 601 of title 18 by increasing their penalties from \$1,000 to \$25,000. The present 1-year maximum term of incarceration would be retained under the proposed amendment. The Department favors this proposed revision, which would bring the violations of the majority of the misdemeanor statutes contained in chapter 29 of title 18, as amended by the Federal Election Campaign Act Amendments of 1974.

I would like to comment upon certain problems arising under section 601 which are not confronted by H.R. 2920.

Section 601 prohibits the deprivation of Federal benefits on account of political activity, "except as required by law." The apparent purpose of this phrase is to cover the situation where a Federal or State employee is dismissed for engaging in political activity in violation of the Hatch Act, or a similar State statute. This exception, as so interpreted, is entirely reasonable and appropriate.

However, the phrase is subject to the construction that, if a State or municipality were to enact a statute or ordinance purporting to legalize a system of required payments to a political party as a condition of employment, the conduct of depriving a person of employment for failure to comply with the local law, with respect to jobs made possible in whole or in part by an act of Congress, would not violate section 601. We do not believe such a result to be desirable or intended by Congress. Therefore, we suggest that the subcommittee give consideration either to rewriting the exception in a narrower and more precise fashion, or to making clear through the legislative history of this bill that the aforementioned exception is not intended to permit such an absurd loophole.

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used in section 601 and its sister statute section 600, be removed. Presently, the definition of "election" which is contained in 18 U.S.C. 591(a) applies to section 600, but does not apply to section 601. Moreover, as defined in section 591(a), the concept of "election" clearly reaches any sort of elective context, be it a general election, a primary, a special election, a convention or a political nominating caucus. By amending the prefatory clause to 18 U.S.C. 591 to include section 601, not only would the scope of the two related sections be identical as to the sort of political activity which they reach, but in addition any argument which could conceivably be made that the bare term "election" presently employed in section 601 does not include every type of contest, would be obviated.

Mr. Chairman, that concludes my prepared testimony and I and my colleagues would be happy to answer any questions at this time.

Mr. HUNGATE. Thank you, Mr. Pauley. We appreciate your work on this bill and we welcome you here again. We recall your contributions to the work of this subcommittee over the years, in particular your work on the evidence code.

Mr. Russo is recognized for 5 minutes.

Mr. RUSSO. Thank you, Mr. Chairman. I would also like to thank Mr. Pauley for his usual excellent job of the analysis of the bill before us. I think it points out some of the shortcomings that we ought to clear up and I would just like to ask a question.

I notice in some of the cases that you discussed on page 2—I wonder if there are other violations of other laws that were committed by those actions taken by these various people that are not violations of section 601? Is there any other law that could have been prosecuted under the Federal statute? For example, "The Two Percent Club" in Indiana. Other than taking it under section 601, is there any other Federal violation that you are aware of—Federal prosecutor?

Mr. PAULEY. Not necessarily. I would like—this isn't perhaps directly responsive but I would like to make the point that we do not view this statute, although that may have been its motivation, as necessarily directed at the Indiana patronage system. In fact, it does not necessarily follow if H.R. 2920 is enacted that the Indiana patronage system would be found to violate the amended section 601. There is nothing illegal or that would be made illegal under 601 simply through requesting contributions to a political party from persons holding jobs in whole or in part funded by an act of Congress. We would have to show that there was implicit in the system itself some threat of deprivation of employment or the fact of deprivation of employment.

Mr. HUNGATE. Would the gentleman yield briefly?

Mr. RUSSO. Sure.

Mr. HUNGATE. You have heard some of the letters that were read by Mr. Roush. Would they allege violations of section 601 as H.R. 2920 would amend it?

Mr. PAULEY. Some of the complaints that Mr. Roush read into the record would seem on their face to constitute violations of section 601 as it would be amended and in one or more instances, if my recollection is correct, of section 600 as it exists now. I can only say on behalf of the Department that neither we nor the FBI has received any notice of such complaints. If we were to receive such notice they would be appropriately investigated.

Mr. Russo. Well, let me just read you this letter:

We understand you are behind with your payments to the Party. Our understanding is 2 percent for State and 1 percent for County of salary.

Will you please take care of this matter at once and pay your 2 percent to State and 1 percent to our County Treasurer, Mr. D. Jack Mahuron, Farmer's Citizen's Bank in Salem.

I think that is what it says.

When you signed up for the job that was the agreement according to our understanding as it is a political job, and we will be looking forward to your cooperation in this matter by keeping your payments up-to-date.

As amended, would section 601 cover that?

Mr. PAULEY. I think it would be a close question. I think again one would have to show that in that letter there was the implicit threat of a deprivation of some benefit of appointment.

Mr. RUSSO. Assume that after this letter was sent out, the gentleman was not current, and that he was fired, how would you view it then?

Mr. PAULEY. I would think it would be then at least a prima facie violation of 601 as H.R. 2920 would amend it, assuming, of course, that we are talking about a federally funded job.

Mr. RUSSO. Well, obviously you see the point I am trying to reach. Is there a way that the Justice Department feels it can tighten up 601 a little more so that there wouldn't be this problem, that you wouldn't have that much difficulty? You can think about it. I am not asking you—

Mr. PAULEY. It is an evidence question. The statute perhaps would reach an attempt as well or a conspiracy, some inchoate form of conduct. I am not sure one can go much beyond that in attempting to proscribe the conduct without putting a chilling effect on the legitimate practice perhaps of soliciting a contribution or of simply asking employees to consider whether they would like to contribute to a political party.

Mr. Russo [continuing]. Let me just ask you one other question. Assuming that the State attorney general is not fulfilling his obligation in carrying out the necessary functions of his office and prosecuting blatant violations of the law, is there any way that the Federal Government can step in and take over that prosecution?

Mr. PAULEY. Under existing laws I do not believe so.

Mr. RUSSO. I have no further questions.

Mr. HUNGATE. Thank you.

Mr. Hyde.

Mr. HYDE. Thank you, Mr. Chairman.

Well, Mr. Pauley, you heard the question that I asked Mr. Roush. I wonder what your comment is on it. It just seems to me that if this becomes law I no longer have anything to say about my administrative assistant's political activities, and if he goes and works for my opponent, he will get a cost-of-living increase.

Mr. PAULEY. I think that does raise a valid point. I know that the Department of Justice has always viewed these statutes, because of the context in which they were enacted as part of the Hatch Act, as basically not intended to reach positions that could be considered in Mr. Hungate's phrase as policymaking roles. I think that position should be reaffirmed or clarified in the statutes, perhaps through the legislative history, or in the committee's discretion, through actual

language in the bill. And we would be pleased to work with the subcommittee in that respect.

Mr. HYDE. Policymaking is what we are looking at but really and truly it goes beyond that because, for instance, my administrative assistant doesn't make policy. He implements the policy.

Mr. HUNGATE. He doesn't make it if you catch him.

Mr. HYDE. Well, that's right. And he doesn't implement it unless I say so. But, I think we have to look at that very carefully. So, as I say, we don't create more problems than we really want to solve.

Now, secondly, I have seen situations where to get into a Federal aid program, vocational training, even to get considered for these jobs, you have to get a letter from your ward committeeman. I don't think section 600 covers that and I don't think 601 covers that. What is your view?

Mr. PAULEY. I am not sure that 600 doesn't cover it. Again, it would be a proof problem of showing that the political activity of some sort, that is, obtaining the letter, was required as a condition precedent to the obtaining of the employment, but if that evidentiary hurdle could be surmounted, I don't see why 600 would not reach that.

Mr. Russo. Would the gentleman yield?

Mr. HYDE. Yes.

Mr. Russo. Assuming the letter was a letter of recommendation which is probably how it is handled—I recommend Henry Hyde for a position of such and such; I think he is a very qualified individual—I don't see how 600 would cover something like that.

Mr. HYDE. I agree with you and I don't think it does. I don't think that is how it is done. If you want to get a guard job, a job as a crossing guard, or some menial job that is politically administered, you darn well better get a letter from some politician and it is a letter of recommendation. I find, you know, the bearer of this a very fine, up-standing citizen, but it is a condition precedent to him being interviewed for the job.

Mr. PAULEY. If I could speak to that for a moment, I think as in most antidiscrimination statutes, what you really have to show to make out a prosecution is a pattern of conduct. If you could establish a pattern in which such letters were issued only to the party faithful, for example, then you may well be able to show this was not merely a case of an independently sought recommendation from a particular body but was a part of this kind of discriminatory pattern. You could make out a case under 600.

Mr. HYDE. Right. It is usually done to develop an obligation where none existed before. Don't forget where you got this job, Charlie. Look what we have done for you. I expect your loyalty come the next election. It is a very intangible area, and would be tough to legislate in. It just gripes me to have Federal programs set up to help a group of people who desperately need it but they have to go through the political sieve to get some of the tax money that is being expended. I think it is wrong. I am not sure the statutes will cover it and I will do some more thinking on that myself and I would appreciate your thinking about it.

Mr. PAULEY. I will be glad to.

Mr. HYDE. Thank you. I yield back.

Mr. HUNGATE. I guess I am hung up on these letters. I recognize that soliciting might be proper but threats are not. I recognize that soliciting has different meanings, too. Take, for example, the 1971 letter that Mr. Roush read.

Patronage payments are due on Monday after pay on Friday. Payments not made by Tuesday noon mean automatic dismissal.

I think that letter would be a rather firm solicitation, or a little more than that, wouldn't it?

Mr. PAULEY. Very possibly. Mr. Donsanto could perhaps address himself to that.

Mr. DONSANTO. Thank you. If we received a letter such as that—may I make it clear to the committee we have not.

Mr. HUNGATE. We don't suggest you have.

Mr. DONSANTO. The fact that the individual already had the job, I assume that this man had a job and let's assume further that his job was in whole or in part funded by an act of Congress. Under those circumstances, since he had the employment and the threat which does seem to be in the letter you have read to me, the situation would be governed by section 601.

Mr. HUNGATE. I guess my first problem is the definition of solicitation. If the letter is merely solicitation, then whatever job he has matters not.

Mr. DONSANTO. It is a threat.

Mr. HYDE. Would the chairman yield?

Don't we all have a duty to hand you that letter, that we here have knowledge of a possible Federal crime and we have a copy of that letter. Mr. Roush has a duty to hand that to you and instigate prosecution.

Mr. DONSANTO. We can suggest that avenue be pursued or the complainant go to his local agency of the FBI.

Mr. HYDE. I am just wondering about my responsibility, having listened to you and Mr. Pauley, that a probable Federal crime has been committed and I have copy of that letter.

Mr. PAULEY. Under 601 as it reads now it would not be a violation.

Mr. HUNGATE. There are gray areas in this law now that we may be able to throw some light on. The letter we are talking about has a date of 1971, and that predates Indiana's new law. But the issue I am trying to focus on is the definition of solicit. I don't know that any of us want to make it illegal if somebody wants to ask an employee in a very meek and friendly and harmless way to contribute to the political party. It seems to me that this 1971 letter is considerably more, and I think we could develop some legislative history on the difference between a threat or a clearly implied threat and a friendly solicitation. Take the February 22, 1974, letter. Let's assume you get this letter, and let's not worry whether you are getting Federal funds or what you are doing.

The only question is whether you are going to consider this a nice solicitation or threat:

It is not fair for your fellow workmen to pay his share and you letting it go this way. I am warning you to "shape up or ship out." This must be paid in full by March 11, 1974, or I will be in the process of making out 104's which means letting you go.

Is that a solicitation?

Mr. PAULEY. If it is that clearly spelled out, it would be a threat of deprivation of employment.

Mr. HUNGATE. Thank you. I may scare easier than you fellows do. The Justice Department thinks that this proposed legislation is appropriate because at the present time the limitations as to work relief or relief funds sort of hamper accomplishing the goals of these two sections. Is that generally true?

Mr. PAULEY. That is correct.

Mr. HUNGATE. Then, eliminating that limitation would seem to help the overall purpose of the law.

Mr. PAULEY. Yes. The statute was drafted with that limitation to deal with a specific problem in the late 1930's, but the reason for the limitation has since vanished.

Mr. HUNGATE. I understand that the Justice Department supports making the penalties uniform, raising the fine \$1,000 to \$25,000.

Mr. PAULEY. That is correct.

Mr. HUNGATE. You really have no trouble with that part of the proposed legislation.

Mr. PAULEY. That is correct.

Mr. HUNGATE. I think there is a bill that amends part of the Hatch Act coming up on the floor, so the subcommittee will want to wait and see what becomes of that bill. I think it is scheduled this week.

You have suggested that perhaps a State or municipality might legalize or purport to legalize firing employees who fail to make political contributions. You would recommend, in effect, that we make it clear that the legislation isn't intended to permit a State or municipality to legalize that sort of conduct.

Mr. PAULEY. That is correct. And I would add that here reference to the legislative history is illuminating because when the statute was first enacted as part of their Hatch Act in 1939 it read except as required by section 9(b) of this act, which was the section of the Hatch Act which required the dismissal of persons who took part in political activity in violation of its prohibitions. When the 1948 revision of the entire Federal Penal Code took place, for some reason the revisors saw fit to substitute the apparently much broader phrase, "except as required by law" for the "except as required by section 9(b)," but I don't think there was any basic substantive change intended. It is just that the language used may have been inappropriate and I think the committee could do a service by giving consideration as to how it can be tightened up to its originally intended form.

Mr. HUNGATE. We discussed earlier discrimination based on race, creed, color, or political affiliation. What would you think if we put a prohibition against discrimination on the basis of sex in there too?

Mr. PAULEY. From our standpoint I don't think we would have any objection. It would be a decision of the subcommittee. I agree with Mr. Roush that it does address problems quite distinct perhaps from—

Mr. HUNGATE. Just sort of in tune with the times, it seems now that we used race, creed—

Mr. PAULEY [continuing]. I would ask Mr. Allen from the Civil Rights Division.

Mr. HUNGATE [continuing]. Yes, Mr. Allen.

Mr. ALLEN. Well, as Mr. Pauley said, I don't think we would have any objection to it. I think that discrimination on the basis of sex is going to be continued to be addressed principally in Federal law by your 1964 Civil Rights Act which provides for civil actions but I think putting it in here certainly is, as you said, in tune with the times and we have no objections to it.

Mr. HUNGATE. Thank you. You pointed out that there seems to be a variance between sections 600 and 601 and that they both should read the same. Can you enlighten me on that?

Mr. PAULEY. The disparity is that the term "election" in section 601 is not a defined term whereas the term "election" in section 600 is defined because section 591(a) reads, "except as otherwise specifically provided, when used in this section and in sections 597, 599, 600"—and then it jumps to 602 and a whole bunch of other sections—"election means"—and then it gives a very complex definition of the term. We simply think that it would be useful to have the same definition apply to section 601, since I perceive no reason for a difference in scope in this regard between section 600 and section 601.

Mr. HUNGATE. When we say election in section 601 it should mean the same thing we mean in section 600.

Mr. PAULEY. That is correct.

Mr. HUNGATE. Thank you. Well, of course, an employee in private business, I suppose, runs a risk of the boss going broke and all of the jobs being gone, the factory moving to another part of the country or to a foreign country, risks that are not generally attendant upon governmental employment. There is usually a certain security in governmental employment, and I don't know whether we can equate losing an election to having a firm go broke. If a man is in the private sector and the business does poorly, there is no raise or he is out of a job. If he is in the government sector, and we can't foresee it going out of business, and if we are not going to equate going out of business and losing an election, then it will mean that the employee will not lose his job because his boss is defeated.

Mr. PAULEY. At any rate, not on the basis of the employee's political activity.

Mr. HUNGATE. Yes. His competence may be reviewed. Thank you very much, Mr. Pauley.

Any other questions? Mr. Russo.

Mr. Russo. Yes. I was wondering about the question posed by Ms. Holtzman earlier when she said crossing a line would be if your immediate supervisor was soliciting contributions from you. And I am wondering how you feel about section 601, if it were amended, if your immediate supervisor asked you for contribution.

Mr. PAULEY. I don't know that I would want to adopt the position that fixed any such per se rule. I agree that that type of situation is one in which a person would be more prone to find an implicit threat in the solicitation.

Mr. Russo. In other words, it wouldn't necessarily have to be in a letter. I just walk up to you and say, Roger, a big party is coming up. We want \$100 from you or it would be nice if you donated \$100. There is a way a fellow can say it.

Mr. PAULEY. I think you put your finger on it. Solicitation is a word that embraces a great many nuances and I think it would depend on precisely how the solicitation was made, by whom it was made, and a

number of other factors all going to determine whether there was an implicit threat.

Mr. RUSSO. I am concerned about tightening up the language so that we can cover some of these areas.

Mr. PAULEY. Well, we will be happy to consider that. I am not sure one can do any better than the word "threat" which is a word that is in a number of extortion statutes now and it does pose the problems you raised but they have not been difficulties that Federal prosecutors have found insuperable in the past.

Mr. RUSSO. Mr. Chairman, just one more comment.

Mr. HUNGATE. Yes. Surely.

Mr. RUSSO. On the problem we are talking about putting in the legislative history, that we don't want the State or the local municipalities to pass a law that says this was actually legal and therefore circumvent 601. I would be opposed to putting in the legislative history for the simple reason yesterday on the floor of the House we had a little problem with the Federal elections law. It was in the legislative history, not in the act per se, that something was to be filed with the Clerk of the House. When it came to the test on the floor it wasn't the intent of the law that was argued, but what the law itself said. So I think it is important if we want to make an exclusion like this that we actually put it in the law, and not in the legislative history, because that seems to fall by the wayside nowadays.

Mr. HUNGATE. Mr. Smietanka.

Mr. SMIETANKA. Mr. Chairman, thank you very much.

Mr. PAULEY, I am interested in how far the revised 18 U.S.C. 601 would go into the domain of State, county, and city governments. For example, will it apply to jobs, benefits, compensation, et cetera, only indirectly related to congressional action, for example, the hiring and firing of subordinates by a county sheriff based upon support or lack of support in previous elections, if that department is a recipient of a grant from the Law Enforcement Assistance Administration?

Mr. PAULEY. I think, and I will defer once again to Mr. Donsanto, but I think that our position would be that some Federal moneys would have to be traced to the particular job or benefit that was being denied in order for the statute to apply. Otherwise as was pointed out, I think by Mr. Wiggins before he left, it would have a completely pervasive impact which might well be unwarranted in terms of Federal invasion into local spheres. But I will let Mr. Donsanto comment on that also.

Mr. DONSANTO. I think we would have to show under those circumstances, No. 1, that there was a fairly sufficient amount of Federal funds involved in the deprivation, and No. 2, that the people who were being dismissed were nonpolicy formulating type people, that they were just ministerial functionaries, secretaries, people of that sort, who under custom had not been part of what ordinarily had been considered a merit civil service, as well as that federally funded jobs that were ordinarily protected from political dismissal were being used for that purpose on the basis of political activity.

Mr. SMIETANKA. Pursuing that one step further, how considerable would the federally traceable funds have to be?

Mr. DONSANTO. That is a prosecutorial sort of judgment which one makes on a case-by-case basis. I think—I can't give you a firm set figure.

Mr. SMETANKA. It is possible, then, that one penny of federally traceable aid might have the effect of applying 18 U.S.C. 601 to a county sheriff's department.

Mr. DONSANTO. It is feasible. I can't say it would be well-received in a Federal court.

Mr. SMETANKA. Thank you very much.

Mr. HUNGATE. This problem still puzzles me. "Policymaking" has a nice ring to it—if we can decide what policymaking means. I am attracted to a simple approach that would protect certain employees on the basis of salary level. But there are problems here. Let's take a case of someone in my office who has decided it would be in the public interest to retire me in an election. All he does is file. But at the end of the day he simply calls my opponent and says, "On H.R. 34 there were eight people who wrote in. Hungate voted yes and they wanted him to vote no. You might want to talk to those eight people." I think that if he does that for about a month, even though he is in a relatively low salary level, nonpolicy position, I would have a lot of trouble.

Yes, Mr. Donsanto.

Mr. DONSANTO. That would not necessarily be a termination on the basis of political activity as much as it would be on the basis of competence, disloyalty. I think there is a distinction between the fact that in this case your subordinate employees may have chosen to support or to assist one of your opponents in this particular way which brings into question not only their political activity but their insubordination to you, and that is quite a separate consideration.

Mr. HUNGATE. Insubordination. That is an interesting approach.

Mr. DONSANTO. There is an interesting confluence, as it were, between political activity and political insubordination, but it is clear your motivation of firing them would be basically that of one being insubordinate.

Mr. HUNGATE. Shooting them would be called political slaughter.

Any other questions? Thank you very much Mr. Pauley, Mr. Allen, and Mr. Donsanto.

Mr. PAULEY. Thank you.

Mr. HUNGATE. Our next witness is Mr. James F. Marshall, national executive director, Assembly of Governmental Employees.

We are glad to have you here Mr. Marshall, and we are pleased to have your statement. We will make it part of the record at this point, without objection. If you would, identify the gentlemen accompanying you, and you may proceed as you see fit.

[The prepared statement of James F. Marshall follows:]

STATEMENT OF JAMES F. MARSHALL, NATIONAL EXECUTIVE DIRECTOR, ASSEMBLY OF GOVERNMENTAL EMPLOYEES

Mr. Chairman and Members of the Subcommittee: I am James F. Marshall, National Executive Director of the Assembly of Governmental Employees, a federation of 46 independent public employee organizations which together represent more than 700,000 public employees in 34 states. We are sincerely appreciative of the opportunity to appear before this Subcommittee concerning its deliberations on HR 2920. We also would like to take this opportunity to thank Congressman Roush for introducing this bill and for his supportive testimony heard this morning.

The Assembly of Governmental Employees is in favor of the proposed amendments to Sections 600 and 601 of Title 18 of the United States Code as delineated in HR 2920. We feel the expansion of the coverage of Section 601 to bring it to

the level of Section 600, and the increased penalties applicable to both sections, will have a desirable deterrent effect on the coercive practices of certain government employees concerning political activities of, or lack thereof, by potential and fellow employees. We also feel that the proposed changes will allow Sections 600 and 601 to have a significant impact on the prohibition of coercive practices as provided for in the Hatch Act, specifically Title 5 U.S.C. Section 1502(a)(2). In a more general sense, we support the amendments as furthering the goals of Intergovernmental Personnel Act of 1970 Merit Principles Nos. 5 and 6 which will be referred to later in this testimony.

While we realize that Section 1502 of Title 5 provides for civil penalties administered under the Civil Service Commission and Sections 600 and 601 provide for criminal penalties prosecuted by the Department of Justice, their practical effects are related in that they both deal with coercive practices. If there have been problems with the effectiveness of Sections 600 and 601 of Title 18, this may explain partially why there have been similar problems with Section 1502(a)(2) of Title 5. There have been very few complaints under 1502(a)(2) which have been successful. This partially is due to the fact that few employees are willing to admit that they were, in fact, subjected to coercion. Prior to the 1974 amendments, the U.S. Civil Service Commission was able to solve this problem by proceeding under the old Section 1502(a)(3). Coercing political contributions was deemed to be "an active part in political . . . campaigns." Thus, an employee could testify that coercive efforts had been made without admitting that he, himself, had been coerced. With the change in Section 1502(a)(3), the Commission was left with the problem outlined above concerning (a)(2), but no solution. We feel that the problem is compounded by the fact that the civil penalties provided for in Title 5, Section 1506 are inadequate. Under that section the Commission is authorized to order the withholding of Federal funds equivalent to two years of the offender's salary, if the state involved does not follow the Commission's recommendation for dismissal. In many instances, this "penalty" is outweighed by the gain derived from engaging in the prohibited activity.

David Minge, Assistant Professor of Law at the University of Wyoming, in a 1973 Minnesota Law Review article,¹ pointed out that in the period between 1957 and 1967 the Commission ordered the withholding of funds in 30% of the cases in which dismissal was warranted. As further evidence of the inadequacies of the legislation, Professor Minge referred to proposals which would increase the penalties under Section 1506 to as much as 25 times the offender's salary (S 3417, 92nd Cong., 2nd Sess., Sec. 1633(d) (1972)).² We feel the increase in penalty is more effective if directed at the offender himself.

Thus, under our interpretation of the broad "whoever" language of Sections 600 and 601, any person, whether in a Federally-funded job or not, would be subject to the proposed \$25,000 fine, so long as the offense involved a position depending on Federal money. We feel that the practical effect of the amendments will be to provide a "bigger hole" for the potential coercer to fall into. The resultant deterrent effect of a workable criminal sanction on coercion under Sections 600 and 601 should vicariously deter coercion under Section 1502(a)(2). Thus, while the Commission's problems of proof may remain, the incidences of violations should be reduced.

I had the privilege of serving on the Advisory Council on Intergovernmental Personnel Policy established in July of 1971, pursuant to the authority of the Intergovernmental Personnel Act of 1970. After months of study and deliberation, the Council made several recommendations for extending the six broad merit principles of intergovernmental policy into state and local grant-in-aid programs. The Council's recommendations were reprinted in the January, 1973 Committee Print "More Effective Public Service" by the Senate Subcommittee on Intergovernmental Relations. In the context of these hearings, we favor HR 2920 on the additional grounds that it furthers the goals of the IPA Merit Principles Nos. 5 and 6 as set forth in the Council's report:

(Principle 5) "Assuring fair treatment of applications and employees in all respects of personnel administration without regard to *political affiliation*, race, color, national origin, sex or religious creed and with proper regard for their privacy and constitutional rights as citizens." (emphasis added)

¹ Minge, "Federal Restrictions on the Political Activities of State and Local Employees," 57 Minnesota L. Rev. 493, 525 (1973).

² Id. at 528.

(Principle 6) "Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office."

Under the comments to Principle No. 5, the Advisory Committee stated that "(a)ny deviation from the criteria of ability and willingness is inconsistent with the concepts of a free and democratic society." We feel that discrimination in employment based on political activities is an impermissible deviation which should incur heavy consequences such as the \$25,000 proposed penalty. The Council agrees with our position as is indicated in its comments under Principle No. 6 which states "The Council believes in a two-pronged approach to assuring political nonpartisanship in the conduct of public business. It favors penalties against those who would coerce public employees for partisan political purposes; it also favors penalties for those employees who use their official authority for the purpose of interfering with or affecting the result of an election or nomination for office."

Political coercion of public employees is regarded by some as ancient history, long since eliminated by the civil service regulations. I assure this committee that in many states and local jurisdictions, the problem is still a major detriment to efficient operation of public services. I commend to your attention the testimony of Charles F. Eble, Executive Director of the Indiana State Employees Association, an affiliate of AGE. His testimony will give you a comprehensive review of the types of problems faced in Indiana.

We gratefully thank the Subcommittee for the opportunity to speak and assure you that the Assembly of Governmental Employees stands prepared to assist and work with you and your staff in any way concerning this legislation.

TESTIMONY OF JAMES F. MARSHALL, NATIONAL EXECUTIVE DIRECTOR, ASSEMBLY OF GOVERNMENTAL EMPLOYEES, ACCOMPANIED BY ROBERT J. McINTOSH, CHIEF COUNSEL, AND GARY G. ELLSWORTH

MR. MARSHALL. Thank you, Mr. Chairman. It is a pleasure and an honor to be here before your subcommittee and we appreciate your courtesies.

On my right is our chief counsel, Mr. R. J. McIntosh, from Washington, D.C., and on my left is Mr. Gary Ellsworth, an associate of Mr. McIntosh.

The Assembly of Governmental Employees is a federation of independent employees' organizations across the country. The identification of the organization is well-stated in the written report, so I won't comment further on that other than to say our organizations, philosophically and constitutionally, are committed to the advancement of merit system principles. We believe in hiring and retaining public employees based on their ability to perform and not their political affiliation.

I would like to say at the outset that our purpose here is to wholeheartedly support the intent of H.R. 2920 and offer to you some comments. I won't try to repeat much of what has been said. I would like to talk with reference to the relationship to the Hatch Act. I would like to talk a little bit about the Intergovernmental Personnel Act and comment to Mr. Hyde's and Mr. Wiggins' question on the policy issue, as well as comment on other jurisdictions to indicate to you that this is not just an Indiana problem. The Indiana example is an absurd example in our estimation but it is not the only example. I would like to show you that it exists across the country.

In the area of the Hatch Act I might say the comment that you are going to have floor debate on the Hatch Act, that has to do with the

Federal Hatch Act. It will not have direct effect on State and local government. That was changed in the Campaign Practices Act of 1974. Many people have said to us that this type of legislation is really unnecessary because the Hatch Act takes care of the problem of coercive activities.

In our estimation it does not. To begin with, the only dealing that the Hatch Act—State and local government—has in this regard is on an employee who coerces. If a case is followed through and it is found that an employee is guilty of coercing another employee, that employee is required—the agency is notified that the action warrants dismissal.

Now, if they do not dismiss that employee in 30 days or if they bring him back within 18 months, then the U.S. Civil Service Commission, it says in the law, shall direct the granting agency to withhold up to the equivalent of 2 years of this man's salary. That is the penalty, which means if you are dealing with a highly paid State or local employee receiving \$20,000 a year, you have an outside chance of maybe losing \$40,000 of a multi-million dollar grant.

Mr. HUNGATE. You said up to. It wouldn't have to be that.

Mr. MARSHALL. I'm sorry. I think it says equivalent to 2 years. So that is the maximum penalty. We don't feel the Hatch Act is adequate, No. 1, because the penalty is inadequate, and No. 2, it only deals with public employees who are in violation of the act.

We like very much the sections in 601 and 600 that relate directly to fining an individual, whomever that individual might be, if he is found guilty of a coercive act.

We have in our testimony some comments relating to the success ratio of actions taken in this area by the U.S. Civil Service Commission.

Mr. HUNGATE. Pardon me. Let me understand. Under the present penalty system, when we have a \$20,000 employee, the penalty would be the forfeiture of the equivalent of 2 years salary. The employee wouldn't necessarily lose his salary.

Mr. MARSHALL. No. He can stay on the payroll. The penalty is assessed only if he stays on the payroll or comes back 18 months after the dismissal. It just affects the percentage of the money, the grant, and it doesn't affect him. To us that is a very important point because the individual doesn't stand to lose and we think that should be of great concern.

I would also like to comment on the Intergovernmental Personnel Act just briefly to relate to you support for the intent of this legislation. I was fortunate enough to serve on the President's Advisory Council under the Intergovernmental Personnel Act in which we evaluated the six basic merit principles that were passed under the act. Principle five states, "assuring fair treatment of applicants and employees in all respects of personnel administration without regard to political affiliation, race, national origin, sex, or religious creed and with proper regard for their privacy and constitutional rights as citizens."

The Council added language in the recommendations for implementation of these principles and under principle five we had one section that I think is very directly related to this. "Any deviation from the criteria of ability and willingness is inconsistent with the concepts of a free and democratic society."

I think that points out the intent of the President's Advisory Council on this issue. More to the point is principle six which states, "assuring that employees are protected against coercion, for partisan political purposes, and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or nomination for office."

The Council added comments to that principle that are quoted in our publication to this extent:

The Council believes in a two-pronged approach to assuring political non-partisanship in the conduct of public business. It favors penalties against those who would coerce public employees for partisan political purposes; it also favors penalties for those employees who use their official authority for the purpose of interfering with or affecting the result of an election or nomination for office.

Thus we support going after the individual in violation.

Now, before I get into some other examples that I think might be of interest to the committee, I would like to go to the issue of the exemption element and I do think it is a very valid point. In our operations across the country, we have been intimately involved in the development of merit system procedures at all jurisdictional levels. That question is a tough one to address in State law and I might suggest to the committee that in research for language for exclusion from this section of the code, a search of State merit laws as to who is exempt might be a worthwhile venture. Some State laws have policy and confidential employees. Some State laws list what categories are to be exempt. And certainly there is a percentage which must truly be exempt in any merit activity to allow for the alliance to the platform on which the candidate was elected.

The percentage of involvement differs from 1 percent from what we call the absurd 27 percent in Indiana. I cannot believe that 7,000 out of 26,000 employees in Indiana that validly are exempt from the system is in the public interest. We have a magic code of somewhere from 4 to 5 percent which is reasonable. There is one reference I might also suggest you look at although we disagree with one section. In grant-in aid programs for State and local government, currently the Civil Service Commission is charged with the responsibility of administering merit standards, and those standards only exist in about 31 of the grant-in aid programs, which are listed in the IPA Council report to the President. The merit standard has quite a lengthy section under jurisdiction of exemption and I commend it to you for consideration. It talks about elected heads, about appointed officials, about Commission heads, about one or two confidential assistants to that Department head, that type of thing. It does come up with language at the end, "and unskilled labor" which is a very tough term to deal with. Nobody considers themselves unskilled labor anymore and job classifications don't identify in that category any more. Therefore, it is almost extinct in usage. We would oppose unskilled labor being part of the exclusion. Other than that, the jurisdiction sections of the merit standards do have some suggested language you might want to consider. There is no question that there should be some.

There are so many hard issues to pin down on where the violations are and how valid the violation is and what constitutes the coercion. I would dare say as a very broad statement, that of the 78,000 public jurisdictions in this country, almost every one of them would, under honest investigation, show some coercive practice in some area. We

have had experience with many of them across the country and I fail to find a place where we are involved, and we are involved in 34 States, where some coercive practice does not exist.

Sometimes it is not intended by the political head of the jurisdiction. Sometimes it crops out of a county official.

Example. In the State of Ohio we had a case in the State highway department, in a county at the western edge of Ohio, where the assistant superintendent of the State highway department brought in some employees in that highway garage to sit down on State time to hear from the county chairman for county politics. Very clearly, they were told, and we had testimony to this extent, that if they did not pay—it was a small amount, but the principle is the point—they would not have a State job.

Now, it was not a State official that said that. It was not a supervisor that said that. It was a county chairman who said that.

We have had other examples, such as the flower funds in the county sheriffs' departments. I was interested in your inquiry about that area because that has been bandied about a long time—where employees in the County Sheriff's Department are expected to put into the flower fund, and if they do not, they lose their position. They are deputies and we have some legal history that you may want to research in the State of Ohio on what a "deputy" really is because, a deputy is considered to be part of the exempt category but the role of the "deputy" in the sheriff's department is not termed as deputy for exemption purposes.

In the State of Utah there was a solicitation letter submitted from the Governor with, I am sure, very honest intent of encouraging activity to get \$25 tickets to "x" banquet and the letter was purely a solicitation letter. "We would appreciate your consideration", and so forth and so on. Somewhere along the line somebody created a contest among the supervisors and the department subheads as to how many people were going to get 100 percent of their employment element involved and there was some very strong verbal, coercive practices there.

Our organization there was able to put it to a stop by drawing it to the attention of the auditor and other officials got into line but there was coercion.

In the State of West Virginia we had an example where five employees of a girls' school, dormitory helpers, were solicited for \$5 on the threat of transfer. When you are making \$350, \$400 a month, you don't particularly want to get transferred from your home.

We had a situation in Ohio, the highway department, where the superintendent of the unit took away privileges, very clearly stating there would be no advancement. They could not take away the increment increases. We have cases on record—clearly indicating that you will not get advancement if you didn't buy a \$100 ticket to the dinner.

These are just a few examples to point out to you that Indiana is not the only place where this happens. We feel this legislation would have a great deterrent effect. The mere fact that an individual knows he might be fined \$25,000 and a year imprisonment makes him think twice, whether he is just an ambitious nonauthorized person or whether he is given direction to coerce. So we certainly support the bill.

That is all I have, Mr. Chairman. I would be glad to answer any questions.

Mr. HUNGATE. Mr. Russo.

Mr. RUSSO. Just a couple of questions. Would you support a mandatory sentence of 1 year as opposed to a 1-year maximum sentence.

Mr. MARSHALL. I don't think I could support that. I think there are too many unusual circumstances that might prevail.

Mr. RUSSO. OK. You have indicated that you have continually gone back to hit Ohio for a lot of violations.

Mr. MARSHALL. I spent 5 years in Ohio, Mr. Russo.

Mr. RUSSO. I was just wondering. I get the impression that your organization did something.

Mr. MARSHALL. Yes.

Mr. RUSSO. What did you do?

Mr. MARSHALL. Well, we went in two different directions. We threatened going to the Civil Service Commission and we also went to the public in press releases.

Mr. RUSSO. In other words, you didn't file any civil action or anything?

Mr. MARSHALL. In a few cases we did but we never had to go to court on it because it was reversed quickly at the time.

Mr. RUSSO. OK.

Mr. MARSHALL. But in many areas, public notification of it very clearly has its effect.

Mr. RUSSO. Are you involved in the State of Indiana at all?

Mr. MARSHALL. Yes. You will be hearing after our testimony from the executive director of our affiliated organization in Indiana.

Mr. RUSSO. What has your organization done in Indiana to alert the people and to bring this to a head? It seems it has been going on for quite some time.

Mr. MARSHALL. Right. Well—

Mr. RUSSO [continuing]. And—

Mr. MARSHALL [continuing]. Mr. Russo, I think I would like to defer to Mr. Eble on that because he has a briefcase so full of material that he can hardly get it closed—

Mr. RUSSO [continuing]. All right.

Mr. MARSHALL [continuing]. With newspaper articles and letters, and so forth.

Mr. RUSSO. How much is the Indiana law being enforced?

Mr. MARSHALL. Well, I think for a long time, from our perspective, for a long time our organization did not have the capability in Indiana to pursue the issue and the employees were left alone. They have developed that capability and have pursued the issue and have brought it to a head in the last 18 months or 2 years. I would like to have Mr. Eble comment on it.

Mr. RUSSO. Thank you.

Mr. HUNGATE. Mr. Hyde.

Mr. HYDE. I have no questions.

Mr. HUNGATE. Counsel? Mr. Smietanka.

Mr. SMIETANKA. I would like to ask one question, Mr. Marshall. You gave some—you gave several examples of solicitation locally throughout the country. Were these dealt with locally by criminal laws? Did criminal laws cover this kind of solicitation?

Mr. MARSHALL. Not in the cases that I have referred you to, no. We opposed them through the civil service structure, through public information, or through Civil Service Commission in violation of the Hatch Act. Sometimes the threat of such action with public notifica-

tion at the same time in most areas that we have dealt with has solved the particular case. It has not solved the problem.

Mr. SMETANKA. Would a State law on the subject matter be more effective than a Federal law? In particular jurisdictions, particularly State.

Mr. MARSHALL. This is a very tough one to answer because a lot depends on the responsibility of the State judiciary system. Many times we have had to go beyond the State on issues and it is a tough one to answer. I think to get a State law passed in most States on this issue would be a tough one because of the self-serving atmosphere and even though they have the law in Indiana, Mr. Eble will be able to point out to you why and how it is not being used. I think the involvement of the Federal intervention into the issue is needed in many jurisdictions in this country.

Mr. SMETANKA. Thank you very much.

Mr. HUNGATE. Thank you, Mr. Marshall, for your helpful contribution. The subcommittee will certainly move in this area.

Mr. MARSHALL. Thank you very much, Mr. Chairman. It was a pleasure to be here and we appreciate the courtesies.

Mr. HUNGATE. The next witness is Charles F. Eble, executive director of the Indiana State Employees Association.

Please come to the table, Mr. Eble. You have a prepared statement, I believe, and without objection it will be made a part of the record at this point.

You may proceed as you see fit.

[The prepared statement of Charles F. Eble follows:]

STATEMENT OF CHARLES F. EBLE, EXECUTIVE DIRECTOR, INDIANA STATE
EMPLOYEES ASSOCIATION

Patronage in the public sector employment as practiced in Indiana, is a vicious system which undermines adequate personnel systems, efficient service and securing competent personnel which certainly could not be intended by Congress or the citizens when programs and money are approved for programs, assistance, jobs or benefits in State and Local governments.

It uses 2%+ of available funds for service to the public toward the use of the political parties rather than the purposes for which it is intended. The system is described as preserving the two party system; making government more responsive; allowing the small contributor to participate and further described as a way of life in Indiana.

The system in Indiana revolves primarily around low-paid employees including clerical, laborers, truck drivers etc., because the "income" is greater since there are a greater number of them and includes hiring practices, promotions, merit increases and more subtle persuasions.

The employee to be hired is required to fill out a patronage clearance form which includes space for the endorsements from political leaders from the Vice-President Committeeman up to the State Chairman of the political party involved. A series of questions are required to be answered including one that reads "Would you be willing to contribute regularly to the Indiana State Republican Party?" (NOTE: Most of the materials assembled deal primarily with the Republican Party only because the Republicans have had control of State government in Indiana since 1969. Both parties have mutually done the same thing.)

While Indiana has learned to try to distinguish between federally-funded programs and locally funded programs in an effort to circumvent the federal restrictions; part of the problem involves pressure and threats by local County Committees who are not considered state officials or employees, but in fact, carry considerable weight within the operation of many state agencies such as the Indiana Highway Commission. Also, many employees who apply for career positions are still required to fill out the forms for "patronage clearance" until it can be determined that a "career" position is open.

H.R. 2920 will in our opinion, close some of the loopholes that allow continued patronage and payments to exist and should be passed by this Congress in an effort to reduce the opportunity for selling public jobs in exchange for political money or works. We believe that the citizens of the U.S. and of Indiana want government to be cleaned up and that public monies be used for the purpose intended and not for partisan political uses.

One final loophole which we would hope to see closed, although not contained in H.R. 2920 is that political affiliation be added to the list of discriminatory practices contained in the "Civil Rights Act" since it is our belief that many minorities are discriminated against because of their political affiliation in addition to race, color, creed, sex and national origins.

In summary, the Indiana State Employees Association supports the passage of H.R. 2920 and we hope that this Sub-Committee will make further commendations to prohibit political affiliation and/or payment to be used by any employer, government or otherwise in employment or retention of employees.

TESTIMONY OF CHARLES F. EBLE, EXECUTIVE DIRECTOR, INDIANA STATE EMPLOYEES ASSOCIATION, ACCOMPANIED BY ROBERT J. McINTOSH, CHIEF COUNSEL, AND GARY G. ELLSWORTH, LEGAL COUNSEL, ASSEMBLY OF GOVERNMENTAL EMPLOYEES

Mr. EBLE. If I might, this is a duplication of some of the material you have.

Mr. HUNGATE. Yes. You have a gentleman with you.

Mr. EBLE. Mr. McIntosh, who is the AGE legal counsel of the Indiana State Employees Association, who is a member of the independent group of affiliates, such as ourselves, which is the Assembly of Governmental Employees.

Basically, Mr. Chairman, we appreciate the opportunity to appear today and to explain to you how we feel the system operates in Indiana and the difficulties and pressures involved within that system as it pertains to the employee.

Basically, we consider it to be a vicious and insidious system. I say that with full knowledge of the fact that the political parties do not like me to say that and I receive much criticism over it, but the basic problem is that the whole system revolves primarily around low-paid personnel. It revolves around clerical workers. It revolves around truck drivers. It revolves around laborers. The reason why it revolves around these people is because there is a larger number of them and if you can get 2 percent of their wages you have a considerable amount more money coming in than if you just include the department heads in the Governor's office.

We recognize the fact that in some States this is done with the administrative people of the Governor. But, the income would be minute for those people. So, in order to have a \$500,000-plus income, as a State party does in Indiana, it is necessary to go after a larger number of people and that becomes the vicious and insidious part of the system.

The employee who is hired into these positions, and I might also mention that it is not just the "patronage" positions of which there are approximately 7,500, but it also involves other career systems. We have employees who are hired in so-called career opportunity-type categories, who, in fact, are required to fill out political clearance, and are required to pledge to contribute regularly to the State party. They are basically told, "Well, we don't know yet whether there is going to be a career position open. So you go ahead and fill out these forms. You make your statement as to whether you are going to contribute,

get the endorsement. If there is a career position, we won't need it, of course. . . .

"However, if we don't have any career positions open, we will put you in one of the patronage positions and you have already filled out all the forms and made the necessary agreements." But they already have gotten the commitment and they expect them to live up to it later.

So it works both sides. The concept of 7,500 patronage positions is only part of the tip of the iceberg. The State of Indiana has learned pretty closely how to follow a federally funded project versus a locally funded project. The State does make a pretty concerted effort to try to keep restricted to those areas where the moneys come from; for example, local gasoline taxes as opposed to Federal construction money. The instances, however, do alter, as in the case of one of the letters which you have where a construction employee in the State highway commission was gone after for money by the Washington County Republican Committee. I would have to point out it is called the Two Percent Club in Indiana, but 2 percent is also only the tip of the iceberg. It is 2 percent to the State, 1 percent to the county in many instances, which is 3 percent. There are counties where they are required to contribute \$150 a year, which sometimes comes to 4 or 5 percent of that particular employee's wages, and they also have to participate in various dinner-raising functions, for instance, a \$25 ticket to this dinner, a \$25 ticket to that dinner. So, 2 percent is only the tip of the iceberg. It is more insidious than even the 2 percent and goes further than that.

The bill which you are considering by Congressman Roush, which I am glad is in, we think would go a long way to closing a lot of the loopholes which have been in existence up to this point.

We firmly and truthfully support that bill as a means of helping to clear up the issue, but we do feel that there ought to be other areas which are covered within this concept of using a person's political affiliation, political contribution, or political work as a means of getting and retaining his job; as a means of getting his promotions, merit increases, and so forth. We would particularly look to something like the Civil Rights Act. We think, as an example, using political affiliation contributions and work as a means of getting and keeping a job most probably discriminates against many minorities. We have tried to find figures, as an example, on what the political ratios of minorities might be, but we would suspicion, as an example, among blacks that maybe 60 percent are Democrat, maybe 40 percent Republican. We don't know whether that is true, but we suspect that might be true. But definitely, if you use political affiliation, you are going to be discriminating against groups that have a higher percentage of one party versus another and you do get into discrimination against minorities by this type of system.

We do think perhaps the subcommittee ought to look into the concept of the Civil Rights Act as well as the Hatch Act and other areas. So, we do basically support this bill as a means of closing of the loopholes, but hope that the subcommittee would look into other areas for possibilities of closing additional loopholes.

We have attached material, some of which you have seen and some of which you have not, but if I may—and the reason I gave you a copy was so that we could go through them in proper order.¹

¹ See p. 63.

The first one you have is a very excellent dissertation by Gordon Englehart, of the Courier-Journal & Times in Louisville, on how the Two percent Club, political contributions system works. It is extremely detailed. It goes through the concept of how the employee gets his job through the endorsement, the fact that the endorsement will not be granted unless he says yes to the section which says, "will you contribute regularly to the party?"

Now, this is interesting because the parties then consider that agreement to be a contract for employment, and, if the employee makes an effort to stop paying his 2 percent, then the party takes the position, by and large, that he has now invalidated his employment contract and therefore should no longer be employed with the State of Indiana; because, he agreed to contribute, if he doesn't contribute now he has violated that contract, the contract which he entered in order to get the endorsement.

The second copy that you have is the patronage clearance form itself. That is pretty self-explanatory. As you get into the bottom area it says, "What is your political party affiliation?" "Would you be willing to contribute regularly to the Indiana Republican State Central Committee?"

I might also point out that most of the materials relate to the Indiana Republican Party only because they have been holding the statehouse for approximately the last 7 years. But there is joint agreement by both political parties, the Democrats and the Republicans, in Indiana that this is the best system that they have seen in operation to this point and both would like to keep it.

There is a statement, as an example, on the next page which has to do with the Indiana GOP chairman firing workers renegeing on their party pledges, the pledges being that they would agree to contribute and now they don't want to contribute. The party chairman, of course, was Mr. Thomas Milligan and this was September 8, 1974, which is a little over a year ago. Let me just read part of it.

In the left-hand column as you go down, about the fourth paragraph it begins, "Milligan, who is also Wayne County"—that is Richmond, Ind.—"GOP chairman noted that every applicant for a State patronage job fills out a 'patronage clearance form' that must bear the written endorsements of his precinct, county, district, and State party officials."

One question on that form reads, "Would you be willing to contribute to the Indiana Republican State Central Committee?"

"As a County Chairman," Milligan said, "he would not endorse anyone who did not write, 'Yes' to the question."

So the concept of the clearance merely being a recommendation, in my opinion, is a false assumption because this is the attitude of most of the county chairmen, precinct committeemen, the district chairmen. If you look back here there are 10 people that have to endorse this particular form and any one of them, generally all of them, will say, "All right, you say yes, or, I won't sign it." So it is not merely a recommendation. It is a solicitation for contributions and a pledge to contribute. So, I do feel that should definitely be part of the record.

The next one was basically a letter from two former employees who finally were fed up with it. I might point out, too, that this whole insidious thing detracts, in our opinion, from good personnel policies and procedures because an employee who is really good, and an em-

ployee who is really competent, just won't put up with this. The good ones will come in, will be told, "Well, now, you have got to fill out this form, you have got to agree to contribute 2 percent of your wages plus whatever the county picks up." The good ones will just say, "hey, I don't need this kind of work. I can find another job because I am qualified and I am competent."

So you have a tendency through such a system to reduce the competency of the work force.

Mr. HUNGATE. Who is working in Indiana?

Mr. EBLE. Excuse me?

Mr. HUNGATE. Who is working in Indiana?

Mr. EBLE. Well, Mr. Chairman, the majority of the State employees are conscientious employees who themselves do not like the system. Many of them got into this system by virtue of having been out of work, by needing a job, and to some extent for many of them it was the only way to get a job. Frankly, they did agree at the time to it. One of the things that we have confronted in Indiana is the political parties will say, "Well, they needed the job, they wanted the job, and this is how they agreed to get the job, and therefore they are stuck with it. They shouldn't renege later."

Well, I firmly believe that times change, as Congressman Roush has said, that just because 20 or 25 years ago a person had to be white to get a job in certain areas, it doesn't mean it was valid at the time or is valid today. I believe the same is true with patronage. Just because it happened doesn't mean it is right.

The next article is basically a letter to the Herald-Argus in the LaPorte, Ind., area by two employees who finally stuck their necks out and basically had concluded themselves that it was just not worth it. "We can find better jobs."

The third article that is the next sheet is basically a copy of a—it is split up actually these are the papers that the Xerox is made. This is a copy of "The Republican News," which is the State party publication, and this is one of the articles that appeared within that publication.

"One of the nicest things about winning elections is winning control of patronage positions for the party faithful.

"Many positions in various fields are now available in Indiana State government. Applicants for patronage positions are required to get party clearance," and so forth and so on.

"Right now, Mrs. Smith has an opening for an assistant director of the social security disability determination division of the Indiana Rehabilitation Services Board . . ." which certainly is a federally funded type of situation.

Also the other area on the bottom is weighmen. These are the weigh stations on the interstate highways and the regular U.S. highways and State highways where they weigh trucks, and so forth. These positions are also patronage type of positions and are solicited through the party faithful.

By the way, the date on that is June-July 1973, so it is not like 10 years ago.

The second one is also from "The Republican News," September 1973, which details engineering jobs that are open. It does go up the ladder.

Now, I might point out the salaries of these engineering positions, are \$16,328. If you consider setting a monetary level, I hope you won't set it so low that it will eliminate career-type positions. Basically, they were asking for engineers in the article.

"At least six civil and agricultural engineers are needed in the Division of Water of the Department of Natural Resources. The agricultural engineers should have a hydrologic background."

So this was going to be conservation-type work for the Department of Natural Resources where the Federal funds are involved whether it is totally local funds. I would suspicion if it is in the area of conservation there is probably some sort of Federal funding. In any event, the salaries were up to \$16,328 per year. So I do hope that if you do set a dollar figure, you won't keep it so low that it will eliminate these types of positions.

The following article is an article of the Indianapolis Star, January 16, 1975. This was an effort by Mayor Richard Lugar of the city of Indianapolis to try to get away from the 2 percent and go to a more voluntary system. Interestingly enough, they sort of equated it to pledging within churches. As the churches go around and ask each of the members of the church to pledge some money, the party does feel that they have as much right as the church to go around to ask for pledges of money.

In this particular case, I believe that you will find that the pledges, assuming that they were all paid, would have amounted to approximately 3 percent of the combined salaries of those involved. And this was a voluntary pledge.

Now, I would point out we of the ISEA have no problem with voluntary donations or voluntary political work by employees, but the problem becomes, once you are found to be in arrears, you are in trouble with your job; you are in trouble with your promotions; you are in trouble with your merit increases.

The following article has to do with the Democratic Party in the State of Indiana. As you can see, they have announced here there was a bill in the last session of the general assembly that tried to totally prohibit the 2 percent type of solicitation, to go into a tax allocation basis on the State income tax, and so forth. The Democratic Party said they would give up their 2 percent solicitation if that bill passed: which indicates, one, they are collecting 2 percent in many areas, and two, they are not quite ready to give it up until they have a substitute. I believe this is also probably the position of the other party as well. So it does involve both parties.

I would have to also point out that that bill did not pass in the general assembly.

Now, this again, I would hope to point out, presents another insidious aspect of the whole proposition. We have suggested to both political parties that if this is such a good thing—that 2 percent of an employee's wages be paid into a political party, that is the way to get the little man contributing to the democratic process—which is usually how it is phrased—and keep the biggies from taking over the political parties—then it would seem to us if this was valid, equitable, reasonable for everybody concerned, the Federal Government and State government should take 2 percent of all payrolls and give them to the political parties. If the thing is right, then that would seem to be the best approach.

However, everybody backs away from that. They say, "Oh, we can't use taxpayers money to fund a political party." What is 2 percent of the employee's wages, but taxpayer money? The employees are paid through the taxpayers' contributions through taxes or otherwise. So you are, in fact, using taxpayer money by virtue of the political contributions systems that is going on. If people want to be honest, then just go after the money and get the money and stop this charade of saying, "Oh, no, this is an employee contribution." He can't get his job unless he agrees to make a contribution.

The other articles are similar, explaining how the system works. The letters are in response to one of the questions that was mentioned earlier. What happens is these letters come out, for instance, July 6, 1971, to all employees. Now, it doesn't limit it. It says, "To all employees." What you will find is the May 14, 1971 letter was considered to have been the letter upon which everybody based their decisions as to whether it was voluntary or mandatory, because the May 14 letter said that it would be voluntary. Then the superintendent puts his out and said, "Well, you are going to be automatically dismissed." And then what will happen is the officials will say, "Well he didn't have authority to put that out."

It is pretty difficult to explain to an employee that he (superintendent) didn't have authority to put that out, because he is the person who hires and fires in that garage. But you will find the higher officials will put aside that letter and say that it is not State policy, that didn't come from the highway commission, and so forth.

That pretty well covers that type of material. The one other thing I thought you should be aware of is the mechanism by which it is solicited. I did not make copies of these envelopes. I brought these envelopes directly. If you would want to keep them, I would be glad to let you have them.

The dates of these are August 22, 1974, August 23, 1974. This is basically the system as it operates, which I think is a very difficult system in itself. These are Indiana State Highway Commission envelopes. These are agency envelopes. In this case, the employee owes \$4.50. In this case, the employee owes \$5.15. This employee is behind \$36.60, and so forth.

Anyhow, these are the pay envelopes, by and large, that are passed out to the employees with this type of envelope along with how much they owe. Then the particular foreman involved, who takes care of that group, begins to collect the money by next Monday or Tuesday, and he, by and large, lists on the back of another envelope who paid and how much. He makes a report to the district as well as to the county chairman involved because some districts will cover several counties.

Mr. HUNGATE. Who makes the entry on the individual envelopes as to how much is owed?

Mr. EBLE. This is generally done within the subdistrict offices by a clerical worker who gets the paychecks and makes out the envelopes for the subdistrict superintendent. One of the problems involved is the tracing of Federal funds. Most of the investigations by the Federal Government have come to a halt basically at some of these levels because it becomes a question, as an example in the subdistricts of the Indiana State Highway Commission, of whether any Federal funds were involved or not. I always find that difficult to un-

derstand because the agency itself gets millions of dollars of Federal funds. Then they find some poor devil down there with six kids, and I'm not kidding you, we have a fellow right now who has been transferred from one subdistrict unit to another who owes \$160 at 2 percent.

He was told the transfer was to get a better handle on him and make his life difficult until he pays up the money. The man has six children, his wife is 4 months pregnant, he has been transferred to another unit, and he has been told the reason is he will be under the thumb of the subdistrict superintendent.

In some of these cases, it is a matter of just having to spend all our time trying to dig down into the details and trying to get it corrected. The situation, as far as the attorney general in the State of Indiana is concerned, is that if we charge a State official with that type of activity it is the attorney general who defends him. As an example we went to the Federal Government for a political affiliation firing in the department of public instruction, which definitely has Federal funds, and it was the Indiana Attorney General who defended the superintendent of public instruction. So we don't feel that we can find both a prosecutor and a defender in the same person and get adequate justice.

That concludes my testimony. I apologize for taking so long and I will be glad to answer any questions you may have.

Mr. HUNGATE. Thank you, Mr. Eble.

Mr. Russo.

Mr. Russo. I don't understand why, under the Indiana law, this practice is allowed to continue. If the attorney general is the one that has to do the defending, why isn't a special prosecutor's office set up in the State of Indiana to handle these particular violations?

Mr. EBLE. I will be perfectly frank with you, sir. Nobody wants to see this system go down the tube. It is too profitable to allow it to go down the tube.

To give an example, there was a study committee on personnel from 1969 to 1971 which was formed by the State legislature. The effort was to try to come up with some system which would be compatible to all interests. That study committee, in fact, attempted initially to abolish the entire merit system within Indiana and only because of the fact that the Civil Service Commission out of the Chicago regional office came down and told them how much Federal money they would lose if they abolished the system did they retain it.

Now, then, if you read the report it says, "compelled to accept the merit system," and then goes on and tries to pick up those which the Federal Government did not require merit system and put them under other areas.

Mr. Russo. Maybe what we ought to do in requiring any of our appropriations, the money sent to the States, require that those who work under it must be under a merit system as opposed to the patronage system.

Mr. EBLE. If you did that on all Federal funding that went into the States, just praise God, that would really be a tremendous assistance because they will not do it unless they are dragged kicking and screaming and everything else into the 20th century as far as personnel practices are concerned. I expect to hear about all this when I get home, but this is the truth.

Now, to give you an idea of what happened in the 1969 to 1971 situation, this was the concept that they had of getting responsive government and good personnel practices. They decided, both parties, that instead of fighting about the turnover on the change of administration, and say 100 percent would be Republican and 100 percent would be Democrat, both parties agreed to a bill which was commonly called the 60-to-40 bill. Now, the 60-to-40 bill, legally within State law, allowed within certain agencies, including all the hourly employees, 2,500 of them in highway, that 60 percent of the employees belong to the political party in power. The bill says you can't have more than 60 percent; which means you can have 60 percent, and the other party—we are a two-party State—has the remainder if they can get it.

Now, that system then was called the 60 to 40. Now, it is a slight misnomer because it never sent 40 percent to the other party. It just said the party in power could not have more than 60 percent. The concept of efficiency and everything and modern personnel practices was that when the party changed, only 20 percent would have to change, to change the 60-to-40 ratio and the 20-percent change was better than 100-percent change and therefore that was a good personnel policy procedure. That was written into the law in Indiana in 1971. It is part of our State statutes for certain agencies. But it never has been implemented even though it is part of the law. It includes a prohibition on political coercion. These things are illegal under that law. Yet the law basically has never been implemented.

Mr. Russo. Has your group instituted any other type of litigation at all, civil litigation for restraining orders to implement the law of Indiana?

Mr. EBLE. The problem becomes getting the material together versus proving it to a court's satisfaction.

Mr. Russo. Obviously, you must have some individuals who aren't too happy about the way things are going. Why aren't they coming forward?

Mr. EBLE. Some of them fear for their jobs. It is one thing to give you the material. It is another thing to go into court, testify, and then risk losing your job.

Mr. Russo. Your organization ought to set up some kind of a fund so you can encourage those to come forward to testify and have some sort of a support fund if they lose their job.

Mr. EBLE. It is beginning to occur. We finally got the support of Common Cause and the Indiana Civil Liberties Union in the past year and these people are helping to support legal action.

Mr. Russo. What about the newspapers? Obviously they write about it. What effect are they having on the local political figure?

Mr. EBLE. Very little.

Mr. Russo. Maybe that is why 58 percent of the people in this country vote and the other 42 percent say, "To heck with it."

Mr. HUNGATE. Mr. Hyde.

Mr. HYDE. Does Mr. Hatcher have any of the problems up in Gary, Ind.? Does he have a Two Percent Club?

Mr. EBLE. I have to qualify this because I don't have any members in Gary and have not done an indepth investigation. It is my under-

standing that patronage was rampant within the city of Gary. It was my understanding there was an effort to try to reduce it considerably, if not do away with it, but I do understand patronage to some extent exists in Gary, Ind.

Mr. HYDE. You are just against patronage as a system, right?

Mr. EBLE. No, sir.

Mr. HYDE. You are not against it?

Mr. EBLE. No, sir. We think there is a place for control of policy-making and we support voluntary political contributions to a party, support voluntary political activity for a party. We recognize that the political parties in order to carry out their policies must retain a certain amount of control within the public sector. What we are against is an employee's job being dependent upon political contributions, being dependent upon his political work; that his raises, his promotions, his transfers become dependent upon his political contributions and political work.

We have no problem with voluntary donations and we have no problems with the high-policymaking areas being political appointments.

Mr. HYDE. Do you see any analogy between the compulsory 2 percent and, say, some union check off system where you have to belong to the union in order to get your job? You don't even get an envelope. They take it out of your pay and it goes to support quite possibly political ideas, ideologies, and candidates to which you are violently opposed, but you can't get your job unless you pay dues and you can't keep your job unless you pay dues. They take it out of your pay. That is just as unjust as the areas to which you are committed and dedicated, but over here in patronage it is a great evil. I would like you to reconcile those things.

Mr. EBLE. There is no basic difference between what you said and what I said. Mr. Milligan will be glad to tell you we have publicly, all over the State of Indiana within the news media and within hearings within the State legislature, opposed any mechanism, whether it be agency or union shop or patronage, that would require an employee to pay someone to keep a public job.

Mr. HYDE. Then you are for right to work, for the right to work law.

Mr. EBLE. We are into a matter of semantics. If an employee's job, a public servant's job, public citizen's job—I dislike to use the word "servant" but everybody seems to use it—if an employee is dedicated to serving the public and is a competent person and he is going to be fired because he didn't pay either a political party or union and that is the basis for his firing, I think it is wrong and unjust.

Mr. HYDE. I have no further question.

Mr. HUNGATE. Counsel?

Mr. SMIETANKA. I have no questions.

Mr. HUNGATE. If there are no further questions by the subcommittee, we thank you very much Mr. Eble. We appreciate your evidence and testimony.

Would you like these patronage pamphlets made part of the hearing record?

Mr. EBLE. Yes. I thought you would find these interesting.

Mr. HUNGATE. Without objection, they will be made a part of the record.

[The materials referred to follow:]

[From the Courier-Journal & Times, Aug. 5, 1973]

THE TWO PER CENT CLUB: POLITICAL GIVE AND TAKE

(By Gordon Englehart)

Indianapolis.—That perennial bogeyman—Indiana's Two Per Cent Club—once again is in the news. This time, it's a federal fiscal watchdog that's aghast.

For 40 years, Indiana state government patronage workers have voluntarily—or, more precisely, involuntarily voluntarily—forked over 2 per cent of their pay to state headquarters of their political party.

The club's alleged rationale: it is better to fund political organizations through small contributions from thousands of patronage workers than for the organizations to become beholden to a few big fat-cat donors.

Through all four decades, Indiana editorial writers periodically have railed against this "extortion."

Out-of-state political writers, coming here to cover campaigns, get goggle-eyed when they stumble onto the institution, peculiar to Indiana. They become doubly incredulous when they find few Hoosiers apologetic about it.

Indiana governors and state headquarters of both parties have unfailingly perpetuated and protected the system. There was one brief aberration.

GOP Gov. Edgar D. Whitcomb, with a great huff and puff of piety, denounced the club, and ordered collections stopped. As soon as Whitcomb got rid of an unfriendly state chairman at state headquarters, however, the take resumed.

Whitcomb did pinpoint a flaw that has grown less defensible over the years:

The percentage of patronage workers is shrinking, as merit or merit-type systems expand. Now, only an estimated 7,200 of state government's 25,000 employees are patronage. Why should 7,200 pay 2 per cent when 17,800 working right alongside do not?

The newest salvo at the club was fired last week by the federal General Accounting Office, which asked the U.S. Justice Department to determine whether GOP state headquarters in 1972 had violated the 1971 Federal Election Campaign Act.

The key question was whether some state employees, paid wholly or partially from federal funds, were given jobs in return for promising to contribute 2 per cent.

GOP State Chairman Thomas B. Milligan had the classic response.

There was no such quid pro quo, and the contributions are strictly voluntary, and that being so, there can be no law violation—whether an employee is paid from federal or from state funds, he insisted.

Until some better system comes along, GOP Gov. Otis R. Bowen said, as other governors have said before him, he sees nothing wrong with it.

STATE EMPLOYEES "INVOLUNTARILY VOLUNTARILY" GIVE 2 PERCENT TO PARTY

The crux of the issue is the word "voluntary."

Here is how the patronage system works:

First, a prospective employe has to get by a long "patronage clearance form." He fills in questions about his education, training and employment record, and answers this question:

"Would you be willing to contribute regularly to the Indiana Republican State Central Committee?" ("Bear in mind that this would be the same Democratic drill if the governor were a Democrat.")

The form provides for endorsement signatures of the party precinct, ward, county, district, and state chairmen and vice-chairmen.

The hopeful gets the job. He reports to a department. There he fills in a small white card that states:

"I voluntarily subscribe the sum of \$—— to the Indiana Republican State Central Committee for the year beginning——."

The card states he can pay by cash or check—quarterly, monthly, or biweekly.

With some slight variations, collection of 2 per cent is the same in all state departments.

There is a boss bag man, to use an inelegant term, since many are women. In the State Department of Revenue, for example, it is Mrs. Elmer Burns, administrator of the personnel and payroll division.

A solicitor, or "forwarder," is appointed for each division within the department. In revenue, that adds up to 21 within the State Office Building and 12 in the field offices.

State employees are paid every two weeks. For the most part, after getting paid, they look up the solicitor and hand over cash or a check for 2 per cent of take-home, not gross, pay. The solicitor gives the contributor a receipt that "acknowledges with thanks . . ."

Every solicitor turns all cash and checks into the bag man, along with a "contribution report" listing each contributor alphabetically, and his contribution.

The bag man normally converts the cash into a cashier's check from the bank branch in the basement of the State Office Building, and then lugs it and the checks across Capitol Avenue to state GOP headquarters.

Once, Mrs. Burns recalled, she had \$4,000 to deliver, and lined up a security guard to ride shotgun on the walk to headquarters.

All the various forms have duplicates, which are disseminated among the contributors, solicitors, bag men and state headquarters.

State headquarters every year assesses every GOP county organization a quota cash amount to pay for headquarters operations. A worker's 2 per cent payment is credited to his home county's quota.

GOP Chairman Milligan estimates that the Two Per Cent Club pours \$31,000 to \$85,000 a month into headquarters. Last year it accounted for nearly half of all GOP State Central Committee revenue.

Mrs. Betty O'Connor at Democratic State Headquarters reports that employees in the Democratic-controlled offices of secretary of state, treasurer, auditor, and Supreme and Appellate Court clerk produced \$600 to \$800 a month in 2 per cent contributions to her office.

Although Republicans control most Statehouse offices, some Democrats hold patronage jobs. Some of these pay 2 per cent to Republican headquarters and some to Democratic headquarters.

Anyone trying to establish beyond any courtroom doubt just how voluntary the payments are might as well attempt to corral the wind in his fist.

Bowen said he has never seen any evidence of anyone being fired for refusing to cough up.

He allowed, however, that "I'm not saying there's not some encouragement and urging."

Translated, that means:

Everyone signing on in state government, presumably, is aware of the 40-year-old system and accepts it as a way of life. To get the job, he has to sign twice that he will go along.

Once on the job, he can refuse to pay and probably get away with it. No boss with any sense is going to cite that refusal in canning him. Nonetheless, pressure, however masked and subtle, is there—from his boss and from his peers who are paying.

Mrs. Burns in Revenue says 98 per cent of the department's 800 employees contribute, including the 250 bipartisan (half Democrat, half Republican) employees in the audit division.

"We don't fire them," Mrs. Burns said to the holdouts. But she calls them in and tries to reason with them. And she sends out some prodding memos to all workers.

"Don't you agree that, even though this is voluntary, it should be treated in some respects as collecting taxes, what is fair for one is fair for all?" she wrote on Sept. 15, 1970.

"We do need the contributions to help the Republican administration retain their authority in providing the positions these employees are now holding.

"Since this contribution is voluntary, it is requested the administrators remind their employees that while most employees do contribute, there are still a few, including some bipartisan employees, who are shirking their responsibility. Let's all get together and have a 100 per cent participation."

On July 25, aware of a handful of recalcitrants in audit, Mrs. Burns wrote another memo, extolling the legislature for exempting that division from obligation to political activity.

But, she said, "political parties live, breathe, and exist only on the monetary support they receive from contributions received from those who believe in the particular political philosophy espoused by such political entities."

"We believe we have at our disposal a unique opportunity to participate in supporting the political party of our choice without violating the bipartisan concept.

"With those thoughts in mind, we would like to solicit all audit division personnel to continue 100 per cent participation in the 2 per cent voluntary contribution program."

A year ago, Mrs. Burns recalled, a young woman employe balked, saying she didn't believe anyone could tell her what to do with her pay.

"I tried to make her understand that these contributions to the Republican Party help us elect candidates of our choice, that we are trying to keep big business from taking over, that if she were in private industry she would be paying comparable union dues," Mrs. Burns said. The young woman paid up.

Mrs. Burns and others in other departments told of "leniency" in allowing employes who are ill or have other problems to postpone payments—temporarily.

"This bureau is a political department," said Ralph Van Natta, commissioner of the Bureau of Motor Vehicles, with 550 employes in the State Office Building headquarters.

"We do firmly expect every employe . . . we politely say to everyone coming in . . . we explain it to them to start with . . . we have no problems (in 100 per cent collection)," he said.

Van Natta recalled personally phoning one balker out in the field.

"I did not fire him," the commissioner said. "He said, 'Hell, I'm not going to mess with it,' and sent in his resignation."

The Natural Resources Department has about 900 winter employes, including 235 on patronage, and Mrs. Dorothy Trump reports that virtually all 235 contribute.

In summer, however, employment zooms to 2,200, mostly at the parks, and therein lies trouble. Many of these low-paid newcomers are college students, strictly temporary.

At GOP state headquarters, Mrs. Vera Warren, patronage clerk in the finance department, who receives all Two Per Cent Club payments from state departments, displayed July 3 and July 11 reports from Mrs. Hester Stillions, the clerk and solicitor at Monroe Reservoir.

The July 3 report showed that 32 of 66 employes refused to pay, while the July 11 report indicated that 47 of 72 workers refused.

At Bloomington, Mrs. Stillions was reluctant to discuss the matter, but confirmed that most of the employes are collegians who had affirmatively signed both the patronage clearance form and the white card.

None had been fired for reneging, she said. And, she added, she has not "presured" anyone.

"I tell them that 2 per cent is required of them, but that if they don't pay, that is up to them, and higher (department) authorities can take it from there," she said.

PATRONAGE CLEARANCE FORM

This is NOT An Application
For State Employment.

| | | | | |
|---------------------|-------------|---------|---------|-----------------|
| Mr. Mrs. Miss | | Date: | | |
| Address: | | (Last) | (First) | (Middle) |
| City: | | County: | | District: |
| Age: | Birth Date: | Height: | Weight: | Marital Status: |

EDUCATION & TRAINING

| | | | |
|------------------------------------|--|----------------|------------------------------|
| Circle Highest Grade Completed: | GRADE SCHOOL 1 2 3 4 5 6 7 8 | Name _____ | Year Last Attended: _____ |
| | HIGH SCHOOL 9 10 11 12 | Location _____ | Year Last Attended: _____ |
| | COLLEGE/UNIVERSITY 1 2 3 4 Graduate | Name _____ | Years Attended From _____ |
| | Major: _____ | Location _____ | To _____ |
| | Minor: _____ | | |
| | Degree: _____ | | |

OTHER: (Please specify type of training such as vocational, business, correspondence, etc., including any registered or licensed profession.)

EMPLOYMENT RECORD

List three work experiences, beginning with the most recent.

| | |
|---|--|
| Exact title of position: _____ | Dates of employment: From _____ to _____ |
| Job: Starting _____ Per _____ | Name of Employer: _____ |
| Final _____ Per _____ | Location: _____ |
| Duties: _____ | Name & title of supervisor: _____ |
| Types of machines/equipment used: _____ | Reason for leaving: _____ |

| | |
|---|--|
| Exact title of position: _____ | Dates of employment: From _____ to _____ |
| Job: Starting _____ Per _____ | Name of Employer: _____ |
| Final _____ Per _____ | Location: _____ |
| Duties: _____ | Name & title of supervisor: _____ |
| Types of machines/equipment used: _____ | Reason for leaving: _____ |

| | |
|---|--|
| Exact title of position: _____ | Dates of employment: From _____ to _____ |
| Job: Starting _____ Per _____ | Name of Employer: _____ |
| Final _____ Per _____ | Location: _____ |
| Duties: _____ | Name & title of supervisor: _____ |
| Types of machines/equipment used: _____ | Reason for leaving: _____ |

Have you ever held a position or office in any branch of government? _____

If so, in what capacity? _____

Department and position applying for: (administrative, clerical, laborer, etc.) _____

1 is your political party affiliation? _____

Would you be willing to contribute regularly to the Indiana Republican State Central Committee? _____

| | |
|---------------------|-----------------------------|
| For Office Use Only | Name _____ |
| Dept. _____ | Address _____ |
| G. I. _____ | City _____ |
| N. I. _____ | County _____ |
| P. C. _____ | District _____ |
| MO. _____ | Applicant's Signature _____ |
| QT. _____ | |
| AN. _____ | |
| Other _____ | |

ENDORSEMENTS

1. Precinct Vice-Committeeman _____
2. Precinct Committeeman _____
3. *Ward Vice-Chairman _____
4. *Ward Chairman _____
5. County Vice-Chairman _____
6. County Chairman _____
7. District Vice-Chairman _____
8. District Chairman _____
9. State Vice-Chairman _____
10. State Chairman _____

(*if applicable)

Secure endorsement signatures 1-8 and forward application to Republican State Headquarters for further processing.

INDIANA GOP HEAD SAYS HE'D FIRE PLEDGE BALKERS

(By Gordon Englehart)

Indianapolis.—Republican State Chairman Thomas S. Milligan yesterday said he would recommend firing state patronage workers who renege on pledges to voluntarily contribute 2 per cent of their pay to the party.

GOP Gov. Otis R. Bowen, however, when told of Milligan's statement, declared: "I have said over and over that it is voluntary—and if it's voluntary, you don't fire if they don't contribute, as long as they are performing their job.

"But I suspect that anybody that is ever fired from here on, the accusation will be it's because they didn't pay their 2 per cent, when actually there can be a lot of reasons for firing."

State government's 25,000 employes include about 7,200 patronage workers. Milligan estimates that 5,500 patronage and merit employes voluntarily give 2 per cent of their wages to the GOP State Central Committee under a 40-year-old system followed by both parties.

Charles F. Eble, executive secretary of the Indiana State Employes Association (ISEA), in August urged state employes to refuse to pay the 2 per cent starting with Sept. 20 biweekly paychecks.

INDIANA GOP CHAIRMAN FAVORS FIRING WORKERS RENEGING ON PARTY PLEDGES

On Sept. 27, Eble estimated that 1,000 of 2,500 state highway patronage workers had stopped paying. He also said "the word is out" that state officials would take no action (dismissal, suspension or demotion) against balkers until after the Nov. 5 election.

Yesterday Milligan said Eble had no basis for his estimate.

GOP State Headquarters has not toted up final figures on the Sept. 20 collection, Milligan said. In some areas, a spot-check showed that the boycott was effective, but in other places, collections were up, he said.

SOME WORKERS "INDISPENSABLE"

Milligan cited the central office of the Indiana State Highway Department, in the State Office Building, and the Vincennes district as reporting higher collections.

Asked if he would verify Eble's forecast of post-election firings, Milligan replied:

"I'm not going to make that statement. Neither am I going to say no one will be fired after the election."

He stressed that he as GOP state chairman neither hires nor fires state patronage workers but only processes their political clearance.

"It's really a highway department matter, to implement the policy of the governor," he said of possible firings.

Milligan and Charles Cook, executive director of the GOP State Finance Committee, observed that there may be nonpaying workers who are indispensable in some departments.

"Each case has to be addressed separately," Milligan said.

Milligan, who is also Wayne County (Richmond) GOP chairman, noted that every applicant for a state patronage job fills out a "patronage clearance form" that must bear the written endorsements of his precinct, county, district and state party officials.

One question on that form reads, "Would you be willing to contribute regularly to the Indiana Republican State Central Committee?"

As a county chairman, Milligan said, he would not endorse anyone who did not write, "Yes," to the question.

If the applicant agrees, is hired but later breaks that commitment by refusing to pay, Milligan said, "he has jeopardized his political clearance for a patronage job that requires clearance."

Milligan said he would, at the county level, urge the firing of that worker.

What about statewide, in his capacity as state chairman?

"The policy of clearance is at stake here," Milligan asserted, "I would recommend that a person in a patronage job who does not maintain political clearance be terminated—I don't like the word 'fired.'"

Would he wait to make that recommendation until after the election?

"I recommend it right now," Milligan declared. "I would have said the same thing in July."

Milligan and Cook echoed Bowen in avowing that contributions are voluntary. Milligan said GOP State Headquarters had contacted the 37 state highway sub-district superintendents and others in other departments responsible for the 2 per cent collections, and urged them to seek out balkers and impress on them the desirability of supporting the party structure.

BOWEN STRESSES JOB PERFORMANCE

County chairmen also have been enlisted, Milligan said. (Eble on Sept. 27 charged that "our members have been threatened directly and indirectly.")

Milligan said Bowen's "reaffirmation of the patronage system" before the ISEA convention Sept. 29 had helped collections in some areas.

Bowen told the convention its paycheck rebellion is "rather a direct slap at my administration" but said this should not be interpreted as "a threat to your status."

The governor was somewhat touchy yesterday when asked to comment on Milligan's remarks.

"You're kind of—I mean this kindly—you're trying to do some divide-and-conquer work here between Tom and me with this type of questioning," he said.

"It has to be a voluntary program," Bowen stressed. "We are approaching it through an appeal to their responsibility to their party and to what we think will be a good government under our administration.

"Their ability to remain on the job depends on their quality of performance." Certainly, Bowen said, anyone who doesn't contribute, after agreeing in writing to do so, has jeopardized his political clearance.

"But that statement has to be essentially nullified by the other statement that it has to be voluntary and that their quality of performance would be the sole determination of whether they remain," he added.

Bowen said both parties should be devising alternate methods of financing their operations should the patronage system stop.

He said Milligan had made no firing recommendations directly to him. The governor also said Eble's prediction of reprisals after the election "irritates me a little." No such statement has come from his office, Bowen said.

Milligan and Cook estimated that about 40 per cent of the collections are coming from highway workers.

At the present rate, Cook said, the 1974 take should reach \$564,000—an average of \$47,000 a month. The 1972 total was \$237,000.

Cook said the \$564,000 estimate does not take into account the ISEA-inspired boycott—so far involving the Sept. 20 and Oct. 4 paydays. In any event, he said, the rebellion would not affect GOP funding of the remaining four weeks of the 1974 election campaign.

Eble on Sept. 27 said that withholding by 1,000 employes would cut the GOP's annual collection by \$150,000.

The ISEA is 20 years old. Eble said it has almost 5,000 members—25 per cent of them patronage.

[From the Herald-Argus, Aug. 14, 1974]

FORMER HIGHWAY EMPLOYEES DECRY PATRONAGE SYSTEM

The Indiana State Highway commission is operated by means of the taxpayers' money. We feel it is our duty, as concerned citizens, to make public the policies within the State Highway commission.

We were clerks in the LaPorte sub-district office. And the political pressures forced upon us we would not wish upon anyone else. We were efficient, well-mannered, and active secretaries. We did our job well, but according to J. Willard Simcox, that was not enough.

Employes are pressured into paying 2 per cent of their bi-monthly wages to the Republican party, are pressured into joining the Young Republican club, and carrying out personal favors which they have no real choice in.

These personal favors are expected to be carried out such as: voting for the candidate designated, buying and selling tickets to various Republican events, campaigning also for designated candidates, and many other facets too numerous to mention.

The fact of doing your job efficiently and accurately is "a whole different ballgame."

We were told in so many words that if we did not cooperate with the party and do his favors for him, then we did not "appreciate our jobs."

We feel that the most important persons to please there at the highway are the taxpayers who pay our wages, not the party in power. We also feel that it is a shame that the Republican party doesn't have enough faith in their own system and party to let people voluntarily become interested in all the above mentioned, instead of pressuring people into their beliefs.

Politics should not be used as a scare tactic. We stood up for our rights and tried to make apparent to those concerned just how we felt. We found ourselves being pressured into quitting our jobs, we sat and listened to insults being thrown in our faces, and no one should have to be put through that.

Therefore, for the benefit of the taxpayers and all others concerned we have come to the following conclusion: The State Highway should be taken out of politics and delivered into the hands of the Civil Service.

RENEE K. KWASNY
MARY L. MROZINSKI

[From the Republican News, June-July 1973]

JOBS OPEN

One of the nicest things about winning elections is winning control of patronage positions for the party faithful.

Many positions in various fields are now available in Indiana State Government. Applicants for patronage positions are required to get party clearance and initial contacts should be made with Winifred Smith, Director of Non-Merit Employment, Room 513, State Office Building, Indianapolis.

Right now, Mrs. Smith has an opening for an Assistant Director of the Social Security Disability Determination Division of the Indiana Rehabilitation Services Board.

Applicants preferably would have a master's degree in Business Administration or other appropriate areas. Otherwise they should have a bachelor's degree and five years disability determination or closely related experience at the administrative level.

The successful applicant will administer all phases of the division's program and supervise a staff of about 200. The salary range is from \$13,936 to \$17,056.

Several positions in various parts of the state are also open for weighmen. This job calls for someone 21 to 34 years of age in good physical condition. Weighman work closely with the Indiana State Police and earn \$220 bi-weekly.

Once experienced the weighman is eligible to become a weighmaster at \$254 bi-weekly.

ENGINEERING JOBS OPEN

Engineers are needed in state government at salaries up to \$16,328 a year.

At least six civil and agricultural engineers are needed in the Division of Water of the Department of Natural Resources. The agricultural engineers should have a hydrologic background.

W. M. Mohr, Director of the Department's Personnel office, says "The employment will be conservation type in nature."

Engineering graduates, fresh from school with bachelors degree are employed as hydraulic engineers II at \$10,816. With two years experience they could be hired at \$11,778. New engineering graduates with a masters degree also can qualify for a \$11,778 starting pay.

Persons interested in applying for these jobs should contact Winifred Smith, Director of Non-Merit Employment, Room 513, State Office Building, Indianapolis.

[From the Indianapolis Star, Jan. 16, 1975]

GOP FUND DRIVE UNDER WAY

Mayor Richard G. Lugar's administration yesterday officially began the GOP Public Employees Fund Drive, a device designed to replace the old 2 per cent patronage deduction from the paychecks of city employes.

Fifteen persons, including department heads and most of the mayor's staff, were given the initial opportunity to pledge, a ceremony which resulted in a total annual pledge of \$7,420, or almost 3 per cent of the combined annual

salaries of those involved. The individual monthly amounts ranged from \$30 to \$50.

City-county Councilman Alan R. Kimbell will administer the program and promised it will be free of "coercion or pressure of any sort."

Mitchell Daniels, the mayor's press aide, remarked, "We are extremely enthusiastic about this program and expect it to be attractive because of its voluntary nature."

Pledge cards, a misnomer since employes actually will sign mimeographed sheets of paper, will be distributed to employes through their department or division supervisors next week.

Uni-Gov Department heads have been asked to draft a list of employes who should be asked to pledge, and therefore will decide who should be exempted from the program.

Daniels speculated that such persons who might be exempted include those whose salaries are derived wholly from Federal funds or who are working in decidedly professional categories. "But that decision rests with the supervisor," he emphasized.

Workers will be asked to send a monthly pledge of \$10 to \$50 to GOP Central Committee headquarters in an envelope.

Although the mayor's office promised the contributions will not be policed, GOP officials will keep records of contributions and mail reminders to persons who neglect to contribute.

It is unknown how many employes will be asked to participate, but Daniels said the city hopes to raise at least \$65,000, the amount received last year from the payroll deductions.

He commented that in some departments, employes traditionally have not contributed and the city hopes to get at least one-half or 1 per cent pledges by virtue of the voluntary nature of the program.

He added the payroll deduction program enjoyed marginal success and said yesterday's pledges by supervisors equalled 11 per cent of all contributions by city employes last year.

The voluntary program will feature a "peer-to-peer follow-up effort" in which nonsupervisory coworkers will visit the homes of employes who fail to pledge and encourage the "maverick" to do so.

Kimbell said training sessions will be held the week of Jan. 27 for persons desiring to engage in the follow-up effort. The training session and all subsequent meetings of project co-ordinators will be held outside the City-County Building and will be open to the press, he said.

Daniels promised that none of the follow-up counselors will threaten an employe with dismissal, nor would they be in a position to do so.

He said officials hope the many small donations will provide more income and better relations than the mandatory payroll deductions.

City employes have received no official advance notice of the mechanics of the program since Lugar announced its inception in his State of the City address Jan. 3.

Many city employes, however, are concerned that the program, for all its pretense will be little removed from the payroll deduction system under which some workers were threatened with dismissal for failure to pay.

DEMOS TO END TWO PERCENT CLUB IF TAX CREDITS ARE OK'D

(By Edward Ziegner, Political Editor)

Democratic state chairman William Trisler says his party is ready to end "2 Percent Club" funds as a source of financial support if the Legislature will authorize tax credits for political contributions.

The "2 Percent Club," started by the Democrats in Indiana in 1933 and used by both parties since, extracts 2 percent from salaries of state employes who get their jobs through politics. The Republicans, holding the Statehouse, received \$544,000 from this source in 1974.

The executive committee of the Democratic State Committee, meeting here this week, authorized backing for H.R. 132S, introduced by Rep. Jeff Hays, D-Evansville, which allows a taxpayer to designate \$1 of his state tax payment to the party of his choice.

Hays has agreed to an amendment drafted by Trisler and the executive committee, allowing up to a \$12.50 state tax credit for a contribution to a political party.

Trisler called the 2 percent system "very vulnerable" and added "we feel strongly that this (H.B. 1328) is a fair campaign practices bill." He also said that 2 Percent Club funds are "on the way out" and "we are going to have to look for other sources of revenue."

Trisler's statement that the Democrats are willing to do away with the old political kickback system is apparently the first time a state chairman of either party has stated publicly it should be eliminated. Indianapolis Mayor Richard G. Lugar, a Republican, ended 2 percent salary contributions from city employes at the beginning of this year in a Jan. 3 speech.

"STEWARDSHIP PROGRAM"

Lugar said then "the problems of the times and dangers involved" in the old system "dictate a fundamental change." He began a system of voluntary contributions from city employes who have their jobs through politics, similar to that used by churches.

There also may be a suit filed soon against the state 2 percent system by the Indiana Civil Liberties Union, with support from the Indiana State Employes Association and Common Cause of Central Indiana.

Charles F. Eble, executive secretary of the association, said "there is an ongoing investigation and a suit will be filed."

Both parties, when in power, have always maintained that 2 percent contributions were "voluntary" and no one was forced to give or fired if he or she did not.

And last November, when a State Highway Department employe lost his job for refusal to make the "contribution," Gov. Otis R. Bowen said in a memorandum to state department heads, and the state GOP organization:

"I want to reiterate what I have said publicly several times. Job retention should be based on the ability to perform adequately and the quality of work done."

The highway worker got his job back.

MORE ABOUT DEMOS, 2 PERCENT CLUB

Last summer, Eble announced that about 500 highway workers would withhold their 2 percent contributions, but it is uncertain how many did.

Hays' bill makes it a criminal offense for any state officer or state employe to directly or indirectly "indicate" to another employe that his job is in jeopardy if he fails to make a contribution.

It also would make it a crime to solicit political contributions on state property. Eble and Walter Hayden, a representative of the AFL-CIO union of State, County and Municipal Employes, say they will support the Hays bill.

Sen. Robert J. Fair, Princeton Democrat and minority leader in the Indiana Senate, said he would favor elimination of the 2 percent system. There is a bill pending in the Senate that, allows state income tax credit up to \$12.50 for political contributions, but Trisler and the Democratic State Committee executive committee want the provision in Hays' bill so the \$1 check-off and the \$12.50 credit can go hand in hand.

Republican state chairman Thomas S. Milligan has vigorously supported the 2 percent system, while Bowen also has defended it, although less strongly, and has said several times no one will lose his job if he refuses to contribute.

Under both parties, when they have been in control of the Statehouse, prospective employes have had to be "cleared politically" and have been asked if they would contribute to the party. While leaders of both parties in the past have always stressed the system is "voluntary," those who refused to contribute generally didn't get jobs.

Trisler also said the executive committee reaffirmed a previous party endorsement of direct primary selection for all nominees for state office, including governor, and for U.S. senator. Trisler said he would like to see it start in 1976.

Direct primary bills already have been introduced in this session of the Legislature, as they have in past sessions for many years. None has ever come close to passage.

[From the Herald-Telephone, Oct. 8, 1975]

GOP'S APPROVE PATRONAGE

Indianapolis.—A special committee created to recommend the future course of the Indiana Republican party again voted to retain the patronage system which brings in about a half-million dollars a year to party revenues.

James T. Neal, chairman of the Directions '76 Committee, told a news conference late Tuesday that of some 62 separate recommendations voted upon at the previous committee meeting, the only major question to be resubmitted to the membership was that on retention of the patronage system. The vote the second time was 16-7, compared to 10-8 at the previous session.

Neal said the 62 recommendations "are innovative and constructive and should help restore the public's confidence in the political process." He said some of the highlights of the recommendations which now go to the Republican State Central Committee at an Oct. 22 night meeting include:

Rejection of statewide slating of candidates for U.S. senator, governor and lieutenant governor. Nominations for these three offices are to be chosen for the first time since 1928 by direct primary rather than convention, beginning next year.

Improvement of the primary election process to include equitable reapportionment of precincts, run-off elections and creation of candidate search committees.

Revision of the party organization to include election of both the county committeeman and vice-committeeman and to designate this 184-member group of county GOP officials as the Republican State Central Committee, meeting at least four times a year.

Designate the present 22 district chairmen and vice-chairmen as the State Republican Executive Committee rather than the state central committee.

Development of political issues at the grassroots through town meetings, seminars and door-to-door calls.

Neal said Gov. Otis R. Bowen stopped by this final and eighth meeting of the special committee to thank them for volunteering their time to development of the recommendations.

Republican State Chairman Thomas Milligan, who had differed with Bowen on the matter of slating in advance of the direct primary, dropped by Neal's news conference with information on the proceeds from the "Two Per Cent Club" as the patronage system often is called. Milligan said he would have to study the recommendations before he would make any comment.

But Milligan did report that the estimated proceeds of contributions from governmental patronage workers to the state headquarters for 1975 is "about \$500,000." He said the 1974 total, in an election year, was \$544,000 and that in 1973 it was \$438,000 while the 1972 total—a year in which the patronage system was temporarily "abolished" for a time by then Gov. Edgar D. Whitcomb—was \$238,000. Milligan commented that the 1974 contributions of government workers represented 26 percent of the funds raised by the party. He said "it's like the preacher being the first to pledge at an every-member canvas."

GATES, GATES & McNAGNY,
ATTORNEYS AT LAW,
Columbia City, Ind., January 24, 1972.

To those working for the State highway from Whitley County:

Most of you have been continuing to pay to the Whitley County Republican Party as you did before.

We intend to make a full and complete Report to the Office of Governor Whitcomb and to Mr. Lee Rush, District Highway Engineer on February 29, 1972, bringing all months to date for each of you.

I believe that each of you know what we have asked you to send us and we attach six envelopes for each of you—one for each of the months from January through June.

If you have not brought yours to date through December, 1971, we ask that you include this in your January and/or February check.

This money will in turn be delivered to the State and applied to Whitley County's contribution.

We ask for your cooperation and certainly hope that you are not delinquent when the list is sent to the Governor on February 29th.

Very sincerely,

ROBERT E. GATES,
Whitley County Republican, Chairman.

STATE OF INDIANA,
INDIANA STATE HIGHWAY COMMISSION,
Indianapolis, Ind., July 6, 1971.

INTER-DEPARTMENT MEMO.

To: ALL EMPLOYEES
From: Ray Mendenhall, Supt.

Patronage payments are due on Monday after pay on Friday. Payments not made by Tuesday noon mean *automatic dismissal*.

RAY MENDENHALL.

STATE OF INDIANA,
OFFICES OF STATE HIGHWAY COMMISSION,
Indianapolis, Ind., May 14, 1971.

To: All State highway district administrative assistants.
From: Claude Hughes.
Subject: Two percent contributions.

On April 29, 1971 the Honorable Edgar D. Whitcomb issued the following statement, "I am directing the department heads of this administration to cease the collection of 2% political contributions effective with the May pay period."

Mr. Joe Root, Administrative Assistant to the Governor, has informed me of the following:

1. Collect all back contributions through April.
2. All County Central Committees may collect contributions after May 1, 1971 from their patronage state employees. This is strictly on a voluntary basis.
3. No state employee shall be responsible for this collection.
4. All fund raising activities or participations are strictly voluntary.

CLAUDE HUGHES.

STATE OF INDIANA,
OFFICES OF STATE HIGHWAY COMMISSION,
Indianapolis, Ind., February 22, 1974.

GENTLEMEN: When you hired into the State Employment you were informed then, that each and every paycheck you received, two (2) percent was due and payable to the Republican Party.

Now, I did not make this rule, but I have been charged with collecting this two (2) percent and turning it in.

It is not fair for your fellow workmen to pay his share and you letting it go this way. I am warning you to "shape up or ship out". This must be paid in full by March 11, 1974 or I will be in the process of making out 104's which means letting you go.

Sincerely,

ROY E. KITTREDGE,
Superintendent.

WASHINGTON COUNTY REPUBLICAN CENTRAL COMMITTEE,
Salem, Ind., July 5, 1974.

We understand you are behind with your payments to the Party, our understanding is 2% for State and 1% for County of Salary.

Will you please take care of this matter at once and pay up your 2% to State and 1% to our County Treasurer Mr. D. Jack Mahuron at Farmers Citizens Bank in Salem.

When you signed up for the job that was the agreement according to our understanding as it is a political job and we will be looking forward to your cooperation in this matter by keeping your payments up to date.

Thank you,

MURREL MEADORS,
Chairman.

WASHINGTON COUNTY REPUBLICAN CENTRAL COMMITTEE

Your application for political clearance has been processed and approved by the Indiana Republican State Central Committee.

This card may be used as proof of political clearance.

PATRONAGE IN INDIANA

THE PATRONAGE SYSTEM

Volunteer—What is patronage?

Precinct Committeeman.—Patronage is a political system. After an election, the successful party has the choice of a limited number of jobs in the state administration. By filling available positions in the state government with loyal party members, it affords the elected officials and the citizens the opportunity for the state government to reflect the philosophy of the present administration.

Apart from enabling the elected administration to coordinate state policy, what does patronage do?

Patronage serves a dual purpose. While it provides a limited number of jobs for deserving party members, it provides funds for the continuing operation of the political parties.

What operating costs are there?

Throughout the year it is important for the political parties to keep in contact with their members. By this contact, prospective legislation is drafted, and necessary research and planning is done for coming election campaigns. These operations are expensive.

Does patronage alone pay for these expenses?

No, but it makes it possible for the parties to budget and plan more effectively in order to keep costs as low as possible.

How does patronage benefit me?

Several ways, patronage involves you actively in good government. It provides funds to maintain your party strength. And most importantly, the patronage system provides the political parties with many contributors of varying interests, and keeps the parties open.

How do I contribute?

By voluntarily contributing each pay day to the party representative in your department. If you are interested in a systematic monthly contribution contact: Winifred M. Smith, Room 513, State Office Building—Phone 633-4744.

Mr. HUNGATE. The final witness we have today is Thomas S. Milligan, chairman of the Indiana State Republican Committee.

Mr. Milligan, we are pleased to have you here, sir. You have a prepared statement. Without objection, it will be made part of the record and you may proceed as you see fit.

[The prepared statement of Thomas S. Milligan follows:]

STATEMENT OF THOMAS S. MILLIGAN, CHAIRMAN, INDIANA REPUBLICAN STATE COMMITTEE

Ladies and gentlemen of the committee: I thank you for the opportunity to testify here this morning on the matter under consideration and wish to present my position against the adoption of H.R. 2920.

The Congressman from Indiana's Fourth Congressional District, the Honorable Edward Roush, has described this bill as the vehicle for abolishing Indiana's "2 Percent Club."

H.R. 2920 does not abolish the so-called 2 Percent Club and, in fact, does nothing to strengthen the provision of sections 600 and 601 except add \$24,000 to the criminal sanction imposed by the existing \$1,000 fine provision.

The Democrat Party of Indiana under the leadership of Governor Paul V. McNutt and the recently deceased, long-time national committeeman, Frank McHale, instituted the 2 Percent Club in January 1933, as a means of financing

the Democrat Party in Indiana. Subsequent administrations both Democrat and Republican have perpetuated the practice.

The 2 Percent Club is not an organization or definable body. It is a concept of political organization that is fundamental to the health of the two-party system in Indiana. Today, 26,000 persons are employed by State government in Indiana, and 19,000 of those employees are covered by various merit laws which can generally be described as the civil service personnel system of our state. The remaining 7,000 jobs are filled by the patronage personnel system. The latter is a non-merit personnel system which can effectuate changes in employment to a limited degree based upon the results of an election.

The growth of government is brought about by the demand for services which the private sector cannot profitably perform. In large measure, these are services rendered to people by people as distinguished from services rendered by machinery and capital goods. The personnel costs in mental and physical health care delivery systems and the lack of profitability in maintaining highways, prisons, recreation facilities, and educational institutions add more and more persons to public employment rolls so that one out of five jobs in the work force today is a man or woman on a payroll provided by tax dollars at some level of government.

I am not urging a return to the abusive and wasteful practice of a total spoils system. I am, however, interested in the federal government not suffocating State and local government with all-encompassing restrictions that remove the political party's limited role in governmental patronage.

The question is not whether or not we have patronage. Every system of government yet devised by man has patronage. Someone in government makes a decision based upon their own self-interest or someone else's self-interest regarding who will be employed and where goods and services will be purchased. The question is whether or not the political parties should participate in the exercise of patronage.

Our State law has maintained the political party's patronage role in the delivery of governmental services in those areas where it is deemed justified and desirable so that government can in fact be more responsive to people.

As a result, Indiana has had a strong two-party system throughout recent years. Voters in our State know it can make a difference who wins an election because changes in personnel can bring about changes in governmental performance.

In the 1974 general election, the national average voter turnout was 38 percent, whereas in Indiana in 1974, 48 percent of our voting age population went to the polls. This favorable comparison is the result of a strong two-party system in our state which functions in our 4,500 precincts for purposes of voter identification, registration and election day turnout.

The key to this essential participation in government by both parties is the political clearance required before persons can be hired in the 7,000 positions of Indiana's patronage personnel system. When a person secures political clearance from his or her precinct committee persons, he or she states a political affiliation and indicates whether or not they intend to support their affiliation with contributions of time and financial resources. Having secured this pledge of support or indication of nonsupport of a particular political affiliation, the respective political party officials exercise their discretion in either granting or not granting political clearance.

The intent of the campaign reform legislation of 1971 and 1974 was to strengthen the two-party system developed in the United States, which two-party system today stands as the single greatest innovation our government has made to the history of democracy throughout the world.

Many writers and commentators despair over the future of the great two-party system, but most offer little nourishment for its weakened condition.

Political parties are a form of enterprise not unlike any other valuable enterprise in our way of life. They must be free of undue restriction and overregulation in order to function. The dynamic conduct of political enterprise has been the genesis of social change and economic progress throughout our first 199 years as a Nation.

The 2 Percent Club is simply a system whereby State and local government employees regularly donate to the party of their choice for the purpose of sustaining political enterprise. Those persons who are not employed by government are challenged by and join with government employees in contributing their time and money as well.

The proposed legislation attempts to place additional restraint and difficulty upon those State and local employees who have made two choices: first, to

seek patronage employment, and second, to contribute their time and money to the party of their choice.

Congressman Roush's bill attempts to prevent such participation in political enterprise because it suggests that any governmental service funded in whole or in part by congressional action must abolish the role of political parties in patronage and leave the same solely to the personal preference of a governmental official, elected or nonelected, or, worse yet, an employee's association which has absolutely no accountability to the voting public.

It would be my pleasure to answer questions at this time.

Thank you very kindly for your consideration of my views.

TESTIMONY OF THOMAS S. MILLIGAN, CHAIRMAN, INDIANA REPUBLICAN STATE COMMITTEE

Mr. MILLIGAN. Thank you, Mr. Hungate. I appreciate the opportunity to be here this morning.

Mr. HUNGATE. As we get started, let me say I anticipate that this gentleman will take a different view from that which we have heard so far today, and I am anxious that he receive an adequate and fair hearing from the subcommittee. The House is now in session and we may anticipate a quorum call. If we receive it, we will proceed through the first 5 minutes of it. I would urge the subcommittee members to return promptly so Mr. Milligan may have an adequate opportunity to set forth his views.

Please proceed.

Mr. MILLIGAN. Thank you very much. I have stated in a very brief statement the concept of political patronage and, I think, the role of the political parties in retaining some participation in the delivery of governmental services. We have in Indiana 26,000 jobs on the payroll. In the patronage system in our personnel administration, we have over 7,000 jobs. The other 19,000 jobs are covered by an array of merit statutes and I would like to anticipate Mr. Russo's question because he has asked it of all four witnesses and it is time for an informed answer.

The statute which is referred to as having been passed in July 1973 applies to the merit personnel system. The 16,000—pardon me—the 19,000 jobs are covered by a number of merit statutes.

By specific wording in that statute, it is limited in application to the State merit system, which is the equivalent of the Federal civil service and I think that I would like right off to clarify the misunderstandings with this subcommittee as to what the law is in Indiana.

There are only two departments that are specifically set apart and excluded from the opportunity to participate in political financing. One department is the State police department and, by Indiana statute, there is a law which prohibits a uniformed member of that department making a political contribution of any kind, time or money.

The second statute is a 1955 Indiana law covering the department of insurance. Indiana has a number of national insurance companies there as a home base. There was a particular situation of corruption in that department. It was under a Democratic administration, but I think under the political system at the time that corruption existed and they adopted a law which stated it would be a criminal misdemeanor to solicit any employee or officer, even the administrator of the department who is a political appointee of the Governor, it would be a violation of the law to solicit them for a political contribution in money.

Now, those are the only two statutes in Indiana which govern or in any way impinge upon the area that we have been discussing, that 7,000 out of 26,000 that are in the patronage personnel system.

I would urge the members of the subcommittee—

Mr. HUNGATE. Pardon me. I want to be sure I understand that. The statutes and criminal penalties, to which reference has been made, relate only to employees of the State police department?

Mr. MILLIGAN. Pardon me. The statute which Congressman Roush made reference to which has been discussed by the other three witnesses, applies only to the State merit employees. Our equivalent of the civil service. It does not apply to the patronage personnel system.

Mr. HUNGATE. All right. When we talk about the merit system, we are talking about what departments?

Mr. MILLIGAN. We are talking about a number of departments, some 250 State agencies and we are probably talking in the neighborhood of 200 of those departments. But those are departments which have merit law and they have merit employees the equivalent of Federal civil service on a State scale. The other two statutes which are referred to are basically in nonmerit departments. The State police, for instance, in our State is a nonmerit department. However, they have a special act which provides half of the force be Republican affiliation, half Democratic, and then they have an added provision which prevents them from making political contributions.

The other department which I referred to was the insurance department which is a patronage employment department, not covered by the merit act, and in that department it is a misdemeanor for anyone to solicit them. They give—

Mr. HUNGATE. Because of this scandal and special legislation in the past.

Mr. MILLIGAN. That is right.

Mr. HUNGATE. Thank you.

Mr. MILLIGAN. I think it is very important to note that section 600 and section 601 got on the Federal books as a result of an attempt to politicize the WPA, the Works Progress Administration, in the late 1930's and obviously the Comprehensive Employment Training Act is designed to provide economic stimulus in a broad scale. The CETA employees in our State are not cleared politically. However, they work for county highway departments which are political departments. They work for the State highway department, which is a patronage department, but the CETA employees and Administrator of the CETA program, funded either through a State agency or through the State highway commission with Federal funds, are not cleared politically and are not asked to donate. They can respond to general appeals through other sources, but they are not asked by their superiors or by their fellow employees to donate. The Hatch Act inhibits political activity, not political donating. It inhibits the activity of an individual in asking his fellow employee for a contribution.

Now, I am as much against coercion as any of the persons who have testified here today. However, I unashamedly am a proponent of the two-party system, which each of you as Congressmen are going to be asked to discuss and you are going to at length next year, in the Bicentennial year, praise this singular greatest contribution of the United States of America to the history of democracies throughout the world and that is the development of the two-party system. The two-party

system has to have nourishment. It should not be funded through tax dollars. It should be funded in the same way as our other valuable institutions in the field of health, education, and talentable institutions are funded.

Mr. HUNGATE. Pardon me. That is the second bell and we must answer a rollcall. I would urge the subcommittee members to return as quickly as possible so that we may complete this hearing prior to the lunch break.

Mr. MILLIGAN. With the exception of Mr. Eble, I am the only one who traveled to get here today and I would like to complete my testimony today.

Mr. HUNGATE. I know some members have questions they want to discuss with you. The subcommittee will stand in recess until 12:30.

[Whereupon, a recess was taken.]

Mr. HUNGATE. The subcommittee will be in order. I apologize for the interruption, but that is the nature of this work. Some of the other members will be back as quickly as they can. If you will, please proceed.

Mr. MILLIGAN. I would like to urge that each one of you read the short 4½ page statement as to the party philosophy because I think at such time the Federal Government legislates the patronage system out of existence insofar as parties are concerned, I think they have very seriously impeded the development and perpetuation of the two-party system in this country and in this short statement, the written statement, I make the point that it is not the question of whether or not we have patronage. Every governmental system devised by man has patronage. The question is whether or not the political parties, the organized parties, are going to have any participation in patronage.

I would submit to you that employees' unions, as we have had two spokesmen from them this morning, at the present time are taking more in dues than our requested—not compulsory—our requested level of contributions. So far this year, of the 7,690 State employees who are regularly donating, of those 7,690 employees, 4,000 approximately, are in the patronage system. The 3,690 are sprinkled throughout government in merit jobs who wish to participate in financing the Republican Party in our State.

Up to September 30, 1975 all those 7,690 employees, only 350 had given in excess of \$100 during that first three quarters of the year. The average gift, the average donation from public employees in Indiana for the first three quarters of the year was \$47.27.

To project that to the end of 1975, that average gift would be \$63.03. It would cost them one-half that amount, because this Congress—in my opinion the single greatest benefit to the public, to the party system in this country—this Congress through the tax credit enables an individual to take a 50-percent tax credit up to a maximum of \$50 on a political contribution. So the average employee in this system who is participating contributes \$63 on an annual basis. It costs him \$31.50 because the other \$31.50 is a tax credit. That is considerably below the present level of dues that are requested by the Indiana State Employees Association, and in my opinion it is considerably below the \$125 annual dues of a person in the Indiana State Teachers Association. For instance, the State teachers association in our State in Indiana, had a total income of \$3.2 million last year. Of that amount they spent about \$1.8 million on salaries. Both par-

ties put together, the Democrat and Republican Parties, last year expended no more than about \$700,000 in salaries. As a pressure group, the teachers being one of those groups, expended three times in personnel costs what both parties on a statewide basis did in a general election year. You may recall that we did have a very hot Senate race in Indiana last year. I think too, in perspective, we have found that our funding within the Republican Party comes from persons who are givers. I practiced the law for 15 years in Richmond, Ind. I was a volunteer.

Mr. HUNGATE. Pardon me. There are some persons around Richmond who think you might have put too much money in the Senate race and not enough in the congressional.

Mr. MILLIGAN. Mr. Chairman, I am a close friend of David Dennis. That is why I got in politics, because of the activities of this subcommittee and no amount of—Mr. Dennis was defeated in a close election but, as you know, he is a man of great legal ability.

Mr. HUNGATE. Pardon me for interrupting.

Mr. MILLIGAN. We did fund every request he had.

Mr. HUNGATE. Good.

Mr. MILLIGAN. I think it is really significant to place Congressman Roush's testimony in perspective. He talked about the engineers in the highway system being subject to political hiring and firing. Let's put that in perspective.

Fifty-five hundred people work for our State highway system. Of that amount, approximately 10 percent are engineers. There are six engineers in the entire system that received their position because of political judgment. Those are the six engineers who preside over the six geographical areas in our State and implement and administer all of the highway policy in those geographic areas. Six out of about 500 or more are actually placed there through politics.

I think it is also important that Mr. Roush talked about the highway commission changes. Yes, it does. Those are the four persons, all four of them being part-time, who represent generally four geographical areas in the State, two Republicans and two Democrats by law who are appointed by the Governor, who serve at the pleasure of the Governor, and they are the policymaking body for our State highway system.

That is the single largest department in State government that we have. The delivery of governmental service in highways and transportation. Of those 5,500 employees, 2,700 are patronage workers. The balance are merit and are protected through a number of merit statutes.

In those 2,700 jobs, as Mr. Eble indicated, 60 percent can only be of one political flavor. We do have chameleons in that system. We have people who declare as Democrats during Democratic administrations and we have Republicans who declare as Republicans during Republican administrations. But unlike New York, California, when you register to vote in Indiana you register as a citizen and as a resident, not by party. When you vote in the primary you declare a party preference. That is the only way you can actually confirm a person's political behavior other than their own declaration.

We have a strong two-party system in Indiana and this is one of the basic concerns of this country. Politics is a participatory enterprise. It

cannot exist without the participation of the citizen. In Indiana we had a 48-percent turnout of our voting-age population. That is 10 points higher than the national average which was 38 percent. The League of Women Voters, Common Cause, and a number of public-spirited groups do a lot of handwringing about voter turnout but on election day the 92 county committees in our State, 92 for the Republicans and another 92 for the Democrats, are the ones that get the vote out, not the League of Women Voters or Common Cause or those groups which expect great concern about it.

In our State we have a varied economic climate. In the southern part of our State, generally, wages are lower, economic opportunities in industrialized cities are much fewer. In the northern part of our State where 60 percent of our people live are some of the best-paid workers in the country, the steel industry and automotive industry being the backbone of that area. But in the southern part of our State where we have basically rural counties, we have scenic hills but no factory jobs available, and many persons have participated in politics in that area because of the economic incentive. When a precinct committeeman signs up to be a precinct committeeman, run for election in our primary, he often has a job in mind that he would like to have in our highway system. He would like to be a unit foreman.

I think it is important for the viability for the political system, to a limited degree, to be able to offer to a person who has not graduated from engineering school, who has not even graduated from high school, but who is willing to get out and do political work, that at a time of an opening, when an opening came up in a particular job when maybe he could make \$7,000, \$8,000 a year, that he be given the opportunity to have that job. That job is not held out to him as a reward, but when the opportunity comes along and we have candidates "A," "B," and "C" to consider for that employment, candidate "A" has never involved himself in politics, candidate "B" is a registered or at least he has a Democratic voting record in the primary, and candidate "C" is a Republican precinct committeeman, those three individuals are equally qualified for the job and I see nothing the matter to giving that to candidate "C" who, is among other things, a partisan in support of and has worked for the Republican administration and it works exactly the opposite way when we have a Democratic government. I see nothing the matter with that. In fact, it is the only way that party work is in fact done because all of the tax money in the world will not be able to professionalize politics on the precinct level. I would be against it if a precinct committeeman took the job only because he wants to be paid, I think that is a dim day for the two-party system in this country.

It has been my privilege to serve on the Republican National Committee since February 1973 as a Republican State chairman and it has been a rough 3 years, mostly because of developments here in Washington in the summer of 1972 and mostly because, in my opinion, individuals were working outside of the institutional parties and were working in candidate-oriented campaigns where the emphasis is on winning at all costs and there was never a consideration given to the fact that the alternative of losing in some contests is better than winning under any circumstances. That was the basic standard that was never established in that campaign.

I happen to have come from a tradition in a State where we have had a Republican Party—it has been a strong Republican Party through

the years—that Indiana is a State that goes one way or another but as a result of competition and as a result of basically unfettered opportunity to participate in politics we have developed the initiative, we have developed, I think, new ideas in political campaigning, and in my idea that is the way the political exercise should be conducted.

The 1971 act was a milestone act for this Congress to adopt because it basically said what you do in politics must be disclosed. I have no quarrel with that. The Republican Party has reported in every reporting period since the time of the passage of that act.

The Democratic Party in our State decided not to report in 1972 and 1973 and in April of 1974, the GAO went back and made them file late reports. I think their policy was wrong. I think the concept of disclosure was long in coming and I think it hailed a new day in politics. But the 1974 act, and many of its provisions, attempts to prescribe how the political enterprise should be conducted. It attempts to limit and does in fact limit \$70,000 the amount that a challenger can spend to take on an incumbent and that is very interesting when you consider that the Common Cause statistics show that the average spent in a successful race against a congressional incumbent was \$140,000 and this Congress adopted exactly 50 cents on the dollar from what their research indicated it cost nationally to upset an incumbent, and that is giving the advantages of incumbency to the incumbent.

So I think when we embark on a course of action through Federal legislation, we severely overregulate the political enterprise, I think we strike at a very basic and fundamental freedom in this society. I think a person should be free to join the Indiana State Employees Association. He should be free to tell his precinct committeeman for either party to go where he wants to tell him to go. At the same time, I want an employee who feels strongly about his party affiliation to be able to continue to support his party and tell the Indiana State Employees Association he does not wish to pay their dues. I think that is freedom of choice.

I abhor some of the letters that have been introduced here this morning. They do not reflect the Governor's policy. They do not reflect my policy. They are individuals who are participating in a large solicitation effort and who have resorted to intimidation through coercion, job pressure—you are going to be fired if you do not pay up by such a date—but I would like to remind you that the four witnesses that preceded me did not cite one record of dismissal, did not substantiate one discharge from public employment for failure to pay a pledged contribution.

The article in the paper, which quotes me as saying my recommendation as a State chairman would be to discharge a patronage employee who pledged to support his party financially if in fact he failed to do it, is a correct statement. I was chairman of the Republican State Committee. I was speaking as a person who has done more asking for gifts for this political enterprise than any other persons in this room and I feel that a person who says, "I want the party's help in getting my job and I'm willing to help the party financially," is breaking a pledge when once they are on the payroll knowing full well they will not be discharged for failure to pay, then blithely ignores their commitment.

As far as I am concerned, that is a fair commentary on that individual's ability to keep a pledge.

There is no enforceable contract. There is no condition. We do not hire any people. We simply give political clearance in a limited number of situations and, as my recent testimony indicates, I am not advocating return to pre-Jacksonian days of unlimited spoils system. The abuses of that system are inherent in all patronage exercises in government. They are also inherent in elected officeholders who demand a contribution and tell their employees not to donate to the party in the State.

I could go on and on because I do feel strongly about the ability of the parties to continue in existence under the present circumstances, and that ability would be hampered by undue and overregulation and basically the thrust of Mr. Roush's bill.

At this time I would like to answer any questions that the subcommittee has.

Mr. HUNGATE. Thank you for a very helpful statement. You get in as much as possible in a small amount of time. I am glad I don't practice law in Richmond, Ind. Between you and Dave Dennis I would never win a case.

Mr. MILLIGAN. He is a tough one to go up against, I will say.

Mr. HUNGATE. I don't think you would lose more than your share.

I thought your comments regarding some of the Watergate problems were very appropriate. There was a good deal of political inexperience that led to some of those occurrences and personal, rather than party, loyalty. Your comments are well taken.

Mr. Russo.

Mr. Russo. Thank you, Mr. Chairman.

First of all, let me say, Mr. Milligan, that I am glad that you set the record straight as to why there hasn't been any enforcement of the law. I was deeply concerned about the fact that there hasn't been any enforcement. It is good to know that the law doesn't cover those employees and if there were violations that did cover them, that the Indiana Attorney General would then step in. That is a relief.

Mr. MILLIGAN. Our attorney general has no prosecutor authority. That rests with our prosecuting attorneys throughout the State.

Mr. Russo. That is how it is in our State too.

I have a little problem reconciling some of the comments that you made. You are for freedom of choice and you are against compulsion. However, at the same time, I read some of the comments attributed to you that if an applicant agrees, is hired, and later breaks that commitment by refusing to pay, he has jeopardized his political clearance for a patronage job and would be terminated.

You see, the question that you ask in your questionnaire for political clearance, and you ought to put it this way, if you really want to be above board and to a point with every applicant that comes in, would you be willing to contribute. You should put, you are required to contribute regularly to the Indiana State Republican Central Committee, because that is in effect what you are saying. This way when a person signs that form, he is advised as to what his responsibilities are and if he doesn't want to do it he shouldn't sign the form.

I think your form is slightly misleading when you say would you be willing, because again that indicates that is a freedom of choice and that he doesn't have to if he is not willing to do so at a later date, and if you are interested—

Mr. MILLIGAN. If I may interject there.

Mr. RUSSO. Sure.

Mr. MILLIGAN. With all due respect to the Congressman's interpretation, that form is the patronage clearance form. It is not an employment application. We will clear any number of people for a particular job because we are not an employment agency and I have been a precinct committeeman. I am presently county chairman and State chairman. I don't hire anybody except people on my payroll at State headquarters.

The question is, quite properly, would you be willing to contribute to the Republican Party. That is both financial and time. They can answer yes or no.

Now, the conclusion to that is—

Mr. RUSSO. I believe you said—

Mr. MILLIGAN [continuing]. Is whether I as a county chairman would give them clearance if they answered no, and I would not give them clearance if they were answering no. Frankly, they have no constitutional right to a State job.

Mr. RUSSO [continuing]. No question about that. I am assuming—

Mr. MILLIGAN. And secondly, they have no constitutional right to a patronage job.

Mr. RUSSO [continuing]. I am assuming he answers yes and later on is not able to meet his commitment of the 2 percent that he is required. At that point, from all the things that we have here, the man is on the line.

Now, the difference he has in the various organizations, for example, the teachers association and the other associations that have testified here this morning, is that he can join, pay his initial fee, and then later on if he wants to quit, he can quit the organization and still maintain his job.

Mr. MILLIGAN. I would like to point out a very significant difference. With regard to the State employees association, they get theirs by payroll deduction. He receives his annual budget from the auditor of the State of Indiana.

Mr. RUSSO. Assuming I as an employee wanted to quit and called the payroll people that I am no longer a part of that organization, I want that payroll deduction eliminated, they can eliminate that.

Mr. MILLIGAN. That is correct.

Mr. RUSSO. And he still keeps the job he has, is that correct?

Mr. MILLIGAN. That is correct.

Mr. RUSSO. Which is not the case of the 2 percent.

Mr. MILLIGAN. Let's be very clear. I stated that that witness or any other witness has not told you or given you any evidence of any person being discharged for this reason. These people continue in employment as well. That is not the way it was 30 years ago, however. These people were terminated. I think that was abuse and that is not the policy of this administration. They are not terminated.

Mr. RUSSO. I think one of the problems—

Mr. MILLIGAN. But the ABC's—basically the person makes the pledge. The transaction where he refuses to pay is basically a violation of his pledge. Now, that is a collection transaction. He has already said he is willing to contribute. You go around and collect.

Mr. Russo [continuing]. Now he is unable or unwilling to contribute. His expenses are higher or greater. He can't afford the 2 percent, quits their union or their organization and he can't make any payments. He is having a hard time making his payments.

Mr. MILLIGAN. Right. And of the 7,000 people in that patronage system 4,000 do regularly. We regularly ask them to keep their pledges, regularly ask them to pay.

Mr. Russo. This letter in 1974 by Mr. Kittredge says:

When you hired into the State employment you were informed then that each and every paycheck that you received, two (2) percent was due and payable to the Republican Party.

Now, I did not make this rule, but I have been charged with collecting this two (2) percent and turning it in.

It is not fair for your fellow workmen to pay his share and you letting it go this way. I am warning you to "shape up or ship out."

This is a little more coercion than saying the State employees association, when you tell not to make a payroll deduction, I don't—I can't afford it and they say OK. You made that pledge but you can't keep it up. They don't lose their job.

Mr. MILLIGAN. Recall that part of the letter.

Mr. Russo. There are subordinates under your political organization, as other political organizations, who are misguided as to what they are supposed to do. That is the reason you have the problem you have today. I agree with you about the philosophy of patronage. The only thing I don't agree with you on, if they don't know it is compulsory, they ought to be told. If it is not compulsory and he can't make the obligation and then you say I am going to fire you. I think this is a detriment to the political system. I don't know how you can be proud of the fact that 48 percent turned out in Indiana.

Mr. MILLIGAN. It is 10 percent higher than the national average and I am proud of that.

Mr. Russo. To me that is nothing to be proud of. And back home in my district it was the same thing, less than a 48-percent turnout. That ought to tell the political parties in this country that something is wrong with this system because 52 percent of the country is staying home. The electorate doesn't like the way the political system is handled and the way things are going. You are against coerced payments and you as the leader of the Republican Party in Indiana ought to do something about it. Maybe if you can't do it, maybe the locals can't do it, whether they are Republican or Democrat—

Mr. MILLIGAN. We have conducted precinct workshops in response to every request in our State over the last 2 years, some 50 training people to register, intelligent people to vote, and getting out the vote, and I assume that is the way the work has to be done to get people to the polls. You can't sit here and legislate people going to the polls. I think 48 percent is very good.

Mr. Russo. It is a sad day when the Federal Government has to step into every local problem, too.

I don't have any more time.

Mr. HUNGATE. Mr. Hyde.

Mr. HYDE. I just want to say—to try to modify my own remarks. I am less outraged than Mr. Russo because I have seen what his party, which has written the book in Cook County in terms of economic

pressure and political patronage, has done. They give new meaning and dimension to the term. And I would like to have my good friend and colleague talk to certain Illinois politicians, who are about to have a big dinner. Distribution of those tickets among his employees is a marvel of efficiency.

Mr. RUSSO. And there is no coercion. That is the amazing thing about it all.

Mr. HYDE. Not much.

I have no further comments or time.

Mr. HUNGATE. I am pleased that we have been able to keep partisan politics out of our hearings. I was afraid we might not.

Let me ask just a few questions.

The Department of Justice in its testimony talked about—do you have a copy of its prepared statement?

Mr. MILLIGAN. Yes, I do, Mr. Chairman.

Mr. HUNGATE. It talks about the work relief and relief purposes limitations and the enforcement of section 601. Unless the Federal funds went for work relief or relief purposes, the Justice Department is powerless to enforce the Federal law.

Let me see if I understand you correctly. Are you saying that 7,000 out of 26,000 or 27,000 employees are patronage employees?

Mr. MILLIGAN. Correct. Those are people who have to get a political clearance in order to be hired.

Mr. HUNGATE. There are approximately 20,000 employees who are in what you call the merit system.

Mr. MILLIGAN. Right.

Mr. HUNGATE. As far as Federal funds are concerned, if things are properly functioning now, these employees aren't patronage.

Mr. MILLIGAN. That is correct.

Mr. HUNGATE. What I am trying to get to is this, do you have any objection to the expansion of the coverage of these sections beyond work relief and relief purposes? Would that affect you, do you know?

Mr. MILLIGAN. I was very familiar with those two investigations because in July 1972-73, General Accounting Office announced from here our violation before giving us a copy of their report, and the Federal Bureau of Investigation launched a field project in August of 1973 and they interviewed approximately 25 employees in the highway system. They sent the report into Washington and there was no—they concluded no evidence was turned up of any violation of section 600 and section 601. Those were the two sections they were particularly looking at.

The Washington office asked them to go back into the field and expand their sample by 100 percent to see if they could find a violation. So they went back out and interviewed another 50 persons in November and December of 1973 and after 5 months of prodding, on May 2, 1974 we have the response over Henry Petersen's signature a letter prepared by Thomas McTiernan, Chief of the Fraud Section, and this is part of the story that Congressman Roush did not give you and I would like to present it to you at this time.

Mr. HUNGATE. Without objection, we will make that a part of the record at this point.

[The document referred to follows:]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., May 2, 1974.

Mr. THOMAS S. MILLIGAN,
State Chairman,
Indiana Republican State Central Committee,
Indianapolis, Ind.

DEAR MR. MILLIGAN: This will respond to your letter, dated April 10, 1974, in which you requested information regarding the disposition of the Criminal Division's investigation regarding the Indiana Republican State Committee's fund raising program.

On July 26, 1973, the Comptroller General referred to the Attorney General a case involving alleged violations of Federal election laws by the State of Indiana as well as the Republican and Democratic Parties of Indiana. As you know, the Comptroller's referral indicated that applicants for State patronage positions were frequently required to engage in political activity as a condition precedent to obtaining employment. It also indicated that, once hired, patronage employees were requested to contribute an amount equal to two percentum of their salaries to the political party whose elected representative most directly administered the executive department in which their positions were located. Finally, the Comptroller's referral noted that the salaries of a number of State patronage employees were provided for, in whole or in part, by Federal statutes.

An investigation of this matter was initiated by the Criminal Division. During its course, the possible applicability of a number of Federal criminal statutes, including Sections 242, 600 and 602 of Title 18, United States Code, were evaluated.

The Criminal Division's investigation has been completed and the decision has been reached that, based upon the particular facts and circumstances brought to light by the investigation, no prosecutive action is warranted. However, in view of the U.S. Civil Service Commission's probable concurrent jurisdiction over the subject allegations, this matter has been referred to the Commission for review under the provisions of Title 5, United States Code, Section 1501, *et seq.*

Sincerely,

HENRY E. PETERSEN,
Assistant Attorney General, Criminal Division.
By THOMAS J. McTIERNAN,
Chief, Fraud Section.

Mr. HUNGATE. Thank you.

Mr. MILLIGAN. And that letter states that the Federal Bureau of Investigation investigated and the Justice Department concluded that the Indiana 2-percent system did not violate section 600 and section 601. The proposed amendment in my opinion—

Mr. HUNGATE. They found no violations?

Mr. MILLIGAN. Right.

Mr. HUNGATE. Go ahead.

Mr. MILLIGAN. The proposed amendment in my opinion will not make any difference as far as work or work relief projects. That part of the amendment will not make a defense because their investigation clearly was on the basis that it was not limited to that. They knew the highway department was not involved in work relief and that is where they spent 6 months investigating. What they were looking at, whether or not there was coercion because of Federal funds being in highway and they enforced and they investigated and evaluated enforcement in that situation without any thought of limitation on work relief or work relief programs. So, in my opinion, that will not change their present enforcement policy.

Mr. HUNGATE. If that definition were changed as the bill proposes, so far as you see it right now, it wouldn't change the way they pragmatically approached it in your State.

Mr. MILLIGAN. That is correct, and I think the Congressman's toting of this bill to do away with this system has something to do with the fact that the *Sentinel* has been opposed always to the 2 percent system,

whether it is Democratic or Republican. Presently, they are very much opposed to its administration in the system in Fort Wayne under a Democratic mayor, and Congressman Roush has received the support of this system because he has won a number of times.

Mr. HUNGATE. You called for evidence of any firings based upon the failure to keep a pledge or make a contribution. How far back are you going?

Mr. MILLIGAN. Well, I was citing the fact that they have yet to introduce today any sort of—that is, essentially the Federal Government investigated this for 8 months and then concluded that there were in fact no firing because under 601 deprivation is deemed to mean discharge and to deprive a person of employment, and that is exactly what they were looking for.

Mr. RUSSO. Mr. Chairman, would you yield?

Mr. HUNGATE. Yes, I yield.

Mr. RUSSO. I was wondering what the figure would be on transfers to other parts of the State as a result of not paying the 2 percent. Any figures on that?

Mr. MILLIGAN. Well, I am not involved in the personnel administration in those departments and you would be—you I assume could subpoena the personnel records and they would justify why transfers were made. I don't know why they were made and of course the Federal statute does not in fact inhibit transferring an individual. It talks about depriving him of employment.

Mr. RUSSO. I mean that may be an area we can look into.

Mr. MILLIGAN. Does the Federal Government want to get into administering a total personnel policy?

Mr. HUNGATE. I believe Mr. Eble and Mr. Marshall are still here. Let the record show that they are. We have indicated certain evidence that would have time to come in. Perhaps on or before the 21st of November, we could have a list of the number of firings and perhaps a number of transfers which they know of, within each of the last 3 years. That would be 1972, 1973, and 1974.

Mr. MILLIGAN. To put that in perspective, unless the ISEA, Indiana State Employees Association, are going to furnish with the personnel records, you only have their allegation that a firing or transfer took place for this reason. I think is a—judicially I think that is rather hazardous.

Mr. HUNGATE. You have raised the issue that they have not named anybody they could assert was fired for that purpose.

Mr. MILLIGAN. Certainly.

Mr. HUNGATE. Now, we in Congress don't believe all we are told. We don't have to accept everything, but I think in view of that challenge I would be interested in knowing whether anyone is able to furnish any of names of persons they allege—

Mr. HYDE. Mr. Chairman, perhaps staff might, if they were given a few names. It should not be too difficult to have someone from our staff go out and check the personnel records in Indiana.

Mr. MILLIGAN. And I would also urge the committee it is possible to look at the field reports of the FBI. They worked on this very issue for 8 months and I am interested in saving taxpayers' money.

Mr. HUNGATE. All right. I think staff would do well to look at that. It should be available to us and it might be helpful.

Part of this legislation, we are told, would make uniform the punishment in campaign-related offenses. The principal part, I think, raises the penalty from \$1,000 to \$25,000. What do you think about that?

Mr. MILLIGAN. Well, I think that is an exorbitant penalty. I don't see the logic of just making it uniform with some other section. A person who could be prosecuted under section 601 and section 600 conceivably could be a person making \$5,000 a year, a minor political functionary who gets completely out of bounds and starts promising a job or contract to an individual in exchange for a contribution. Technically he could be prosecuted under this and I think a \$25,000 fine is completely unreasonable. I don't think that is a necessary deterrent. I think \$1,000 is sufficient.

Now, if we are talking about the head of one of the major oil companies, American Air Lines, or something like that, we are talking about a different type of defendant.

Mr. HUNGATE. As I understand the legislation, it is not a mandatory maximum but a maximum. The fine could be any amount up to \$25,000. I don't know how long we have had the \$1,000 maximum. One thousand dollars today and \$1,000 10 years ago are different amounts of money. I think we would agree on that.

Mr. MILLIGAN. I don't think this bill should rise or fall on that point. I—

Mr. HUNGATE. But you think \$25,000—

Mr. MILLIGAN. Is exorbitant.

Mr. HUNGATE. It is your view that is exorbitant.

Mr. MILLIGAN. Right.

Mr. HUNGATE. I think Mr. Russo or someone inquired of an earlier witness about a mandatory 1-year sentence. What is your view on that?

Mr. MILLIGAN. My view on that is that that is unreasonable. I think the judge—you know we have a judicial system which I think is charged with that responsibility. I am unaware of any prosecutions under section 600 and section 601 in our State in the last 20 years since I have been involved in the practice of law. It might be interesting to see what the enforcement experience has been and what type of sentences and fines been meted out and that would be more of a guide to the committee I think on those provisions than my views on that.

Mr. HUNGATE. Counsel might be well advised to contact the Justice Department as to the number and outcome of prosecutions under these two sections in the last 20 years.

There was also discussion as to the prefatory clause of sections 600 and 601; the question is whether "elections" should be defined in section 601 so it means the same as it does in section 600. Do you have any views to express on that?

Mr. MILLIGAN. I didn't pay particular attention to that part of their testimony. The part of their testimony that talked about as required by law. I think the point is well-taken there because the loophole that they suggest is a rather gross perversion of it and that someone could by ordinance or law make this a legal requirement and I think that the reference by the recodifiers to simply say otherwise, that was probably somewhat careless, so I think it could be narrowed to that situation. But I don't have an opinion on that.

Mr. HUNGATE. Thank you very much. We appreciate your waiting.

Counsel?

Mr. HUTCHISON. Are you recommending that the subcommittee not report out this bill, that it be defeated?

Mr. MILLIGAN. My major purpose in coming down here was to add some enlightenment as to how it works in perspective. I realize the witnesses who were appearing were going to be all one-sided and I don't have a great disagreement with the proposed amendment by Mr. Roush. It does not begin to do what he claims it will do and so I do not have a disagreement if the subcommittee saw fit to report the bill out favorably. I was advised by Congressman Dennis and also minority Counsel Smietanka that they felt the legislative record should include the party's view on this since most of the references by Mr. Eble and the other persons testifying were against me personally or the Republican State Committee and I am only too happy to come down here for that purpose.

I don't have a great feeling as to whether or not this bill should be reported yes or no and that is the reason for my appearance.

Mr. HUNGATE. All right.

Mr. Smietanka.

Mr. SMIETANKA. No questions.

Mr. HUNGATE. Any further questions?

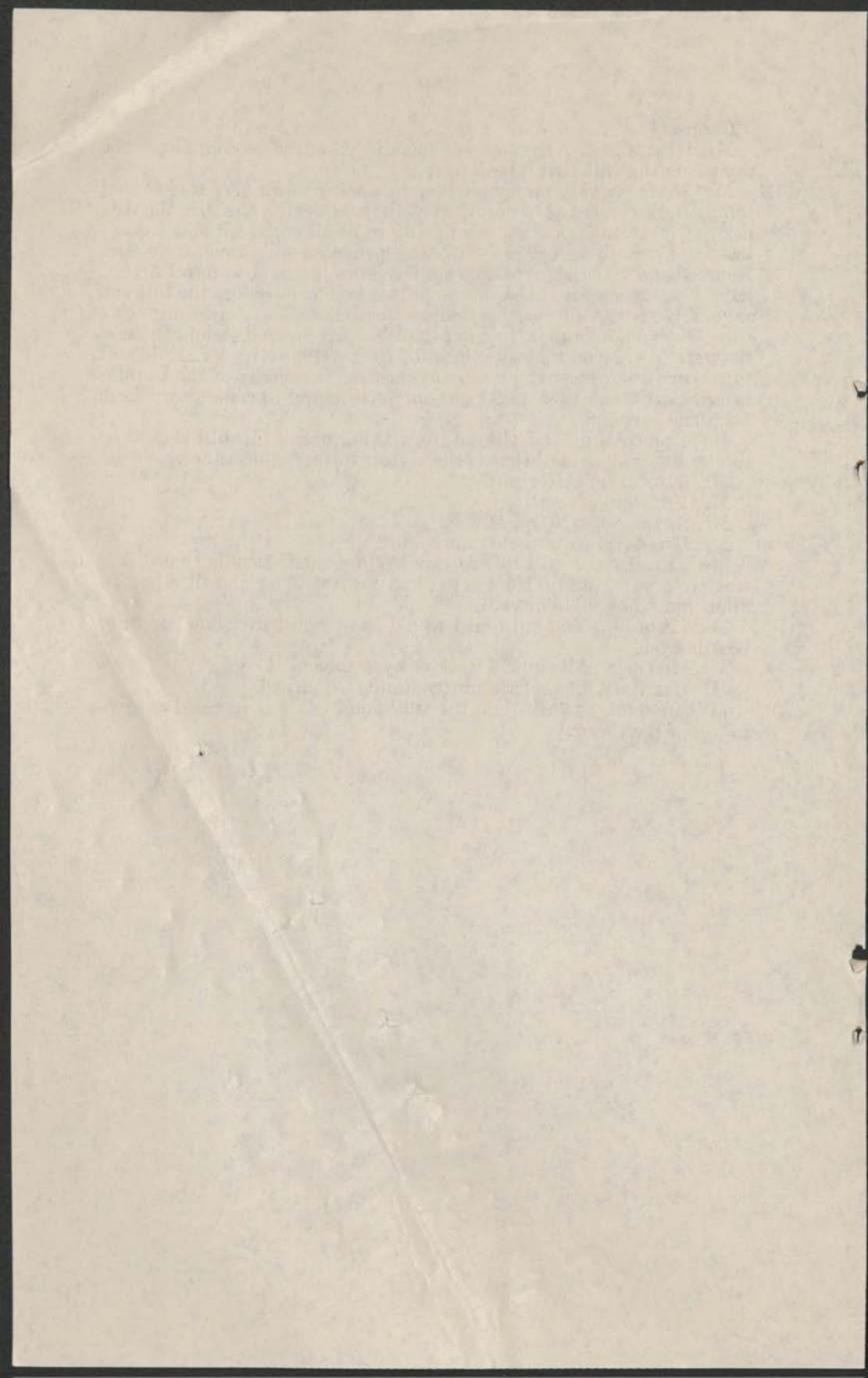
Mr. MILLIGAN. I will tell former Congressman Dennis that I was treated most cordially. He was to come down with me and then had an appearance he couldn't avoid.

Mr. HUNGATE. You tell him I would have done better but I lost my best lawyer.

Mr. MILLIGAN. All right. Thank you very much.

Mr. HUNGATE. The subcommittee stands adjourned.

[Whereupon, at 1:10 p.m. the subcommittee was recessed subject to call of the Chair.]



APPENDIX

DEPARTMENT OF JUSTICE,
Washington, D.C., October 29, 1975.

HON. WILLIAM L. HUNGATE,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: This will reply to your request to Mr. Pauley, transmitted through staff, following his testimony on H.R. 2920 last Tuesday, October 22, 1975, for an accounting of all cases which have been brought by this Department under 18 U.S.C. 600 and 18 U.S.C. 601, both of which were originally enacted in 1939 as parts of the Hatch Act, Public Law 53-252.

We have reviewed our records concerning the enforcement history of these two statutes quite carefully, and have been able to locate only one case brought under Section 601, and two cases brought under Section 600.

The two brought under Section 600 are *United States v. Malphurs*, 41 F. Supp. 817 (S.D. Fla. 1941), vacated on other grounds, 316 U.S. 1, and *United States v. Herbert Kalmbach*, which was brought by the office of the Special Prosecutor last year.

The *Malphurs* case involved an offer of promotion, which was made to an employee of a project funded by the Work Progress Administration, which was conditioned on his obtaining the votes of several persons for certain candidates in a Florida primary election. The district court dismissed the indictment on the ground that the criminal sections of the Hatch Act, including both 18 U.S.C. 600 and 601, applied only to general elections. This construction of the sections impeded the enforcement of Section 600 until the enactment of the 1971 Federal Election Campaign Act, Public Law 93-225, which made this section governed by the general definition of "election" contained in 18 U.S.C. 591(a) and which amended the text of this definition so that it expressly included all forms of elections for the first time. The problem in *Malphurs* is still present with respect to 18 U.S.C. 601, which as we indicated to you in our testimony is still not subject to the definitional section.

The *Kalmbach* case, as you are probably aware, involved the prosecution of a campaign fund raiser for promising an ambassadorial post to a solicitee on the condition that the solicitee contribute a substantial sum of money to support the re-election of former President Richard Nixon. Kalmbach pleaded guilty to the charge and received an eight-month prison sentence.

The sole Section 601 case, to the best of our knowledge, was *United States v. Dedof*, 52 F.Supp. 57 (E.D. Pa. 1941), involving charges that the defendants threatened relief recipients with termination of their benefits if they did not engage in certain political activities. The indictment was dismissed as technically defective in that it was couched in the disjunctive and thus failed to give adequate notice of the violations alleged.

We believe that this represents a complete accounting of prosecutions, although there may have been one or two more cases which old files fail to reflect. Of course, we have conducted a number of investigations under both of these statutes over the years which have not resulted in the filing of criminal charges. In most cases this has been a result of the fact that the political activity in question centered around a primary election of some sort (a problem which has since been rectified with respect only to Section 600), or because the matter involved deprivation of employment and the benefits in question could not be classified as "relief" in nature. As indicated in our testimony, this latter consideration would immediately foreclose prosecution under 18 U.S.C. 601 as it presently reads, while prosecution under 18 U.S.C. 600 would be possible only if the political activity was a condition precedent to an offer of "non-relief" Federal benefits.

We trust that this information will be useful to you. If we can be of further assistance, please do not hesitate to advise.

Sincerely,

RICHARD L. THORNBURGH,
Assistant Attorney General.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 24, 1975.

HON. WILLIAM L. HUNGATE,
Chairman, Subcommittee on Criminal Justice,
House Judiciary Committee,
Washington, D.C.

DEAR MR. CHAIRMAN: I am enclosing a copy of the letter I received from the Indiana Attorney General's office regarding any prosecutions of violators of Indiana statutes prohibiting certain political requirements of state employees. My October 21 letter also asked for a list of the category of workers protected by such legislation.

Best personal regards.

Yours sincerely,

J. EDWARD ROUSH,
Member of Congress.

STATE OF INDIANA,
OFFICE OF ATTORNEY GENERAL,
November 20, 1975.

HON. J. EDWARD ROUSH, M.C.,
Rayburn House Office Building,
Washington, D.C.

DEAR SIR: I have your letter dated October 21, 1975, addressed to Attorney General Sendak, which was referred to me for consideration and reply, and your letter addressed to me which was dated November 12, 1975.

The matter of legitimate political activities by American citizens in various walks of life is protected by the Bill of Rights and the equal privileges and immunity sections of the Federal and State Constitutions.

Such activities by Federal civil service and State merit service employees have some guidelines such as the Hatch Act and the Indiana Act to which you refer.

Under the Indiana law, however, the Attorney General has no jurisdiction to prosecute alleged violations of such laws. Therefore, you would have to contact the individual local prosecutors to obtain the information you desire.

Very truly yours,

SHELDON A. BRESKOW,
Chief Counsel.

COMMON CAUSE,
Washington, D.C., November 20, 1975.

HON. WILLIAM L. HUNGATE,
Chairman, House Judiciary Subcommittee on Criminal Justice, 2137 Rayburn
Office Building, Washington, D.C.

DEAR CHAIRMAN HUNGATE: On behalf of Common Cause, I would like to submit this letter for inclusion in the subcommittee's hearing record on H.R. 2020, a bill to amend sections 600 and 601 of Title 18, United States Code, relating to the granting or deprivation of benefits provided for or made possible by any act of Congress, on the basis of political activity. Common Cause strongly supports this legislation introduced by Representative J. Edward Roush of Indiana.

For some time, Common Cause has been greatly disturbed by the longstanding practice in Indiana of basing decisions to hire, fire or promote state government employees on the willingness of the employee or prospective employee to allow a portion of his or her wages to be contributed to the political party in power. As an organization deeply involved in efforts to improve the performance of government, Common Cause finds no place for consideration of an individual's political affiliation in determining his or her fitness to obtain or hold a government job. Unfortunately, Indiana's infamous 2% Club, which has existed since 1933 under both Democratic and Republican state administrations, is built upon this very concept of political loyalty rather than upon efforts to attract the most competent, most highly qualified people to public service.

The patronage system continues to flourish in Indiana in large measure because of the 2% Club. A 1973 report of the General Accounting Office found that approximately 60% of Indiana State government employees are patronage employees. Moreover, the report pointed out that not only is patronage employment primarily dependent on political affiliation, but that "patronage collections are an important source of financing for political parties." The report estimated that

under the Republican Governor in 1972, patronage contributions to the Republican State Central Committee aggregated approximately \$375,000, or 46% of the total contributions received by the Central Committee. Similar fund raising activities have been conducted by Democrats when they have held the office of Governor.

Common Cause certainly recognizes the importance of well-financed party organizations in our political process. Nevertheless, there is no justification for granting employment or a salary increase to an individual, or depriving him or her of employment or a part of his compensation, on the basis of his or her willingness to make political contributions. We share the sentiments expressed by Rep. Roush in his testimony that:

"States must have the very best qualified people they can attract to public service; the people deserve no less. Political loyalty should not be the criterion in hiring public employees nor should lack of political loyalty be the criterion for firing them."

Representative Roush's bill would strike a substantial blow to the 2% Club and would protect the integrity of jobs and programs which are in whole or in part federally funded, by prohibiting anyone from promising or depriving a person of a federal benefit on the basis of the beneficiary's political activity. Section 600 of Title 18 U.S.C. already makes it an offense to *promise* a benefit, provided for or made possible in whole or in part by any Act of Congress, on account of political activity. Section 601 prohibits the *deprivation* of benefits on the basis of political activity, but is restricted in its scope to benefits provided for or made possible by any Act of Congress appropriating funds for *work relief or relief purposes*. The Department of Justice has testified that in their opinion this limitation to federally appropriated "relief" benefits operates as a bar to prosecution in cases where a beneficiary is deprived of non-welfare benefits due to some political consideration. Section 1 of H.R. 2920 would broaden the protection of Section 601 to cover *any* program or activity receiving Federal financial assistance, by eliminating the reference to work relief—which is not contained in section 600—and by adding the words "in whole or in part"—which are already in section 600—after the phrase "made possible".

Thus, by passing H.R. 2920, the Congress will be bringing section 601 into line with current federal spending practices. Since the section was originally enacted in the 1930's, the use of federal funds in state and local government programs has vastly expanded. Today such diverse state and local programs as health care, transportation, housing and law enforcement—among many others—receive some measure of federal funding. By eliminating the language in section 601 which restricts its applicability to relief or work relief programs, H.R. 2920 will insure that section 601 reflects current realities, and will enable the Justice Department to bring suit in the full range of instances where federal spending creates a federal interest.

Common Cause commends Rep. Roush for reacting to the experience in his home state of Indiana under the 2% Club by introducing H.R. 2920. We also want to commend the Subcommittee on Criminal Justice for conducting hearings on the bill, and we hope that it will act favorably on the bill in the near future so that the full Judiciary Committee and the entire House will be able to move on this important legislation early next year. Enactment of H.R. 2920 will go a long way toward ending the insidious practice, in Indiana or elsewhere, of extracting a portion of an employee's wages as a pre-condition of employment or continuance of employment. We believe that H.R. 2920 is an important step toward emphasizing competence rather than politics in making government personnel decisions.

Sincerely,

DAVID COHEN,
President.

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