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[*PG733]MORE HONORED IN THE BREACH:A HISTORICAL PERSPECTIVE OF THE PERMEABLE IRS PROHIBITION ON CAMPAIGNING BY CHURCHES

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Abstract: Since 1954, there has been a prohibition on certain forms of intervention in political campaigns by entities exempt from taxation under section 501(c)(3) of the Internal Revenue Code—including most churches. This Article provides a historical perspective on the genesis of this prohibition—the 1954 U.S. Senate campaign of its sponsor, Lyndon Baines Johnson, and the involvement of religious entities and other 501(c)(3) organizations in his political campaign. Although Johnson was not opposed to using churches to advance his own political interests, he did seek to prevent ideological, tax-exempt organizations from funding McCarthyite candidates including his opponent in the Democratic primary, Dudley Dougherty. The illumination of these motivations is done through the extensive use of President Johnson's personal papers and provides a more complete understanding of the contours of the prohibition.

Churches are exempt from federal income tax pursuant to the terms of section 501(c)(3) of the Internal Revenue Code, and the regulations promulgated thereunder. The Code provides that such an organization must be organized and operated exclusively for charitable purposes and contains an absolute prohibition specifying that such an organization may "not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."1 This Article begins with examples illuminating the current state of affairs and how the prohibition is ignored in spirit and in substance. The Article will then describe the political context for enacting the prohibition in 1954—a change that was single-handedly [*PG734]achieved by then Senator Lyndon Baines Johnson. As described in the Article, far from churches playing a significant role in Johnson's decision to enact the prohibition, Johnson himself sought religious alliances in his quest for re-election.2

I. How Not to Do It:3 The Current State of Affairs

To consider the current practices of churches in light of the prohibition, it would be helpful to consider how things might be different if the prohibition did not exist. Such a situation might be examined in the hamlet of Eatanswill, the fictional English town created by Charles Dickens in *The Pickwick Papers*.4 In Eatanswill, the town was ripped asunder by two competing political parties, the Blues and the Buffs, so that there existed, "Blue shops and Buff shops, Blue inns and

Buff inns—there was a Blue aisle and a Buff aisle in the very church itself."5 Given that churches have historically served as one of the foci of community activity and organization, one might imagine that the churches in Eatanswill engaged in certain political acts without having to worry about being constrained by anything resembling the parameters of the prohibition.

[*PG735] For instance, one Buff pastor thundered at his parish, "Don't get the Blues," and warned that if the Blue candidate is elected, "then we're going to war." The pastor then introduced the out-going Buff prime minister who was campaigning on behalf of his wife, Buffy, a Buff candidate for parliament. From the pulpit, the Buff prime minister warned the congregation, "If you want to keep the economy going, you have to vote for Buffy." Buffy herself pleaded to the congregants, "I need you to ask people to vote for me." Then, the current cabinet member and Buff candidate for prime minister took the pulpit, after being introduced by the pastor as "the next prime minister," and admonished the parishioners, "I'm asking not only for your votes, but your enthusiasm and dedication, for your willingness to go the extra mile." The service ended with a rousing hymn with the pastor substituting the Blue candidate's name for "Satan."

The Blue pastors were no less vociferous in denouncing the Buffs and supporting the Blues. One pastor effused, "You vote for the Blue of your choice," but warned, "Our country is going to pay a dear price" if the Buff candidate for prime minister is elected. He then urged his congregants to kneel at bedtime and pray: "The Lord is my shepherd, I shall not vote for Buffy." Another pastor, attempting not to be seen as being heavy handed, explained, "I'm not telling you who to vote for. I'm telling you who you may not vote for." In a similar vein, one very prominent traveling minister attempted to strike a more bi-partisan note by explaining that he did not endorse candidates, but that with respect to the Blue candidate, "I've come as close to it, I guess, now as any time in my life because I think it's extremely important."

Indeed, the churches of Eatanswill would prove critical to the campaigns, sometimes being the only stops that a candidate would make on the campaign trail—and the failure of a candidate to stump from the pulpit would be severely criticized. Further, the churches would be used as a point for organizing campaigns and transporting the voters to the polls—sometimes immediately after Sunday services. To assist in the organization efforts, church ministers and pastors would be called to No. 10 Downing Street to meet with the prime minister and coordinate their activities. One such activity involved a group boycott by various ministers of a newspaper that had endorsed the Blue candidate.

[*PG736] One might imagine that the world of Eatanswill is far removed from our own, yet the following—among many other instances6—were reported during the 2000 election cycle:7

- Addressing the congregation at a Pittsburgh church, Al Gore criticized George Bush for saying he would appoint "strict constructionists" to the Supreme Court. Gore said that this term took him back to an era of "strictly constructionist meaning" in which, "some people were considered three-fifths of a human being."8

- Pastor Charles Betts, Sr. at the Morningstar Missionary Baptist Church in Queens, New York, introduced the First Lady, Hillary Rodham Clinton, who was running for the Senate, by saying, "I would like to introduce to you the next senator." He then stated, "I speak the word and the word is truth. After she goes to the Senate, she is going to come back to our communities and say 'Thank you.'" Another pastor at a Bronx church substituted her opponent's name, Representative Rick Lazio, for Satan in a service hymn during a visit by the First Lady.9
- Preaching at the Genoa Baptist Church in Ohio, the Reverend Jerry Falwell told the worshipers, "You vote for the Bush of your choice." He also warned that if Al Gore was elected, "Our country is going to pay a dear price." "We simply have to beat Gore," Falwell said.10
- [*PG737]At the Morris Brown AME Church, Al Gore told parishioners, "I have to appeal to you because you have the votes." He also stated, "I'm asking not only for your votes, but your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday."11
- The Reverend Billy Graham gave what was described as a "near-endorsement" to George Bush: "I don't endorse candidates. But I've come as close to it, I guess, now as any time in my life because I think it's extremely important. I've already voted. I'll let you guess who I voted for."12
- In Flint, Michigan, Al Gore attended the evening service at New Jerusalem Full Baptist Church where the speaker, Kenneth Edmonds, urged congregants to kneel at bedtime and pray: "The Lord is my shepherd, I shall not vote for George Bush."13
- In Milwaukee, Wisconsin, the Reverend Joseph Noonan of Our Lady of the Rosary Roman Catholic Church inveighed against candidates who were not pro-life and instructed, "I'm not telling you who to vote for. I'm telling you who you may not vote for."14
- At Detroit's New Bethel Baptist Church, the Reverend Robert Smith, Jr. preached that, "if Bush is elected, then we're going to war."15
- During Sabbath services at University Synagogue in West Los Angeles, Rabbi Allen Freehling spoke of Noah's drunkenness and remarked that the same "obscene behavior can be said of a certain Republican presidential candidate."16
- In Detroit, Al Gore told a Sunday congregation, "I need you to lift me up so I can fight for you." He was introduced by the church's pastor, Bishop Charles H. Ellis III, who offered a prayer for Mr. Gore's success and told his congregation that the choice "seems to be a no-brainer to me—if it ain't broke, don't fix it."17
- The Christian Coalition implemented plans to distribute 70 million copies of its voter guide at churches on the Sunday before [*PG738]the election.18 Critics have claimed that the guides are "partisan campaign fliers" because of their presentation of the candidates' positions on various issues.19
- Victory Baptist Church and Second Baptist Church were the only two stops that the Democratic Vice-Presidential candidate, Senator Joe Lieberman, made in Las Vegas during a campaign stop. At both churches he urged the congregations to vote for the Gore-Lieberman ticket.20

- President Bill Clinton spoke from the pulpit in a Harlem church to a group of African-American religious leaders and urged them that if they want to "keep the economy going" then "you have to vote for Hillary and Al Gore and Joe Lieberman."21
- In Chicago, about 20 ministers boycotted the Chicago Sun-Times for its endorsement of George Bush for President. The ministers said they will now rely on their pulpits and other newspapers to keep their communities informed about the elections.22
- In Miami, 23 ministers met in the Jordan Grove Baptist Church to coordinate efforts to get out the vote for Al Gore. They agreed to do radio ads, to coordinate vans to get people to the polls, and pledged to preach from the pulpit about voting. John Sales of First Baptist of Brownsville explained: "You don't have to need someone to tell you to vote. We've got to watch out for what's in the Bushes." David Horton of Greater New Bethel Baptist complained that "there should have been more of an effort by the Gore campaign to make itself visible in the black churches." Sales agreed, noting that although Gore has spoken in African-American churches elsewhere, the Gore campaign has turned to Clinton to energize African-American leaders and go to black churches.23
- In Arkansas, Kathy Robinson, a Democratic activist, complained about a county clerk refusing to open the clerk's office for early voting on Sunday, explaining, "I had 17 Afro-American churches [*PG739]lined up to be bussed to the courthouse to vote on Sunday." She then added, "Now I am going to have to retract that. We are trying to get Gore elected."24
- Explaining why Al Gore attended so many churches, his campaign manager, Donna Brazile explained, "More African-Am-ericans gather in church than any place else."25 "The churches are key," remarked David Bositis, senior political analyst at the Joint Center for Political and Economic Studies, an African-American think tank. "It's an organizational nexus. You've got people who come there every week."26
- On the Sunday before the election, numerous candidates made "whirlwind" tours of several churches seeking support.27

As these examples indicate, there is arguably widespread non-compliance with the prohibition and certainly no groundswell of public support for it. Further, these instances merely represent political activity by churches that was actually reported. One surmises that many other instances occurred which escaped the scrutiny of the press. One also surmises that this level of activity indicates a certain slackness of enforcement of the prohibition by the Internal Revenue Service.28 An examination of the history of the prohibition indicates that it was passed in 1954 with little thought by Congress, or even by its sponsor, the Democrat Minority Leader (soon to be Majority [*PG740]Leader), Senator Lyndon Baines Johnson, concerning its effect on churches. In any event, the prohibition was not the product of a change in public opinion, but instead appears to have been proposed by Johnson as a way to squelch certain unsavory campaign tactics targeted at him by a few tax-exempt entities.

II. Do Other Men, For They Would Do You:29 The Genesis of the Prohibition

On July 2, 1954, Senator Lyndon Johnson was recognized from the Senate floor and the following colloquy occurred:

Mr. JOHNSON of Texas: Mr. President, I have an amendment at the desk, which I should like to have stated.

The PRESIDING OFFICER: The Secretary will state the amendment.

The CHIEF CLERK: On page 117 of the House bill, in section 501(c)(3), it is proposed to strike out "individuals, and" and insert "individual," and strike out "influence legislation." And insert "influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Mr. JOHNSON of Texas: Mr. President, this amendment seeks to extend the provisions of section 501 of the House bill, denying tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office. I have discussed the matter with the chairman of the committee, the minority ranking member of the committee, and several other members of the committee, and I understand that the amendment is acceptable to them. I hope the chairman will take it to conference, and that it will be included in the final bill which Congress passes.30

Following that short colloquy, the amendment, unchanged in its verbiage, eventually became part of the Internal Revenue Code of 1954. Subsequently, it proved to have a profound effect on how thousands [*PG741]of tax-exempt organizations—including churches—dealt with issues relating to political campaigns.31 Although not subject to debate and cryptic in its origins,32 it is possible to piece together a plausible genesis of the prohibition.

For tax practitioners, 1954 marks the seminal year of the creation of the modern Internal Revenue Code. For Lyndon Baines Johnson, freshman senator from Texas, it marked his first attempt at seeking re-election after a very close—and questionable—contest in 1948 which earned him the unflattering sobriquet of "Landslide Lyndon."33 Johnson won the state-wide race by the exceedingly slim total of 87 votes—less than one hundredth of one percent of the total votes cast.34 This margin of victory was supplied by the machinations of the notorious "Duke of Duval County," George Parr, and the infamous "Box 13" (the contents of which were later destroyed in a fire) that at the last second mysteriously generated 200 extra votes for Johnson and only one extra for his opponent, Governor Coke Stevenson.35 This election continued to haunt Johnson when he next ran for re-election in 1954.36

[*PG742] In 1954, Texas was basically a one-party state dominated by the Democrat Party, so that the primary election scheduled on July 24, 1954, to choose the Democrat candidate became the *de facto* general election.37 Johnson drew as his opponent in the primary the relatively young and unknown thirty-year-old, first-term state representative from Beeville, Dudley

Dougherty.38 This "young man from Beeville," as Johnson called him in correspondence,39 projected the persona of [*PG743]a rabid, fire-breathing anti-communist. In a long, hand-written letter that he sent to Johnson after his defeat, Dougherty ruefully acknowledged, "I had a rather unhappy role to play, that of ultraconservative."40 Dougherty also had a religious role to play: he was Catholic and Johnson was protestant.

The year 1954 saw McCarthyism at its height and Texas was no exception to its allure.41 The extremely popular Governor, Allan Shivers, espoused McCarthy's anti-communist views and ran a "Red Scare-style gubernatorial campaign."42 Other imposing figures, such as the right-wing Dallas millionaire, H.L. Hunt, had geared up a conservative tax-exempt organization, Facts Forum, which produced radio and television programs as well as books and other literature espousing a hard anti-communist line that frequently crossed over into what some viewed as attacks on elements in the Democrat Party.43 Facts Forum, however, was not the only prominent tax-exempt organization trumpeting McCarthyism: the Committee for Constitutional Government (CCG) also joined the fray and in a seven-year period distributed over 82 million pieces of literature, made over 100,000 radio transcriptions, sent 350,000 telegrams, and issued thousands of news releases.44 CCG was adamantly opposed to Johnson's election and vociferously supported Dougherty—and Johnson suspected that Facts Forum, in spite of its pledge not to involve itself in political campaigns, was clandestinely in support of Dougherty, as well.

[*PG744] As derisively noted by Johnson, it seemed that most of Dougherty's support came from outside of the State.45 Indeed, although unsuccessful in securing endorsements from Texas newspapers and periodicals, Dougherty did receive an endorsement from the notorious anti-semite, Robert H. Williams, the publisher of the Williams Intelligence Summary from Santa Ana, California.46 Under the headline, "The Fighters are Winning in the Primaries; Two Potential McCarthies Throw Hats in the Ring," Williams describes Dougherty as a "Young St. George in Texas" who is fighting "the powerfully entrenched arch-New Dealer, Lyndon Johnson . . . one of the most hated of all Texans in office."47 Dougherty was also the beneficiary of the mass-mailing of a story by Willis Ballinger under the auspices of the Washington, D.C.-based group, Human Events, which endorsed him as the young "David" against Johnson's "Goliath."48

[*PG745] Johnson—worried about the conservative tenor of the Texas electorate which might throw enough support behind his opponent to, if not actually defeat him, then at least garner sufficient votes to tarnish his chances with respect to subsequent elections—privately took Dougherty very seriously,49 while at the same time projecting a public image that attempted to marginalize him and his supporters as much as possible.50 Many of Johnson's tactics consisted of the typical parry-and-thrust of campaigning whereby his supporters engaged in such activities as challenging Dougherty's attendance record in the legislature, soliciting support from prominent conservatives, and seeking evidence of special favors received by Dougherty.51 Johnson also had his staffers and others keep close tabs on Dougherty's campaign appearances and the work of his supporters and to report back on his progress.52

However, other tactics were of a different character which reflected a more aggressive campaigning style and indicated that Johnson was willing to pursue a number of different tactics to rout his opponent. Dougherty, in a letter written to Johnson after his defeat, explained, in a sardonic manner, his use of "vigorous artillery" against [*PG746]Johnson "[s]ince some of your people put out a little poison as always happens in campaigns and since others were kind enough to wire tap my home."53 Given the source, this accusation must be discounted. Another associate of Dougherty's, Igor Cassini,54 complained about being kicked off the air by the National Broadcasting Company (NBC) after he conducted a favorable television interview with Dougherty and Coke Stevenson.55 Johnson was very thin-skinned with respect to Stevenson's involvement in the campaign,56 which helps to [*PG747]explain why, after the incident, Cassini wrote a letter to Richard Berlin, the president of the Hearst Corporation, seeking his commiseration by explaining, "[u]nfortunately, this got me into trouble with NBC, because the Washington office received a call from Sen. Johnson's office, saying that they wanted to sue me (or so they said), and they threw the show off the air in order to appease the senator. I'm sure Senator Johnson didn't request this, but you know how jittery they can be in broadcasting stations."57 In an earlier memorandum to Johnson, one of his aides reported that he had spoken to Frank Russell of NBC who had ordered a transcript of the interview and that, "[i]f the tape shows any thing like what was reported Cassini will not be carried after this Sunday."58 The memorandum concluded with Russell's observation that "he would keep Senator Johnson completely out of it, and that whatever is done would be done purely by the network."59

[*PG748] Robert L. Clark, a Dallas attorney and Johnson confidante,60 was associated in activities directly concerning church involvement in the political campaign. He sent a copy of a typed letter to Senator Johnson's office a few days prior to the July 24 primary that was signed by "Rev. Lewis L. Shoptaw" and addressed "Dear Fellow Minister":

I regret having to write you and other good pastors a letter concerning politics. I do not think that under ordinary circumstances any Minister of the Gospel should take part in any political campaign, but I feel compelled to do this because I think you feel as I do, that we must always be alert and viligant [sic] in any issue which seeks to combine Church and State.

I want to call your attention to the fact that there definitely is a campaign being waged against our fine Texas Senator Lyndon B. Johnson on religious grounds.

Lyndon Johnson is protestant. His opponent belongs to the Roman Catholic faith. I have no criticism as to his opponent's religious belief but I am very much alarmed at the fact that religious politics are being used against Senator Johnson.

An impartial state-wide poll indicates that the Roman Catholic Mexican vote has been organized against him. In small communities in North, Central and South Texas, where German, Czechs and Polish citizens reside, an overwhelming vote against Senator Johnson is indicated in this very thorough poll.

I am not asking you to do anything politically but I am very humbly warning you that this under-cover attack on a fine Christian Senator does exist. I hope that you will regard this letter as entirely confidential and may the Good Lord Bless you for the fine work you are carrying on for protestant Christianity.61

Clark included a hand-written message at the bottom of the letter stating, "[a]round 6500 of these mailed to clergy other than Catholics over the State for delivery July 21. I hope you like it."62

[*PG749] On another front, Johnson sought a rapprochement with the Archbishop of Texas, Robert E. Lucey. This action was probably motivated, in part, by the prominence of Dougherty's family with respect to the Catholic Church in Texas.63 Johnson's staff member, Jake Pickle, sent a memorandum to Johnson, informing him that Pickle had contacted Dan Quill, a close acquaintance of Archbishop Lucey, and asked him "to have a session with Archbishop Lucey to establish the specific relationship we might enjoy with Archbishop Lucey at this time."64 Pickle reported that Quill "thought Archbishop Lucey was Lyndon's friend."65 Pickle then relayed that he told Quill "to stay close to him and find out," and added, "I understand that Archbishop Lucey has, at least, said some kind things to Dougherty, primarily on his wetback stand."66 Johnson, in response to this memorandum, sent a [*PG750]letter to Quill asking, "I wish you would talk to Archbishop Lucey and see how he feels about the situation without involving yourself and let me know right away."67

This overture bore fruit, as relayed by Pickle who contacted several people close to the Archbishop and received word back "that he [*PG751]was for Senator Johnson for a number of reasons. Most of all, I think he believes you have done a good job and are a credit to the State."68 Pickle then urged Johnson to "please write him a nice letter telling him that you have heard . . . about the considerate things he said about you and your work as Senator from Texas and you appreciate it very much. Tell him it was a distinctive honor to hear this from a man of his position and influence."69

Johnson's campaign also launched another religiously-tinged attack with respect to the endorsement by Williams in his *Intelligence Summary*. Dougherty denied any involvement with Williams and speculated that his "unsolicited support" might "*even be designed to hurt me.*"70 This observation turned out to be prophetic. Staffer George Reedy made contact with Herman Edelsberg, the Director of the Anti-Defamation League of B'nai Birth, who sent him a number of materials exposing Williams's anti-Semitic activities as a dispenser of hate literature.71 Another Johnson staffer, James Rowe,72 also contacted Edelsberg,73 who indicated:

[I]f agreeable to the Senator he, Edelsberg, will draft a letter which will be sent to one or two of the leading people in each community in Texas—Anti-Defamation League people—and probably there will be more than 2 going to places like Dallas and Houston.

The letter will say that Mr. Dougherty has invoked the aid of Mr. Williams, who is Anti-Semitic, and that these facts should be known to the Jews in Texas. It will not mention [*PG752]Senator Johnson. Edelsberg is a wise politician and he knows what to say.

This letter will go out if and when you say OK, and not before.74

In the margin are the scrawled letters, "OK."75

All of these activities show that Johnson was worried about making a favorable showing in the campaign and would seek the support of all Texans in attempting to strengthen his support. Ultimately, he succeeded in spectacular fashion. Johnson received 883,000 votes to Dougherty's 354,000, winning a decisive 71.37 percent victory over the "young man from Beeville."76 Dougherty, shortly after the primary, informed Johnson in a letter that in spite of the true "landslide" for Johnson, he was "pleased at the 350,000 that I, an unknown young man of thirty, a Catholic in a Protestant state, could receive."77 Later, as the bruises from the lop-sided election settled in, Dougherty wrote another letter to Johnson pledging, "I am not going to go after you again" and "I doubt if I will ever get into politics much again."78 True to his word, Dougherty never ran again for public office.

With this backdrop concerning the political events unfolding during the first half of 1954 and Johnson's mental outlook regarding the upcoming election, one can better understand the motivations surrounding Johnson's amendment to the Code preventing interven[*PG753]tion in a political campaign by tax-exempt entities. Two tax-exempt organizations, in particular, drew his attention during the campaign: Facts Forum and CCG. It is apparent from both inter- and intra-office correspondence that both these organizations figured prominently in his decision to enact the prohibition.

Hunt started the tax-exempt organization Facts Forum in 1951 as a platform dedicated to the dissemination of his conservative views,79 which he disingenuously labeled as "constructive."80 Hunt, through this organization, soon acquired a stature which his opponents viewed with alarm.81 Beginning with a periodical, Hunt quickly expanded the activities of Facts Forum to include giving large dinner parties featuring speakers warning of the evils of communism, both at home and abroad, and broadcasting radio and television programs that eventually reached 5 million viewers a week.82 These programs prominently featured such speakers as Senator Joseph McCarthy.83 However, Hunt attempted to distance Facts Forum from any criticism that it was something other than an entity concerned with educating the public on different policy issues. In an article entitled, "Background on Facts Forum," Hunt wrote that Facts Forum would remain strictly non-partisan and had pledged not "to take part in any political campaigns *nor to support any candidate for office.*"84 Indeed, Hunt bragged that Facts Forum was "so successful in its impartiality toward the political parties, and toward differing philosophies, that it went through the bitterly contested election campaign of 1952 with practically no criticism from any source whatsoever."85

[*PG754] Johnson, among others,86 had a different view.87 There exist numerous reports prepared for Johnson by Robert Clark that indicate an extensive investigation concerning various individuals working for Dougherty that might be linked to Facts Forum. For example, there is a dossier prepared by Clark on a B. Hayden Freeman, who is described as "a young boy about 14–16 years old, a student of Greenhill School, a private Dallas prep school. Young Freeman works after school at Facts Forum and for H.L. Hunt personally as a propagandist. He lives with his mother, who is a widow, Mrs. Elizabeth Freeman, 4005 Bryn Mawr."88 Clark reports on conversations with the neighbors, and with Freeman's mother where he posed as "a friend of Dudley T. Dougherty" and she "volunteered the information that her son Hayden worked every day after school for Facts Forum and H.L. Hunt but could not be reached today because he had gone to Houston to attend the Joe McCarthy speaking at the San Jacinto Battleground, but was expected back in Dallas tonight."89 Clark also investigated the boy's deceased father and the mother's places of employment. The report ends by describing how Hunt became interested in Freeman and that his "present political affiliations (if any), are under investigation."90

[*PG755] Freeman was the President of Texas Youth for America and had printed a widely disseminated letter under its banner critical of Johnson.91 Apparently, it was believed that the information for these at[*PG756]tacks had been supplied by Hunt.92 As a follow-up to these reports, a Senate staffer, Booth Mooney, had a blunt talk with Hunt confidante, H.L. Williford.93 Concerning the Ballinger article disseminated by Human Events, Williford disclaimed all knowledge and stated "it positively was not being distributed by anyone connected with Facts Forum or the Hunt organization."94 Williford acknowledged that Freeman "formerly did some work for Facts Forum after school," but he claimed that Freeman was immediately discharged after a letter distributed by Texas Youth for America came to their attention.95 Williford also denied involvement with certain other individuals and activities associated with supporting Dougherty and "asserted very strongly that Hunt would not contribute in any way to Dougherty's campaign."96 Mooney, for his part, remained skeptical of Williford's protestations of innocence97 but thought the "frank discussion"—whereby Mooney relayed that Johnson did not believe the reports circulating but could not "keep wondering at their persistence,"—"might serve as a restraining influence" on Hunt.98

[*PG757] As discussed, Hunt's Texas-based outfit was not the only tax-exempt entity causing problems for Johnson. Among the veritable plethora of national organizations taking potshots at Johnson during the campaign, the most nettlesome of these out-of-state interlopers appears to have been CCG.99 CCG was founded in 1937 by Frank Gannett, owner of one of the largest newspaper chains in the country.100 Like Facts Forum, it was supposedly created as a nonpartisan entity designed to educate the public on various policy issues. Directed by Gannett, its long-time executive secretary was Dr. Edward Rumely,101 described by an internal report for Johnson as "the guiding genius" of CCG.102 Apparently, a large proportion of CCG's funds was raised in Texas, although Rumely declined to reveal its major contributors when hauled before a congressional committee.103

Prior to its involvement in Dougherty's campaign, CCG had developed somewhat of a track record for skirting the line between nonpolitical issue education and intervention in the political campaigns of particular candidates. Early on, CCG advocated against Roosevelt's court reform bill of 1937 and then, later, against the "road to dictatorship" when Roosevelt sought a third term in office.104 Gannett claimed that this activity was not political because the organization [*PG758]did not come out explicitly against Roosevelt as a candidate.105 Similarly, in 1944, when Roosevelt sought a fourth term, millions of pamphlets were sent out urging a coalition against the "New Deal Nazis in 1944." This time, Rumely denied that the mailings were political.106 Generally, however, CCG tried to abstain from intervening in a political campaign.107

From Johnson's files, it is apparent that at one time a separate Senate-office file was kept on CCG,108 and that CCG was perceived as the model for Dougherty's organization.109 Johnson viewed the involvement of CCG as a serious problem.110 One internal report described it as "the wealthiest and most powerful of the extreme right-wing groups in the United States. It publishes a fantastic amount of literature which is distributed all over the United States."111 Of course, CCG had widely disseminated the Ballinger article critical of the senator through its organ, *Spotlight*,112 which Johnson found strongly ob[*PG759]jectionable.113 Further, it had come to Johnson's attention that CCG's mailing list coincided with the mailing list for Representative Ralph Waldo Gwinn.114 Upon further investigation, a staffer reported to Johnson that it was "not at all unusual that Representative Ralph Waldo Gwinn should be using one of the Committee's mailing lists. He is notorious for putting the Committee's material in the [Congressional] Record and then mailing it out by the ton under his frank. It is supposedly a matter of common knowledge that he has actually turned bundles of his franks over to the [CCG] to use as they see fit."115 Gwinn also was not shy about this connection and used it in defense of Richard Nixon when old stories about his "slush fund" that was maintained from various interested donors were resurrected during the 1954 Congressional campaigns.116

Perhaps most infuriating to Johnson was that CCG was raising funds from corporate contributors and then using those funds to [*PG760]wage war against his campaign.117 This tactic, too, was apparently typical of CCG which had raised funds from corporate donors for years, in apparent violation of the Corrupt Practices Act, with little fear of reprisal because of the lax enforcement of the law.118 On May 27, 1954, Johnson received a letter from J.R. Parten, the Chairman of the Board of the Federal Reserve Bank of Dallas,119 who included a fund raising letter from Sumner Gerard, a trustee for CCG, which stated the following:

We appeal to you and to other long-time friends to help bring about the immediately needed seed money fund of $30,000 to $50,000. . . .

If you give now, or add to your past support in the form of subscriptions to SPOTLIGHT, a legitimate corporate expense, you will help greatly. Or, if you prefer, make personal or corporate check payable to the Constitution and Free Enterprise Foundation, Inc., which has U.S. Treasury

ruling of deductibility and is chartered to safeguard constitutional liberty and economic freedom.120

Also included was a subscription form for *Spotlight* describing the periodical as a way to "aid your non-partisan, educational campaign on fair taxation, sound anti-recession remedies, and safeguarding constitutional liberties and economic freedom."121 Parten commented in his letter that he was sending the enclosures to Johnson in order for him [*PG761]to review them "with a view to taking any appropriate action in the interest of sound governmental practice."122 Parten further added:

The pecularities [sic] that quickly meet the eye are: (1) That it is an appeal for contributions; (2) that Mr. Gerard says "If you give now or add to your past support in the form of subscriptions to SPOTLIGHT, a legitimate corporate expense, you will help greatly;" and (3) the enclosed issue of SPOTLIGHT presents what is entitled the "Texas Story" by Willis Ballinger, and this article devotes one and a half full pages to a violent attack on you, and for the clear purpose of advancing the candidacy of Dudley T. Dougherty, your opponent in the Democratic Primary in Texas. . . .

Since when did it become legal and legitimate to expend corporate funds for political purposes? I wonder if Mr. Gerard did not mean to convey the idea that such contributions may be considered both "legitimate corporate expense" and income tax exempt.123

In response, on June 3, 1954, Johnson sent a letter to Parten, thanking him for the enclosures relating to CCG and remarking, "I myself am wondering whether contributions to an organization so actively engaged in politics can be classed as a legitimate corporate expense and I am having this question explored by experts."124 Indeed, Johnson had Gerald Siegel, counsel to the Senate Democratic Policy Committee, look into the issue.125

On June 15, 1954, Siegel submitted a memorandum to Johnson concerning whether the Ballinger article circulated by CCG, which also listed Dougherty's address and urged readers to communicate with him, violated Section 243(e) of the Texas Election Code, which prohibited "purely" charitable entities, subject to criminal sanctions, from intervening in political activities.126 Siegel explained to Johnson [*PG762]that this statute served as a prophylactic measure to prevent corporations from indirectly participating in political activities through donations to charities which would then use the contributions to further the corporations' political agendas.127 Although he noted that CCG "has openly solicited corporate contributions to its organization for so-called educational purposes" and may be viewed as trying "to influence a senatorial election by aiding the candidacy of Dougherty and attempting to defeat your candidacy," nonetheless Siegel concluded that CCG probably cannot be viewed as having violated Section 243(e) because it can argue that it is simply educating the Texas voters on policy issues—such "efforts to influence legislation" being sanctioned under Section 101(6) of the Internal Revenue Code as long as they are not a "substantial part" of CCG's activities.128

In addition to ascertaining whether CCG had violated any statutes, Johnson also contacted several of his influential friends to pursue other avenues of running CCG to ground. On June 17, 1954, his friend, Thomas G. Corcoran, a long-time political insider,129 had a telephone conference with Gerard concerning the Ballinger story. Shortly thereafter, Gerard sent Corcoran a letter, informing him that Gerard had spoken to Dr. Rumely who explained that "the article was used . . . because your friend, Mr. Lyndon Johnson, took no definite [*PG763]stand on certain current issues," but "[b]eyond that, there was no thought of messing up in Texas politics."130 Sumner further added that Dr. Rumely "now promises to cause to be printed as a 'Spotlight' article any statement or article Mr. Johnson would like to make, provided it be along the lines the Committee is moving . . . ."131 Apparently, Johnson was not inclined to accept this magnanimous offer to be enlisted as a CCG mouthpiece.

Also at this time, Johnson apparently spoke to Massachusetts Representative John W. McCormack, a long-time ally,132 who was then the House Democratic Whip.133 McCormack, on June 18, 1954, sent a copy of the Ballinger article and the Sumner Gerard CCG fundraising letter (which Parten had sent to Johnson) to T. Coleman Andrews, the Commissioner of the Internal Revenue Service. In a cover letter, McCormack informed the Commissioner:

There has very recently come to my attention an unusual document being distributed by the Committee for Constitutional Government, Inc. which is apparently an organization, or affiliated with an organization—the Constitution and Free Enterprise Foundation, Inc.—claiming exemption from Federal income taxes under section 101(6) of the Internal Revenue Code. I am enclosing photostatic copies of some documents from which you can see that the committee is going very far in the direction of intervention in support of a political candidacy.

The Committee for Constitutional Government urges contributions from its readers, both individual and corporate, pointing out that such contributions may be deducted from their Federal income tax. As a member of the House Ways and Means Committee for many years, this document strikes me as both amusing and shocking. I cannot recall of any other similar flagrant engagement in political affairs by a tax-exempt organization.

[*PG764] Would you please furnish me with a report as to whether the Committee for Constitutional Government and its affiliated Foundation are exempt organizations under section 101(6) and whether in your opinion the activities reflected in the attached documents are properly and legally engaged in by such an exempt organization.

Your prompt consideration of this matter and answer to this letter, if possible, within the next ten days will be appreciated.134

On June 28, 1954, the Commissioner responded to McCormack's letter, noting that he, too, found the CCG documents "no less amusing and shocking" and that the Service was "taking appropriate steps to see just what is the effect of the activities of these organizations under the

internal revenue laws and what, if anything, can be done about their present status in relation to exemption privileges."135

Apparently, under existing law, there was very little that could be done. The House Special Committee to Investigate Tax-Exempt Foundations was winding down its operations without having made any apparent headway. In Johnson's files is a copy of a statement dated June 2, 1954, made before this committee by Norman A. Sugarman, the Assistant Commissioner of Internal Revenue. This lengthy statement describes the history of the tax provisions limiting political activities by tax-exempt entities and, specifically, propaganda activities carried out by educational organizations. It describes the history of the 1934 amendment concerning these matters and explains that the Committee reports:

show that as first proposed, the 1934 amendment to the statutes read "and no substantial part of the activities of which is participation in partisan politics or in carrying on propaganda, or otherwise attempting to influence legislation." [*PG765]The words "participation in partisan politics" were stricken from the bill, as enacted.136

The statement also notes that as a current condition to exemption, "no substantial part" of an entity's activities "is carrying on propaganda, or otherwise attempting, to influence legislation." A handwritten transcription of this requirement is contained in notes, presumably made by a Johnson staffer, accompanying the copy of the statement. The staffer also wrote down the cites for the various cases discussed in the statement concerning the activities of educational entities.

On July 2, 1954, the House Special Committee to Investigate Tax-Exempt Foundations ended its deliberations.137 That same day, Johnson offered his amendment on the Senate floor, banning such tax-exempt entities, including all 501(c)(3) organizations, from participating in a political campaign by supporting a political candidate.138 The next day's front page of the Washington Post carried an article that described the amendment as one that "would withdraw tax-free status from any foundations or other organizations that attempt to 'influence legislation' or dabble in politics in behalf of any candidate for public office."139 This article, with its broad language concerning "other organizations" and "influence legislation," apparently generated some worry and consternation among various Johnson supporters—including, most importantly, labor unions—which feared they were caught in the prohibition's dragnet and could no longer support various candidates for public office. Johnson once again tapped the Democratic Senate Policy Committee counsel Siegel for a clarifying memorandum which he obligingly issued that same day:

SUBJECT: Amendment to the Tax Bill respecting political activities of tax-exempt organizations.

The amendment which you offered and which the Senate adopted to extend the limitations on the activities of tax-exempt organizations under section 501 of the bill (formerly section 101(6)) to prevent intervention in behalf of the po[*PG766]litical candidacy of anyone running for public

office, will have no effect upon labor organizations. Unions, or organizations affiliated with unions such as the CIO Political Action Committee, are not tax-exempt organizations under section 501 and will not in any way be affected by the amendment.

FOOTNOTES:

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1 I.R.C. § 501(c)(3) (1986). This provision will be generally referred to throughout this Article as "the prohibition."

2 Throughout this Article, citation to materials housed in the Lyndon Baines Johnson Library and Museum (LBJ Library) in Austin, Texas, will conform to the citation format suggested by that library. Copies of those materials will remain on file with the Boston College Law Review until September 2003.

3 "Whatever was required to be done, the Circumlocution Office was beforehand with all the public departments in the art of perceiving—HOW NOT TO DO IT." Charles Dickens, Little Dorrit 104 (The New Oxford Illustrated ed. 1953) (1857).

4 Charles Dickens, The Pickwick Papers 157–74 (The New Oxford Illustrated ed. 1974) (1837).

5 The following is a description of the Blues and the Buffs from The Pickwick Papers:

It appears, then, that the Eatanswill people, like the people of many other small towns, considered themselves of the utmost and most mighty importance, and that every man in Eatanswill, conscious of the weight that attached to his example, felt himself bound to unite, heart and soul, with one of the two great parties that divided the town—the Blues and the Buffs. Now the Blues lost no opportunity of opposing the Buffs, and the Buffs lost no opportunity of opposing the Blues; and the consequence was, that whenever the Buffs and Blues met together at public meeting, town-hall, fair, or market, disputes and high words arose between them. With these dissensions it is almost superfluous to say that everything in Eatanswill was made a party question. If the Buffs proposed to new skylight the market-place, the Blues got up public meetings, and denounced the proceeding; if the Blues proposed the erection of an additional pump in the High Street, the Buffs rose as one man and stood aghast at the enormity.

Id. at 157–58.

6 *See, e.g.*, Martha Sawyer Allen, *Groups Urge Voters to Follow Their Faith on Election Day*, Star-Trib. Newspaper of the Twin Cities, Nov. 4, 2000, at 5B; Esther Talbot Fenning, *Churches Take Different Approaches to Politics*, St. Louis Post-Dispatch, Nov. 3, 2000, at 3; Stephen Huba, *Churches Immersed in Politics*, Cincinnati Post, Nov. 4, 2000, at 7A; Ben Macintyre, *Hallelujah! Clinton's Out to Serenade the Black Vote*, Times of London, Oct. 30, 2000, at 1; Gebe Martines & Kim Kozlowski, *Religion, Politics: Unprecedented Mix Hot Election*, Detroit News, Nov. 2, 2000, at 1; Bruce Nolan, *Religious Leaders Take Varied Tacks*

on Election Advice, Times-Picayune, Nov. 4, 2000, at 16; Emma Sapong, *Clinton Addresses Congregation*, Buffalo News, Oct. 30, 2000, at B1; Jodi Wilgoren, *Just Before Election, Politics and Religion Mix Easily at a Michigan Church*, N.Y. Times, Nov. 6, 2000, at A19.

7 This cycle has already been described as one of immense importance and historic interest because of the closeness of the presidential race whereby the Democratic candidate, Vice President Al Gore, was narrowly defeated by the Republican candidate, Texas Governor George W. Bush. Another notable race involved the election to the Senate for the State of New York of the First Lady, Hillary Rodham Clinton, over her Republican opponent, U.S. Representative Rick Lazio.

8 Ralph Z. Hallow, *Gore Used Race as His Ace in Cards Played in Election*, Wash. Times, Nov. 9, 2000, at A1; Glen Johnson, *Black Voters Key to Final Gore Push*, Boston Globe, Nov. 6, 2000, at A1.

9 Steve Miller, *Hillary Courts Blacks at Church Services*, Wash. Times, Nov. 6, 2000, at A1.

10 Dennis M. Mahoney, *Falwell Stumps for Bush at Church*, Columbus Dispatch, Nov. 6, 2000, at 3C.

11 Ken Foskett, *Gore Whips Up Passions of Faithful for Big Turnout*, Atlanta Const., Nov. 6, 2000, at A11.

12 Bob Kemper & Naftali Bendavid, *Rivals in Frantic Race to the Finish Bush, Gore Spend Last Campaign Hours in States Key to Victory*, Chi. Trib., Nov. 6, 2000, at 1.

13 Sandra Sobieraj, *Gore Team Campaigns Through Midwest*, Assoc. Press, Nov. 6, 2000.

14 Richard N. Ostling, *Some Clergy Deliver Political Words*, Assoc. Press, Nov. 5, 2000.

15 *Id.*

16 *Id.*

17 Sean Scully, *Democrats' Visits Could Cost Churches Tax-Exempt Status*, Wash. Times, Nov. 3, 2000, at A11.

18 Bill Sherman, *Voter Guides Raise Moral Issues*, Tulsa World, Nov. 2, 2000, at 12.

19 Greg Hitt, *Churches Feel IRS Pressure to Stay Out of Election*, Wall St. J., Oct. 12, 2000, at A28.

20 Jane Ann Morrison, *Lieberman Speaks at Local Churches*, Las Vegas Rev.-J., Nov. 6, 2000, at 1A.

21 Office of the Press Secretary, *Remarks by the President to African American Religious and Community Leaders*, M2 Presswire, Nov. 1, 2000.

22 Ana Mendieta, *Bush Endorsement Ripped*, Chi. Sun-Times, Nov. 1, 2000, at 34.

23 Derrick Z. Jackson, *Will Blacks Save Gore in Florida?*, Boston Globe, Nov. 1, 2000, at A19.

24 Sean Scully, *Cigarette Swap for Voting Skews Race, GOP Says*, Wash. Times, Nov. 7, 2000, at A7; *see also* James Jefferson, *Ark. Governor Criticizes Own State*, Assoc. Press, Nov. 6, 2000 (quoting Arkansas Governor Mike Huckabee as saying, "[t]hey're lining up buses at minority churches, loading them up and hauling them to the polls as soon as church is over.").

25 Toby Eckert, *Gore Tries to Boost Turnout of Blacks: Spends Two Days in Church Appeals*, San Diego Union & Trib., Nov. 6, 2000, at A1.

26 Fred Kaplan, *Black Vote Seen as Key in N.Y. Senate Race*, Boston Globe, Oct. 30, 2000, at A12.

27 *See, e.g.*, Bob Lewis, *Va. Campaigns Reach Frantic Finish*, Assoc. Press, Nov. 6, 2000

(describing Senate candidate Chuck Robb's "whirlwind tour" of eight predominantly black churches); Adam Nagourney, *With Time Short, Mrs. Clinton Preaches to the Democratic Faithful*, N.Y. Times, Nov. 6, 2000, at A33 ("In a day of gospel and politics, Hillary Rodham Clinton preached and prayed her way through seven churches in seven hours yesterday . . . ."); Jeff Zeleny & Susan Kuczka, *Frantic Voter Push Sees Candidates Knocking, Praying*, Chi. Trib., Nov. 6, 2000, at 2 (describing schedule of one candidate "who attended nine church services in a 12-hour stretch that started at 7:30 a.m.").

28 There has been only one recent reported decision of a church losing its tax-exempt status as the result of political activities. *See generally* Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000). This case did not include the kind of pulpit activities described above but instead concerned a newspaper advertisement the church paid for warning "Christians Beware" of then-Governor Bill Clinton. *Id.* at 169.

29 "Here's the rule for bargains—'Do other men, for they would do you.' That's the true business precept. All others are counterfeits." Charles Dickens, Martin Chuzzlewit 181 (The New Oxford Illustrated ed. 1959) (1854).

30 100 Cong. Rec. 9604 (1954).

31 The only subsequent change to the amendment's language, enacted decades later, was the addition of the parenthetical phrase "(or in opposition to)" to make clear that the prohibition against electioneering extended beyond merely favorable speech and conduct in support of a candidate. *See* H.R. Rep. No. 391 (II), Omnibus Budget Reconciliation Act, 100th Cong., 1st Sess., pt. 2, at 1018 (1987).

32 The Conference Report contains no analysis of this provision. *See* H.R. Rep. No. 2543, 83d Cong., 2d Sess., at 46 (1954); *see also* Bruce R. Hopkins, The Law of Tax-Exempt Organizations 392 (6th ed. 1992) (noting that amendment was introduced "without benefit of congressional hearings"). Indeed, one commentator has derisively remarked, "[w]ithin a few seconds, or—if one is a slow reader—a few minutes, one can master all there is to know about the legislative history of this . . . significant conditional restraint on the political freedom of exempt organizations." Edward McGlynn Gaffney, Jr., *On Not Rendering to Caesar: The Unconstitutionality of Tax Regulation of Activities of Religious Organizations Relating to Politics*, 40 DePaul L. Rev. 1, 24 (1990).

33 Robert A. Caro, The Years of Lyndon Johnson Means of Ascent 387 (1990).

34 *Id.* at 317.

35 *Id.* at 316–17. These 201 votes were cast in alphabetical order and several of the persons listed had been dead for some years. *Id.* at 328–29.

36 At least one scholar has suggested that this election continued to haunt Johnson for the rest of his political life. *See id.* at 402. It certainly did during the 1954 election, and Johnson remained informed during this time about continuing legal developments affecting Parr. *See* Letter from Robert Clark to Lyndon Johnson, Feb. 10, 1954, LBJ Library Comparison Docs., 1954 File (giving Johnson the "low-down on the campaign of terror against Parr"). The concern even went so far as to documenting old rumors resurrected by his opponent Dudley Dougherty concerning the 1948 election. *See* Report, undated, LBJ Library Special Political File (remarks made to the Associated Press concerning Sam Smithwick, a former horse wrangler for Dougherty's father).

The gist of the rumor was:

Smithwick, sent to prison for the slaying of an Alice radio commentator, wrote former Governor Coke Stevenson that he could give the whole story of Box 13, from which an avalanche of late-counted votes defeated Stevenson in the 1948 Senate race. A few days later he was found strangled to death in his cell at Huntsville.

Id. Smith's death in 1952 had resulted in banner headlines across the state. Caro, *supra* note 33, at 385–86.

37 For an in-depth overview of Democrat politics in Texas with respect to the 1954 election and Johnson's Senate race in the context of explaining the history of the prohibition, see James D. Davidson, *Why Churches Cannot Endorse or Oppose Political Candidates*, 40 Rev. of Religious Research 16 (1998). Briefly, although Texas constituted a one-party state, the Democrat Party was deeply riven into several factions, the most prominent consisting of the conservative Dixiecrats led by Allan Shivers, sometimes referred to as "Shiverscrats," and the more traditional and more liberal Democrats who were more closely aligned with the national leadership and were led by Johnson. *Id.* at 22–23.

38 Robert Dallek, Lone Star Rising 449 (1991). Dougherty was an oil millionaire who freely spent his own money on the campaign. *See, e.g.*, Letter from Robert Clark to Lyndon Johnson, Feb. 10, 1954, LBJ Library Campaign Docs., 1954 File (noting that he is "very wealthy" and the Dougherty "ranch lands are studded with oil and gas wells"); Memorandum, George Reedy to Lyndon Johnson, Apr. 21, 1954, LBJ Library Reedy Memoranda Jan.–Nov. 1954 File (noting as Dougherty's first strength, "[u]nlimited funds (or at least as much money as a man could possibly spend in a campaign)"); Letter from Lyndon Johnson to Harlan Fentress, June 17, 1954, LBJ Library Dougherty, Dudley, June 1954 File (complaining "[m]y opponent will not get twenty percent of the vote but he is spending thousands of dollars"). Johnson, for his part, was irritated by suggestions that he too was a millionaire, as evidenced by his huffy reply to one negative letter:

First of all, I am not a millionaire. Such assets as I have—namely, Johnson City bank stock at $10,000.00; half interest in approximately 275 acres of land with a house on it; and a few small notes owing me by employees and family—constitute my total assets.

I make annual payments on my war insurance of $10,000.00 and on another $10,000.00 I started purchasing in the middle 30's. I owe an aunt from whom I acquired the farm approximately $3,000.00 and have no other debts. I have less than $1,000.00 in the bank. I own no stocks or bonds or other investments.

Letter from Lyndon Johnson to Brandon Trussell, June 25, 1954, LBJ Library Special Political Files, 1949–1961.

39 *See, e.g.*, Letter from Lyndon Johnson to Allen Duckworth, July 14, 1954, LBJ Library Dougherty, Dudley June 1955 Special Political File, 1954 ("Naturally, I am glad to know that the News is not going to endorse the young man from Beeville."); Letter from Lyndon Johnson to Dr. R.A. Wansley, July 12, 1954, LBJ Library Dougherty, Dudley File, 1954 ("It was thoughtful of you to send me the campaign propaganda you received from the young man from Beeville.");

Letter from Lyndon Johnson to Adrian Spears, June 30, 1954, LBJ Library Dougherty, Dudley File, 1954 ("It is certainly true that the young man from Beeville has strayed far away from announced intentions of not slinging mud in this campaign."); Letter from Lyndon Johnson to Ted Andress, June 24, 1954, LBJ Library Dougherty, Dudley, June 1954 File ("Other friends tell me the same thing you do about refusing to dignify the candidacy of the young man from Beeville.").

40 Letter from Dudley Dougherty to Lyndon Johnson, postmarked Nov. 27, 1954, LBJ Library Correspondence File, 1954.

41 Johnson represented early on one of the few prominent elected officials who was recognized as being immune from McCarthy's braying siren's call. *See* Memorandum from Dorothy to Lyndon Johnson, July 8, 1954, LBJ Library Political Financial File (noting a political bulletin that says "the Democratic leadership is all for a vote on McCarthy except Lyndon Johnson who is disturbed by the oil millionaires of Texas who back McCarthy"). Apparently, Dorothy is Dorothy Palmie, Johnson's secretary at the time. *See* Dallek, *supra* note 38, at 289.

42 Don E. Carleton, Red Scare! 266 (1985).

43 Davidson, *supra* note 31, at 19. Years later, a former aide of Johnson's indicated "that he was irritated by the activities of Dougherty's followers—especially H.L. Hunt." *See* Deirdre Halloran Dessingue & Kevin M. Kearney, *Federal Tax Code Restrictions on Church Political Activity*, 38 Cath. Law. 105, 107 (1998) (quoting letter from George Reedy to Deirdre Halloran Dessingue).

44 Davidson, *supra* note 37, at 21.

45 In one letter, Johnson complained that, "[i]t seems strange that a candidate for the United States Senate from Texas is running on the basis of a platform which does not contain a single plank devoted directly to Texas problems and whose major backer is an organization controlled by New Yorkers." Letter from Johnson to J.R. Parten, Chairman of the Board of the Federal Reserve Bank of Dallas, June 3, 1954, LBJ Library Dougherty, Dudley, 1954 File. In another letter, Johnson fulminated that "[s]o far as I know, he has no newspapers in the State supporting him and no responsible citizens." Letter from Lyndon Johnson to Edwin Weisl, June 22, 1954, LBJ Library Special Political File. He then noted that Dougherty's principal supporters, "Human Events, published in Washington, Dr. Rumely's Constitutional Government, published in New York, Williams Intelligence Summary, published in Santa Ana, California, and Poison Pen Quigley of Minneapolis, Minnesota, seem to be bought and paid for . . . ." *Id.* Johnson made a similar point in another letter: "[m]y enemies seem to be moving in on me from all directions. The Committee for Constitutional Government, Inc., New York; Walter E. Quigley, Minneapolis, Minnesota; Human Events and Willis Ballinger, Washington, D.C.; Robert H. Williams, News Analyst, Santa Ana, California." Letter from Lyndon Johnson to Bob Jackson, July 1, 1954, LBJ Library Special Political File, 1954; *see also* Letter from Lyndon Johnson to Preston E. Johnson, June 30, 1954, LBJ Library Dougherty, Dudley 1954 File ("In the meantime, my opponent has imported some well-known smear artists from Minnesota, Washington, D.C. and New York City who are covering the State with vicious and libelous literature.").

46 6 Williams Intelligence Summary 2 (May 1954) (on file with author).

47 *Id.* In the same issue, Williams speculates that President Franklin Delano Roosevelt was actually murdered by Stalinist agents; and he writes in support of a California State Senator who

is "daring to attack the Anti-Defamation League of B'nai B'irth and the whole subversive, blackmail cult of which it is a part." *Id.* Williams' writings are riddled with such crude, anti-Semitic remarks. *See* Memorandum from George Reedy to Lyndon Johnson (undated) LBJ Library Reedy Memos June–Nov. 1954 File. Apparently, nearly 100,000 copies of this particular article were circulated throughout the State of Texas. Report (undated) (on file with author).

48 Wallis Ballinger, *The Texas Story*, 11 Human Events No. 15 (Apr. 14, 1954). The story emphasized the "moral odor" of the 1948 senate election which it alleged Johnson "stole . . . by a bit of crude politics reminiscent of a New York Boss Tweed." *Id.* The attack culminates with a peroration that "[a] vote for Johnson—many Texans feel—will be a vote for more centralization of power and socialism in Washington; for more of the internationalism which is designed to abolish the U.S.A.; and for more covering up of Communist infiltrators." *Id.* This story was reprinted by the CCG organ, "Spotlight." *See* Spotlight, D-269 (on file with author). As with the Williams article, this piece was "circulated through the State." Report (undated) (on file with author).

49 Indeed, at least one aide complained about the inordinate amount of attention focused on Dougherty. Memorandum from George Reedy to Lyndon Johnson, June 4, 1954, LBJ Library Reedy Memos June–Nov. 1954 File ("Personally, I have the feeling that we are all spending too much time talking amongst ourselves about Dougherty. We've got to find some new goals and start working for them."). George Reedy was a principal aide on Johnson's staff. *See* Dallek, *supra* note 38, at 352.

50 *See, e.g.*, Letter from Booth Mooney to Ray Zauber, July 2, 1954, LBJ Library Special Political File (explaining that Johnson would not respond to charges from a disgruntled job seeker because "he is following a policy . . . and I think a wise one . . . of ignoring the young man from Beeville and his cohorts"). Mooney was originally a campaign manager for Coke Stevenson in 1948, but he eventually became a staff member for Johnson. *See* Dallek, *supra* note 38, at 421.

51 Dallek, *supra* note 38, at 450–51.

52 *See, e.g.*, Memorandum from J.J. Pickle to Lyndon Johnson, May 11, 1954, LBJ Library Austin District & County Files, 1951–54 (describing Dougherty's talkathon appearance and campaign swing through Bryan and College Station); Letter from J.J. Pickle to Lyndon Johnson, May 11, 1954, LBJ Library Special Political File (reporting on Dougherty's cancellation of his appearance in El Campo due to being hospitalized for "almost [having] a nervous breakdown"). J.J. "Jake" Pickle was a long-time Johnson aide who eventually became a congressman and represented Johnson's old district. *See* Dallek, *supra* note 38, at 187. In a twist of fate, Pickle would eventually become the second-ranking Democrat on the House Ways and Means committee overseeing tax policy.

53 Letter from Dudley Dougherty to Lyndon Johnson (July 30, 1954) (on file with author).

54 According to an undated report found in Lyndon Johnson's files describing the "'Dougherty Team' of smear artists and poison-pen experts," Igor Cassini was a "Russian-born Count who writes a column of society chit-chat for New York newspapers." Report (undated) (on file with author). Apparently, he appeared under the pseudonym Cholly Knickerbocker and also hosted a society television program. *See* Mark Eldon Young, Lyndon B. Johnson's Forgotten Campaign: Re-election to the Senate in 1954, at 3 (1993) (unpublished M.A. report, University of Texas)

(on file with University of Texas at Austin Library); Letter from Igor Cassini to Richard Berlin, July 26, 1954, LBJ Library Special Political File (headed "Office of 'Cholly Knickerbocker'").

55 A transcript of the offending television interview was appended to a letter sent by Johnson to Edwin L. Weisl, a Wall Street attorney and long-time fundraiser for Johnson. *See* Dallek, *supra* note 38, at 162, 251, 308; Letter from Lyndon Johnson to Edwin Weisl, July 5, 1954, LBJ Library Special Political File. The transcript contained several inflammatory remarks from Coke Stevenson concerning the 1948 election to the effect that "I don't believe that the public ought to reward a man by re-election to the United States Senate who was never honestly elected to begin with." Letter from Lyndon Johnson to Edwin Weisl, July 5, 1954, LBJ Library Special Political File. Cassini replied, "[w]ell, in that case he certainly, he has no right at all to be there, because I understand there were some peculiar things that happened during the last election." *Id.* This transcript was sent in response to an earlier letter, whereby Weisel promised to Johnson that he was "taking this up immediately with his [Knickerbocker's] superiors and I am sure that no recurrence will happen." Letter from Edwin Weisl to Lyndon Johnson, June 24, 1954, LBJ Library Special Political File. Clearly, Johnson was incensed by the interview, as is apparent from an earlier letter he sent to Weisl asserting, "I don't know why Cholly Knickerbocker would voluntarily inject himself into Texas affairs, but he has." Letter from Lyndon Johnson to Edwin Weisl, June 22, 1954, LBJ Library Special Political File. Johnson went on to add, "I assume he doesn't know that Dougherty is a chronic alcoholic, a crackpot, and a screwball of the first order, who happened to inherit 16 thousand barrels of daily oil production." *Id.* He also complained about other out-of-state organizations, including CCG, "flooding the State with scurrilous literature." *Id.*

56 *See* Letter from Lyndon Johnson to Harlan Fentress, June 17, 1954, LBJ Library Special Political File ("Coke can get a much better headline on the front page by saying he is not vindictive but is going to make a radio speech against me than I can by making a speech on the Senate floor on an important Texas problem."). This sensitivity extended to tracking down information about a satirical radio commercial Dougherty was airing called "The Darling of Duval County." *See* Letter from Lyndon Johnson to Howard Davis, July 23, 1954, LBJ Library Special Political File ("I am glad to have this information about the singing commercial"); Letter from Adrian Spears to J.J. Pickle, July 23, 1954, LBJ Library Dougherty, Dudley, July 1954 File ("I also checked with station K.O.N.O. with reference to the jingle being played on behalf of Dougherty, and the words are enclosed herewith on a separate sheet."). The words were as follows:

(To the tune of "Red River Valley")

Last time Lyndon ran for the Senate

He was trailing behind for a while

But the votes of Duval's dear departed

Helped pull him ahead that last mile

He's the darling of Duval County,

He's Duval's bright, shining star.

F.D.R. couldn't put Lyndon over

The man who did that was George Parr.

From the Senate they say Lyndon's leading

Ole Boss Parr will be shedding many a tear,

Cause they cleaned up the polls in his county,

And he can't help Lyndon this year.

Lyndon's still the darling of Duval County,

But this time the voting is strict.

They can't count those votes from the graveyard,

And ole Lyndon is sure to be licked.

Id.

57 Letter from Igor Cassini to Richard Berlin, July 26, 1954, LBJ Library Special Political File. Berlin duly forwarded the letter to Johnson. *See* Letter from Richard Berlin to Lyndon Johnson, July 28, 1954, LBJ Library Special Political File.

58 Memorandum to Lyndon Johnson from "Walter," June 30, 1954, LBJ Library Memoranda 1954 File. "Walter" is apparently Walter Jenkins, a longtime aide of Johnson's. *See* Dallek, *supra* note 38, at 186–87.

59 Memorandum to Lyndon Johnson from "Walter," June 30, 1954, LBJ Library Memoranda 1954 File.

60 Young, *supra* note 54, at 32. Apparently, Johnson became acquainted with Clark, who was the brother of United States Supreme Court Justice Tom Clark, during the 1948 Senate campaign. *See* Caro, *supra* note 33, at 289.

61 Letter from Rev. Lewis L. Shoptaw (undated) (on file with author).

62 *Id.*

63 *See* Memorandum from Walter Jenkins to Lyndon Johnson, July 2, 1954, LBJ Library Memoranda 1954 File (estimating that, "Dudley may get 50,000 votes for himself. Then he might get another hundred thousand because of his family and his father's contributions to the Catholic Church. Then he may get another 150,000 from folks who don't like Lyndon"). As noted by Cecil Burney, a Corpus Christi attorney and longtime Johnson supporter, corresponding with Pickle, "[a]s you know, the Dougherty family has contributed more to the Catholic Church than any other group in the State." Letter from Cecil Burney to J.J. Pickle, July 9, 1954, LBJ Library Special Political File. *See* Dallek, *supra* note 38, at 440. Burney discounts in the letter the report from a John Galvan of Corpus Christi that Johnson would have "great trouble carrying" the San Antonio area, because Galvan's "opinions are influenced by his Catholic background, . . . [he] is very closely affiliated with the Church, and half the time when I see him, he is accompanied by a Priest." Letter from Cecil Burney to J.J. Pickle, July 9, 1954, LBJ Library Special Political File. However, there clearly was some concern about the influence of Dougherty's family given their prominence in the Texas Catholic community, which was centered in San Antonio. The San Antonio-based, state-wide, bi-weekly Catholic newspaper, The Southern Messenger, published at this time a number of stories favorable to Dougherty and his

family. *See, e.g.*, *Conservation of Water Urged by Dougherty*, Southern Messenger, June 10, 1954, at 4 (describing Dougherty's water-conservation position); *Dudley Dougherty Seeks Senatorial Seat*, Southern Messenger, Feb. 11, 1954 at 4 (announcing Dougherty's bid to run for the Senate); *James Dougherty School of Nursing Cornerstone Blest*, Southern Messenger, Feb. 25, 1954, at 1 (describing event); *James R. Dougherty School of Nursing, Corpus Christi, Laying of Cornerstone by Bishop Garrigan Feb. 22*, Southern Messenger, Feb. 18, 1954, at 1 (announcing upcoming laying of the cornerstone of the James R. Dougherty School of Nursing); *Late J. Dougherty Honored in Austin*, Southern Messenger, Jan. 28, 1954, at 4 (describing Dougherty's father, Judge James R. Dougherty, as a "distinguished attorney and business executive," who "was a leading Catholic layman and was well know for his philanthropies," on the occasion of the unveiling of a portrait in the State Bar Association building which was constructed as a memorial to him). There are no articles in this paper during this time period concerning Johnson or his positions.

64 Memorandum from J.J. Pickle to Lyndon Johnson, June 15, 1954, LBJ Library Special Political File.

65 *Id.*

66 *Id.* This position concerned Johnson in that Dougherty had made general allegations that Johnson "doublecrossed the Latin Americans." Letter from Dudley Dougherty to Ed Ray, June 2, 1954, LBJ Library Dougherty, Dudley June 1954 File (letter to the editor complaining of the endorsement of Johnson by the San Antonio Express). Johnson's staff was amazed by this charge and considered it "nonsense." Letter from George Reedy to Ed Ray, July 9, 1954, LBJ Library Reedy Memoranda 1954 File (letter suggesting possible responses to letter from Dougherty). It is understandable that Reedy found such charges "nonsense" given Johnson's very advanced and sympathetic views concerning immigration at this time. In one contemporaneous memo, Reedy criticized hard-line attempts to restrict immigration from Mexico:

> [I]t is obvious that the border can never be completely sealed off to any truly significant extent. It is too long; there are too many places to cross; the temptations to cross are too great. As long as there are provinces in Mexico where people are suffering from an intolerable economic situation and as long as there is work to be done in the Valley, there will be border crossing.

Memorandum from George Reedy to Lyndon Johnson, Jan. 13, 1954, LBJ Library Memos, Jan.–Nov. 1954 File [2 of 2]. In another memorandum, Reedy criticized proposed legislation that would make it unlawful for anyone to employ an alien "knowing or having reasonable grounds to believe" that the alien entered the country illegally. Memorandum from George Reedy to Lyndon Johnson, July 14, 1954, LBJ Library Reedy Memoranda 1954 File. Reedy argued that the passage of this law would mean that "Americans of Latin descent would almost have to carry citizenship papers or other proof of citizenship with them at all times. If the law is to be enforced, it would require an enormous expansion of police agencies and constant searches and seizures on the part of immigration authorities." *Id.* Given that border patrol activities "have already aroused considerable resentment," bestowing these additional powers on the border patrol would probably mean that they would "acquire the same low standing in the community prohibition agents had during the 20's." *Id.* Summing up these legislative proposals, Reedy

found them unworkable because:

The actual facts are that there is wide-spread economic misery and suffering in many provinces of Mexico and the people in those provinces are desperate for work at any wage. The Rio Grande is very easy to cross. On the American side of the Rio Grande are many employers who badly need labor. Most of the employment that is open is seasonal employment in which the employer needs a lot of labor for a short period of the year and cannot afford to go through too much red tape in getting it. Under these circumstances, repressive and punitive legislation will only provoke resentment.

Id. Such prescient advice is as relevant today as it was fifty years ago.

67 Letter from Lyndon Johnson to Dan Quill, June 21, 1954, LBJ Library Special Political File 1951. George Reedy, a principal aide on Johnson's senate staff, suggested possibly swaying the Archbishop by passing on to him a memorandum Reedy had prepared concerning anti-Semitic remarks made by Robert H. Williams, who had endorsed Dougherty in his Williams Intelligence Summary. *See* Memorandum from George Reedy to Lyndon Johnson (undated) LBJ Library Reedy, Dudley Dougherty File (noting that, "[i]t is possible that Williams might also arouse Archbishop Lucey's ire").

68 Memorandum from J.J. Pickle to Lyndon Johnson, June 23, 1954, LBJ Library Austin District & County Files, 1951–54 [1 of 2] ("Archbishop Lucey paid you several compliments yesterday morning and stated he was for you.").

69 *Id.* ("I believe this can be a great deal of help to you and I hope you will get the letter off immediately."). It is unclear whether Johnson followed this advice.

70 Letter from Dudley Dougherty to Harry Provence, July 6, 1954, LBJ Library, Dudley Dougherty July 1954 File.

71 *See* Letter from Herman Edelsberg to George Reedy, June 22, 1954, LBJ Library Reedy, Dudley Dougherty File. One enclosure documented that Williams had his commission terminated by the army and had been criticized by many major newspapers because of his anti-Semitic propaganda activities. Report (undated) (on file with author).

72 Rowe was a "brilliant attorney" who had worked at the Securities and Exchange Commission and in the Roosevelt administration as a White House assistant to James Roosevelt, the President's son. Dallek, *supra* note 38, at 289.

73 In an earlier meeting with Rowe, Edelsberg promised to "check their leaders in Texas and see how far the Williams stuff has gone. After that, he will know what they can best do to be helpful and will let us know." Memorandum from Walter Jenkins to Lyndon Johnson, July 1, 1954, LBJ Library Special Political File.

74 Letter from Dorothy to Lyndon Johnson, July 8, 1954, LBJ Library, 2 Political Financial 1954 File.

75 *Id.*

76 Dallek, *supra* note 38, at 451.

77 Letter from Dudley Dougherty to Lyndon Johnson, July 30, 1954, LBJ Library Dougherty, Dudley July 1954 File. Dudley's defensive tone concerning his Catholic religion is understandable given the prejudice against Catholics at that time. Some of Johnson's campaign tactics, described *supra* notes 53–75 and accompanying text, gives some indication of this

prejudice. Probably the most notorious instance, prior to John F. Kennedy's presidential campaign in 1960, was the opposition faced by Democrat Al Smith in his presidential campaign against Herbert Hoover in 1928. During that campaign his opponents circulated construction photographs of the Holland Tunnel, claiming that it was a transatlantic passageway to bring the Pope to Washington. Rumors circulated that the Pope was going to move into Washington, D.C. right after election day, that he already lived there in an underground bunker, that Smith would nullify all Protestant marriages and he would strip Protestants of their bibles. *See* Robert A. Slayton, Empire Statesman: The Rise and Redemption of Al Smith (2001).

78 Letter from Dudley Dougherty to Lyndon Johnson, postmarked November 27, 1954, LBJ Library Dougherty, Dudley Nov. 1954 File. Johnson wrote a gracious letter in response, assuring Dougherty that he did not "hold a grudge against those persons who have opposed me politically" and he felt "no enmity toward you." Letter from Lyndon Johnson to Dudley Dougherty, Aug. 4, 1954, LBJ Library Dougherty, Dudley Aug. 1954 File.

79 Carleton, *supra* note 42, at 93.

80 Margaret Hunt Hill, H.L. & Lyda 241 (1994). Apparently, Hunt signed each of his articles "Constructively, H.L. Hunt" and believed that this would counter criticism that he was "too conservative" because, "[h]ow can you be accused of being too constructive?" *Id.; see also* Stanley H. Brown. H.L. Hunt 183 (1976) (describing Hunt's motivation for starting Facts Forum and its early activities).

81 *See* Theodore H. White, *Texas: Land of Wealth and Fear*, 10 The Reporter 30, 31 (June 8, 1954) (describing Hunt as commanding through Facts Forum "a national grassroots organization whose influence almost every Washington Senator has felt").

82 Hill, *supra* note 80, at 241. At its peak, the radio program reached 222 stations and the television program appeared on 58 outlets. The periodical, *Facts Forum News*, had a circulation of 60,000. In addition, there appeared a newspaper column that was carried by 1800 newspapers. Carleton, *supra* note 42, at 93.

83 Hill, *supra* note 80, at 214.

84 Facts Forum News (Dec. 1954), at 27 (on file with author).

85 *Id.* Hunt did acknowledge "FACTS FORUM has been charged with running Senator McCarthy for President," but denied any direct involvement, noting that it "does not support candidates, and treats McCarthyism like all other issues, and as in other issues does try to get the public to find out more on the subject." *Id.*

86 In an article touching on Hunt's activities with respect to Facts Forum, Theodore White noted Hunt's "power any small-town Texas editor can explain by pointing to the flood of Facts-Forum-inspired letters supporting Senator McCarthy." White, *supra* note 81, at 31; *see also McCarthy, Hunt, and Facts Forum*, The Reporter, Feb. 16, 1954, at 20 ("Perhaps the most persistent rumor about Facts Forum is that it is a tax-exempt device to use free radio and television time to promote the political views of McCarthy and his allies in Congress."). This article ends with the statement, "[t]hese, then, are the widely varied activities of an organization that derives its tax-exempt status from its claims of being 'nonpartisan' and 'educational.' It may be questioned if Facts Forum meets the test of these claims . . . ." *Id.* at 27.

87 In one report prepared for Johnson, Hunt is described as having "an affinity for Joe McCarthy" and of using a Dallas lawyer, Dick Tullis, as an "ideological and political errand

boy" who "goes to Washington regularly to see Joe Martin, Nixon, McCarthy and other key Republicans." Report (undated) (on file with author). This report also describes Hunt's connections with various journalists and alleges that Hunt "has gone so far as to send a $50.00 check to a Dallas News editorial writer as a bonus for an editorial Hunt liked." *Id.*

88 Letter from Robert Clark to Lyndon Johnson, May 3, 1954, LBJ Library Special Political File. The cover letter to these reports also includes Clark's assessment of Dougherty that he "looks and acts even more immature and boyish on TV than he does ordinarily, and he sounds like a teenager. He has set a fast and costly pace and I suspect his personality weaknesses will prove too strong for him to handle the problems that will come about and he will turn to whiskey and young girls for escape." *Id.*

89 *Id.*

90 *Id.* Specifically, the report provides:

Mr. H.L. Hunt became interested in Hayden during the past presidential campaign, during which time Hayden was passing out "buttons" and propaganda for McArthur. Since that time Hayden has been in the employ of Hunt and Facts Forum, whose offices are on 7th floor of Mercantile Securities Building, after school. He worked in the research department, checking on the lives, current activities and previous records of people in public life. He was paid 75¢ per hour. He went to Houston in Hunt's airplane for Senator McCarthy's talk last week and organized a teenage group to carry posters and banners through the crowd. It is understood that he was dismissed from the employ of Facts Forum on April 30 because he was unpopular with the girls and women who worked there. It seems he is another Orson Wells [sic]—a child prodigy—far advanced mentally for his age, but juvenile in his actions. He is a heavy reader and a deep thinker—he wants to make a career of politics. He assumes the attitude that he must clean up politics, etc., obviously because of Hunt's direction. It seems that he was unpopular with the other employees at Facts Forum because he likes to show off his knowledge on all subjects and was Hunt's pet and also because of his childish actions.

Id. Other dossiers in a similar vein were prepared on a variety of different organizations and individuals. *See, e.g.*, *id.* (report on Jimmie Corder, "a young boy about 13 or 14 years old" who was the Secretary of Texas Youth for America and involved in Facts Forum; the report describes, among other things, his father's credit record including "[l]ocal bank reports low 4 figure checking account," "[l]ocal lumber company reports account since 4–53, high $2,135.03, paid satisfactory," and "[l]ocal paint company reports account for over 1 year, high $148.31, pays 30 days prompt"); *id.* (report on D. Mapp who wrote an unfavorable letter to the editor concerning Johnson accusing him of stealing the 1948 election from Coke Stevenson); *id.* (report on Ray Carpenter, an associate of H.L. Hunt and B. Hayden Freeman, who worked for Dougherty on his talkathons in an attempt to generate publicity and is described as "nervous and neurotic"); *id.* (report on United Chemical Company which is linked to Carpenter and whose secretary appears "mysterious about the whole business" and evidently "has been well coached on what to say to inquirers"); Letter from Robert Clark to J.J. Pickle, May 28, 1954, LBJ Library Special Political File (report of Dr. Robert Franklin, a cousin of Dougherty's and a young doctor who circulated a letter among physicians favorable to Dougherty and who is a very active member of a young doctor group among the members of Facts Forum. He is well known at the

headquarters of Facts Forum, and full information on him is in their active membership file." Clark jokes that "the situation, as Corrigan puts it, is being cured.").

91 This letter was sent to a number of Texas newspaper editors. *See* Memorandum from Walter Jenkins to J.J. Pickle, Apr. 9, 1954, LBJ Library Memoranda 1954 File ("Here's a letter that has been sent out by Hayden Freeman of Dallas to editors all over the state."). The letter recounted the events surrounding the "Duval County ballots" and how Johnson had "used his political influence in Washington to force the federal courts to keep its hands off the Duval County ballot stinkpot." Letter to the Editor from B. Hayden Freeman, (undated), LBJ Library Special Political File. The letter went on to note that Parr had recently visited Johnson and hinted that the purpose of the visit was linked to the fact that, "[t]oday, the Duval County political cesspool is being given a thorough airing and the so-called Duke of Duval County sits on the throne of a tottering empire." *Id.* The letter ends by urging "all Texans to learn more about Dudley T. Dougherty, to study his record, and ponder the evils of the Duval County political cesspool that once more are reaching into the sacred halls of the United States Senate." *Id.*

92 In the cover letter to the reports, Richard Clark stated:

[h]ere are reports on investigation of the Mapp, Muldoon and Texas Youth for America letters. Not too much was uncovered but enough to definitely show that Hunt is the main spring of all of it. Contacts have clammed up, so I'm temporarily discontinuing active investigative work. After you have studied the reports let me have any ideas that occur to you. . . I also believe that Mapp got the material for his letter from Hunt thru Hayden."

Id. In addition, John Connally, a Johnson staffer and future Governor of Texas, spoke to Bob Windfohr, "about the 'kid newspaper' put out at Dallas. He has checked into it with one of Hunt's men and if Hunt has anything to do with it, his staff does not know it." Memorandum from Walter Jenkins to Lyndon Johnson, Apr. 30, 1954, LBJ Library Memoranda 1954 File.

93 Williford was described by Hunt's daughter as follows: "Daddy always had a sidekick, a troubleshooter, who did a lot of things for him that he had neither the time nor desire to do himself. First there was Mr. Bailey and then came Mr. H.L. Williford, a gray-haired, elegantly spoken Southern Gentleman from Memphis, Tennessee, who always dressed in a navy blue suit, white shirt and necktie." Hill, *supra* note 80, at 67. Interestingly, Hill describes Williford as "a consummate actor." *Id.*

94 Memorandum from Booth Mooney to Lyndon Johnson, May 5, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954.

95 *Id.*

96 *Id.*

97 *See id.* ("All this, in my opinion, is exactly what he would have been expected to say. I do not know how much of it is true. My opinion of his credibility is not high.").

98 *Id.*

99 Not surprisingly, Hunt's Facts Forum and CCG were suspected of working in tandem. *See McCarthy, Hunt, and Facts Forum*, *supra* note 86, at 21 ("Facts Forum tells its members how to get their names on the mailing lists of several well-known national lobbies. One is the Committee for Constitutional Government, headed by Dr. Edward A. Rumely and described by the Anti-Defamation League as a 'political propaganda organization of extreme

right-wing orientation . . . ."").
100 George Norris Green, The Establishment in Texas Politics 52 (1979).
101 *Id.* at 52–53.
102 Report (undated) (on file with author); *see also* Memorandum from George Reedy to Lyndon Johnson, May 27, 1954, LBJ Library Reedy Memoranda 1954 File (describing Rumely as the "operating head of the organization"). The report described Rumely as a convicted pro-German agent during World War I. *Id.*; *see also* Memorandum to Lyndon Johnson from G.W. Siegel, June 1, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954 (describing in detail the background of Rumely and his conviction). It appears that during World War I, Rumely had accepted over $1.3 million from imperial Germany to purchase the *New York Evening Mail.* He was indicted for violating the Trading with the Enemy Act and was sentenced to a year and a day in prison, although ultimately pardoned by President Coolidge after serving only 30 days. Green, *supra* note 100, at 53. Ironically, history appears in some ways to be repeating itself given the recent pardon by President Bill Clinton of Marc Rich who was accused of engaging in similar types of activities and has generated a firestorm of controversy.
103 Green, *supra* note 100, at 53. This fact was also noted in the internal report generated for Johnson. Report (undated) (on file with author).
104 Green, *supra* note 100, at 53.
105 *Id.*
106 *Id.*
107 *See* Memorandum from George Reedy to Lyndon Johnson, May 27, 1954, LBJ Library Reedy Memoranda 1954 File ("It is highly unusual for the Committee for Constitutional Government to take a strong stand for or against a candidate for public office as they have done in this instance. As a rule, the Committee confines itself to generalities and only makes attacks upon such people as the Roosevelts, Frankfurter and other obvious targets for right-wing sniping.").
108 *See, e.g.*, Memorandum from George Siegel to Lyndon Johnson, June 1, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954; draft of letter from Representative John W. McCormack to T. Coleman Andrews, Commissioner of Internal Revenue Service, (undated), LBJ Library LBJA Subject File-Taxes Income 1954–1960.
109 Report (undated) (on file with author) ("Dougherty's organization is patterned after the [CCG] with headquarters in Cincinnati, Ohio. The Dougherty committee puts out reactionary stuff similar to *Spotlight*—isolationism, the Bricker Amendment, regressive States Rights, bunkum, anti-internationalism hogwash, and the like."). The Bricker Amendment was a proposed constitutional amendment that would have severely restricted the president's ability to conduct foreign policy. *See* Carleton, *supra* note 42, at 113.
110 Letter from Lyndon Johnson to T.R. Bateman, May 22, 1954, LBJ Library Dougherty, Dudley May 1954 File ("Yes, I have seen the propaganda issued by the [CCG]. This organization is composed, as I understand, of men who are against just about every piece of progressive legislation that has been enacted during the last twenty years. I know the organization is supported by some of the richest men in the country who are anxious to gain acceptance for their own ultra-conservative political views. It is natural, of course, that they should oppose me.").

111 Memorandum from George Reedy to Lyndon Johnson, May 27, 1954, LBJ Library Reedy Memoranda 1954 File.

112 In one letter, Johnson expressed some concern regarding how wide an audience the article may have reached and expressed an interest "in finding out as nearly as I can just how widely it has been distributed." Letter from Lyndon Johnson to R.W. "Chubb" Wortham, June 17, 1954, LBJ Library Correspondence 1954 File (noting, "[s]everal of my friends have sent me copies of this document from various parts of Texas"). In another letter, Johnson stated that he did not think "many of the people of Texas are going to be affected by this kind of balderdash, even though I understand that it is being widely circulated." Letter from Lyndon Johnson to Wright Matthews, June 12, 1954, LBJ Library Correspondence 1954 File; *see also* Letter from Lyndon Johnson to Stanley Joiner, June 10, 1954, LBJ Library Correspondence 1954 File ("My own opinion is that this kind of material which is being circulated over Texas, will not have much effect on the people there.").

113 Johnson considered the article underhanded and deceitful: "The statements in the Ballinger ar[t]icle are for the most part completely untrue, and the parts of it which even have a basis for truth have been greatly distorted." Letter from Lyndon Johnson to Dr. Irving Rapfogel, June 14, 1954, LBJ Library Special Political File. In another letter, he complimented a friend of his for "not falling for the smear and innuendo" it contained. Letter from Lyndon Johnson to H.A. Potter, May 20, 1954, LBJ Library Special Political File.

114 Letter from J. Blake Timmons to Lyndon Johnson, May 17, 1954, LBJ Library Special Political File (describing under heading of "subject": "Rep. Ralph W. Gwinn & Comm. For Const. Govt. use same mail list to back state Rep. Dudley Dougherty," and including a Congressional Record mailing from Gwinn and Ballinger article from CCG with envelopes). Johnson sent a memorandum to Representative Wright Patman to "look this over" and he wanted to talk to Patman "about it at the first opportunity." Memorandum from Lyndon Johnson to Wright Patman, May 21, 1954, LBJ Library Correspondence 1954 File. Patman was a Congressman who was a contemporary of Johnson's father and a long-time admirer. *See* Dallek, *supra* note 38, at 46.

115 Memorandum from George Reedy to Lyndon Johnson, May 27, 1954, LBJ Library Reedy Memoranda 1954 File.

116 12 Facts on File 304 (Sept. 19–Sept. 25, 1954) (reporting Gwinn statement "that he had received $5000 to $6000 from the [CCG] to finance a weekly column he distributed to newspapers. He declared that at least 100 Congressmen draw from privately donated funds like Nixon's."). The "slush fund" stories concerned the 1952 Presidential election which reached its dramatic denouement when Nixon secured his place on the ticket by forcefully answering his critics about the fund with his famous "Checkers" speech. *See* Stephen E. Ambrose, Nixon 276–90 (1987).

117 Johnson accepted no contributions of money or property and did not incur any debt with respect to the primary election. *See* Candidate's Statement of Expenses (covering period Apr. 10, 1954 to Aug. 3, 1954), LBJ Library Political Financial File 1954; Letter from Lyndon Johnson to U.H. Lucas, June 15, 1954, LBJ Library Dougherty, Dudley & LBJ Correspondence 1954 File [1 of 2] ("He talks about certain companies backing me, implying they have contributed to my campaign. I have accepted no contributions to my campaign. The four of five voluntary checks

sent to me, all by individuals and in small amounts, have been returned to the individuals with a statement that I hope it would not be necessary to accept any contributions."); *see also* Letter from Adrian A. Spears to J.J. Pickle, July 22, 1954, LBJ Library Special Political File (noting that he has turned down people seeking contributions for local races from Johnson's campaign "with the statement that Senator Johnson has not received any contributions, is not receiving any, and has no funds to distribute for campaign purposes").

118 Green, *supra* note 100, at 54.

119 Letter from J.R. Patten to Lyndon Johnson, May 27, 1954, LBJ Library Special Political File.

120 Letter from Sumner Gerard, May, 1954, LBJ Library Special Political File.

121 *Id.*

122 *Id.*

123 *Id.*

124 Letter from Lyndon Johnson to J.R. Parten, June 3, 1954, LBJ Library Dougherty, Dudley June 1954 File.

125 *See* Dessingue & Kearney, *supra* note 43, at 107.

126 Memorandum from George Siegel to Lyndon Johnson, June 15, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954. Siegel quoted the pertinent provisions of Acts 1951, 52nd Leg., p. 1097, ch. 492, art. 243(e) as follows:

> If any officer, agent, or employee of any bona fide association, incorporated, or unincorporated, organized for or actively engaged for one (1) year prior to such contribution in purely religious, charitable or eleemosynary activities, or local, district, or state-wide commercial or industrial clubs, or associations, or other civic enterprises or organizations not in any manner, nor to any extent, directly or indirectly, engaged in furthering the cause of any political party or aiding in the election or defeat of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof, shall use or permit the use of any stock, money, assets, or other property contributed to such organizations by any corporations, to further the cause of any political party, or to aid in the election or defeat of any candidate for office . . . such officer, agent, or employee, shall be fined not less than One Hundred Dollars ($100) nor more than Five Thousand Dollars ($5000) or, be imprisoned in the penitentiary not less than (1) nor more than (5) years, or be both so fined and imprisoned.

Id. (quoting V.A.T.S. Election Code, art. 14.07(e)).

127 *Id.*; *see also* Comment, *Church Lobbying: The Legitimacy of the Controls*, 16 Hous. L. Rev. 480, 488 n.56 (1979). Businesses now are permitted to deduct, as ordinary and necessary expenses, the costs incurred in lobbying activity related to their business interests. I.R.C. § 162(e) (1986).

128 Memorandum from George Siegel to Lyndon Johnson, June 15, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954.

129 *See* Dallek, *supra* note 38, at 166–67 (describing Corcoran, a former Roosevelt White House aide and powerful lobbyist, as one of "the most effective political insiders in the Roosevelt

Administration").
130 Letter from Sumner Gerard to Thomas G. Corcoran, June 17, 1954, LBJ Library Special Political File.
131 *Id.*
132 *See* Dallek, *supra* note 38, at 163–64 (explaining that as a first-term Representative in 1938, Johnson developed "close working relationships with House leaders," including McCormack).
133 *See* Dallek, *supra* note 38, at 194, 512. McCormack went on to become the House Democratic Majority Leader and eventually Speaker of the House from 1963 to 1971.
134 Letter from John W. McCormack to T. Coleman Andrews, June 18, 1954, LBJ Library Tax Law File. An earlier, undated draft of this letter was sent to Johnson's office. The only changes were a clarification of the last sentence of the third paragraph deleting the words "proper and legal" and inserting "properly and legally engaged in by such an exempt organization," and the addition of the fourth paragraph setting a deadline for response. *See* Draft Letter from John W. McCormack to T. Coleman Andrews (undated) LBJ Library Tax Law File.
135 Letter from T. Coleman Andrews to John W. McCormack, June 28, 1954, LBJ Library Political Financial 1954 File.
136 For a description of the historical background to the 1934 amendment see Wilfred R. Caron & Deirdre Dessingue, *IRC ☐ 501(c)(3): Practical and Constitutional Implications of 'Political' Activity Resolutions*, 2 J.L. & Pol. 169, 185–87 (1985).
137 Davidson, *supra* note 37, at 28.
138 *See supra* notes 29–30 and accompanying text.
139 Robert C. Albright, *Senate Votes Eisenhower Tax Revision Bill, 63 to 9*, Wash. Post & Times Herald, July 3, 1954, at 1, col. 1.
140 Memorandum from G.W. Siegel to Lyndon Johnson, July 3, 1954, LBJ Library Pre-Presidential Memo File, Memos to LBJ from Staff 1954.
141 The Congress of Industrial Organizations (CIO) and Johnson were close allies. The head of the CIO was Walter Reuther, a long-time friend of Johnson's. *See* Dallek, *supra* note 38, at 314. Early the next year, Johnson would work hand-in-hand with CIO lobbyists to initiate the first minimum-wage increase in more than six years. *Id.* at 481.
142 Letter from Sumner Gerard to Thomas G. Corcoran, July 9, 1954, LBJ Library Special Political File.
143 Homer Dodge, *The Johnson Resolution*, Spotlight No. D-280 (1954).
144 Letter from Dr. Edward Rumely to Sumner Gerard, July 8, 1954, LBJ Library Special Political File. In a follow-up, Rumely sent a copy of a typed letter to Senator George Smathers noting the wide distribution of this article and suggesting "this piece introduced into the [Congressional] Record might be distributed at low cost to even larger numbers." Letter from Edward Rumely to George Smathers, July 13, 1954, LBJ Library Special Political File. The letter contains a handwritten note to Corcoran, "[t]he above is further proof we are dealing fairly with your Texas friend." *Id.*
145 This quotation represents the condensation of the philosophy of Podsnappery, a peculiar brand of no-nothingism practiced by the stuffed shirt, Mr. Podsnap, a minor character that appears in Charles Dickens' last finished novel, Our Mutual Friend. Dickens describes his

watchwords and mannerisms as:

"I don't want to know about it; I don't choose to discuss it; I don't admit it!" Mr. Podsnap had even acquired a peculiar flourish of his right arm in often clearing the world of its most difficult problems, by sweeping them behind him (and consequently sheer away) with those words and a flushed face. For they affronted him.

Charles Dickens, Our Mutual Friend 128 (The New Oxford Illustrated ed. 1959) (1865).
146 Reedy, in correspondence written decades later, indicated that he was "confident that Johnson would never have sought restrictions on religious organizations, but that is only an opinion and I have no evidence." Dessingue, *supra* note 142, at 107 (quoting letter from George Reedy to the author).
147 By 1956, Hunt had completely disbanded Facts Forum. *See* Davidson, *supra* note 37, at 28.
148 *See supra* note 79 and accompanying text.
149 William Shakespeare, Hamlet, act 1, sc. 4.

I noted in the Washington Post this morning that their statement about the amendment was incorrect. They gave the impression that your amendment included a prohibition on activities "influencing legislation." That provision is already in the law and the only addition, of course, made by your amendment would be to deny tax-exempt status to such so-called charitable or educational organizations if they participate or intervene in any political campaign on behalf of any candidate.

The amendment will not have any effect on such organizations as Facts Forum either unless they go beyond their present activities and specifically intervene in political campaigns on behalf of public office candidates. So far as I know they have never done this but have confined themselves entirely to discussions of political issues.140

The apparent instigator for this memorandum was probably the powerful CIO Political Action Committee,141 since it is the only entity specifically mentioned. One might surmise that this hastily written memorandum was duly shown to it and other concerned parties to calm any fears that might have been raised by the inaccurate newspaper article.

As a coda to Johnson's amendment, it appears that—just as Booth Mooney's discussion with Hunt's right-hand man, Williford, appears to have had the salutary effect of causing Facts Forum to back down from its possible opposition to Johnson—all of this frenetic activity by Johnson's office also put CCG on the defensive and forced it into an abrupt *volte face*. On July 9, 1954, Sumner sent another letter to Corcoran enclosing correspondence from Dr. Rumely and a *Spotlight* article that Sumner hoped would give Corcoran "some satisfac[*PG767]tion."142 Dr. Rumely's letter discusses the new *Spotlight* article which praises Johnson's reaffirmation of the Monroe Doctrine by his March 28, 1954 resolution asserting that proper steps should be taken "to prevent any interference by the international Communist movement in the affairs of the States of the Western Hemisphere." The article highlights the "great value of statements like

those" made by Johnson and ends with the hope that, along with the Lodge Resolution of 1912, "the Johnson Resolution of 1954 be made living instruments, as fully implemented as need be."143 Dr. Rumely notes that, with respect to this article, CCG "had a special mailing planned for 18,000 top level leaders in Texas, a new list of the most influential civic and business leaders there" as well as a mailing to the usual mailing list of 60,000.144 Dr. Rumely does not explain why the mass mailing of the Ballinger anti-Johnson article occurred after this historic March 28 resolution. One might surmise that this new article might have been in reaction to pressure placed by Johnson's office, and that CCG frantically searched through Johnson's record for some recent legislative action that it could support. In any event, the article signaled the final surrender of the conservative forces which had opposed Johnson during his primary campaign. Not a peep would be heard from them during the general election.

[*PG768]III. I Don't Want to Know About It; I Don't Choose to Discuss It; I Don't Admit It:145 A Conclusion

There is no evidence that a religious element played a significant part in Johnson's decision to ban certain tax-exempt entities—including churches—from intervening in support of a political candidate.146 Rather, Johnson saw a cabal of national conservative forces, led by tax-exempt educational entities fueled by corporate donations, arrayed against him and wanted to put a stop to the meddling of these foreign interlopers—chief among these being CCG. By the end of his campaign, Johnson had effectively cowed these organizations, with CCG in particular offering a propitiatory tribute to him in its own house organ. Further, Johnson also wanted to stomp out a potential threat in his own back yard that might arise in the guise of H.L. Hunt's Facts Forum. Even though Siegel's memorandum makes clear that Facts Forum, as it was then operating, would not be affected by the prohibition, Hunt never again sought to cross Johnson through the organization.147 Finally, Johnson was still smarting from the innuendo surrounding the 1948 election; and Coke Stevenson's support for Dougherty and continued airing of charges in the national media from that prior election simply added to the already volatile mixture that led to the enactment of the prohibition.

Although the involvement of churches in political campaigns did not spur Johnson's amendment, such involvement did figure in his actual candidacy. One might discount the claim, made in the heat of the campaign, "that religious politics are being used against Senator [*PG769]Johnson." Clearly, however, there was a religious element to the 1954 election. Certainly, Johnson did not disdain to use religion as a wedge when it suited his purposes or to neutralize certain religious elements that might prove to be potentially hostile. Further, Dougherty was very much aware that his Catholicism would be an impediment to winning office in Texas, a predominantly Protestant state, and was quite proud of the showing he was able to make in spite of such a perceived disability.148 It appears that Dougherty was one of the first Catholics to run for state-wide office in the State of Texas, and that a lesson that may be drawn today from his quixotic campaign is the impossibility of unraveling the interweaving of politics and religion.

In the face of lackluster opposition by the Internal Revenue Service, the Democrats and Republicans—harkening back to the Buffs and the Blues—continue to use the literal bully pulpits of the churches to preach to the party faithful. Lyndon Johnson, as the sponsor of the amendment that made such conduct problematic, clearly had no compunction against using such tactics to advance his own political candidacy. When he pushed through the prohibition, he was not acting in response to any public outcry against such activities. Indeed, there is no indication of any concern expressed regarding such politicking. Little has changed since that time—except now some churches feel compelled to pay lip service to Johnson's prohibition, one that is increasingly becoming "more honored in the breach than the observance."149

[*PG770]BLANK PAGE

Senator Eugene D. Millikin (Co), chairman. (Jun. 22 - Jul. 7, 1954). Senate Proceedings and Debates, Johnson 501(c)(3) Amendment, p. 9604, 83rd Congress, 2nd Session, Vol. 100-Pt. 7, pgs: 8557-9984, GPO-CRECB-1954-pt7-9. GPO.

The PRESIDING OFFICER. The Senator from Texas [Mr. JOHNSON] has been recognized.

Mr. JOHNSON of Texas. Mr. President, I have an amendment at the desk, which I should like to have stated.

The PRESIDING OFFICER. The Secretary will state the amendment.

The CHIEF CLERK. On page 117 of the House bill, in section 501 (c) (3), it is proposed to strike out "individuals, and" and insert "individual," and strike out "influence legislation." and insert "influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Mr. JOHNSON of Texas. Mr. President, this amendment seeks to extend the provisions of section 501 of the House bill, denying tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office. I have discussed the matter with the chairman of the committee, the minority ranking member of the committee, and several other members of the committee, and I understand that the amendment is acceptable to them. I hope the chairman will take it to conference, and that it will be included in the final bill which Congress passes.

Mr. MILLIKIN. Mr. President, I am willing to take the amendment to conference. I understand from the minority leader that the distinguished Senator from Georgia [Mr. GEORGE] feels the same way about it.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Texas [Mr. JOHNSON].

The amendment was agreed to.

Mr. MILLIKIN. Mr. President——

Mr. DOUGLAS. Mr. President, I shall be very glad to yield to the Senator from Colorado, if he wishes.

The PRESIDING OFFICER. The Senator from Illinois has not been recognized.

EXTENSION ON A RECIPROCAL BASIS OF THE PERIOD OF FREE ENTRY OF PHILIPPINE ARTICLES INTO THE UNITED STATES

Mr. MILLIKIN. Mr. President, I should like to take up one other matter, not related to the pending business. I should like to dispose of it now, as the Senator from North Carolina [Mr. ERVIN] has been waiting a long time. During the morning hour I ask for the immediate consideration of H. R. 9315, which was unanimously reported by the Committee on Finance yesterday. The need for speed is that certain trade agreements which we have with the Philippines expire on July 4 of this year. I presented the matter this morning. Then the Senator from North Carolina [Mr. ERVIN] stated he wanted to make some inquiry about it, and I said I would withhold the request until later in the day.

I now ask unanimous consent that the unfinished business be temporarily laid aside and the Senate proceed to the consideration of H. R. 9315.

The PRESIDING OFFICER. The clerk will state the bill by title for the information of the Senate.

The CHIEF CLERK. A bill (H. R. 9315) to provide for the extension on a reciprocal basis of the period of the free entry of Philippine articles in the United States.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. ERVIN. Mr. President, the economic welfare of my State rests in large measure upon the continuing sale of leaf tobacco. The present trade relations between the United States and the Philippines are governed by a trade agreement entered into in 1946. The spirit of this agreement contemplated the free importation of leaf tobacco into the Philippines. The Philippines afford a market for approximately 23 million pounds of such tobacco a year. The Philippines produce only 2½ million pounds of such tobacco. In 1952 the Congress of the Philippines passed a statute which works on a progressive basis and curtails the importation of leaf tobacco to the extent of 75 percent of their normal requirements. The result is that eventually, starting next year, under this act the total importation into the Philippines would be only 25 percent of their normal requirements.

The growers of leaf tobacco in my State feel that this act of the Philippines Congress conflicts with the true spirit of the relationship between the Philippines and the United States, and with the true spirit of the trade agreement of 1946. The Philippines act, of course, has a rather disastrous effect upon the farmers in my State who grow leaf tobacco.

After the distinguished Senator from Colorado [Mr. MILLIKIN] agreed to withhold the matter until I could investigate it, I have been assured by Representative BONNER and by General Romulo that the Philippines Government is eager to correct the situation. I also understand that the State Department is now engaged in negotiations looking toward rewriting the trade agreement between the Philippines and the United States. I wish to urge the State Department to request the repeal of the act passed by the Philippine Congress and to attempt to get assurances that leaf tobacco will hereafter be on the free list as long as free trade continues between the United States and the Philippines.

I am very happy to say that General Romulo has assured us that the Philippine Government intends to do all in its power to adjust the matter satisfactorily, which is another evidence of the fact that the brightest page in history is perhaps that which recounts the relationship which has always existed between the United States and the Philippines.

I withhold my objection.

Mr. MILLIKIN. I should like to add that the Committee on Finance agreed yesterday that early next year it will hold hearings on the pending negotiations, because there are a number of members of our committee who are very much interested in the question the Senator from North Carolina has discussed, looking toward a satisfactory solution of the matter.

The PRESIDING OFFICER. The question is on the third reading and passage of the bill.

The bill was ordered to a third reading, read the third time, and passed.

DENIAL OF A FEDERAL PENSION TO ALGER HISS

Mr. DOUGLAS obtained the floor.

Mr. MUNDT. Mr. President, will the Senator yield?

Mr. DOUGLAS. I yield on the time of the distinguished junior Senator from Colorado. I believe in being generous with the time of other people.

Mr. MILLIKIN. I yield 3 minutes to the distinguished Senator from South Dakota—longer, if he desires.

Mr. MUNDT. I thank the Senator. I shall speak less than 2 minutes.

Mr. President, much excitement was generated around town a week or so ago when it was erroneously reported in the press that the Civil Service Commission and the President of the United States were in favor of granting a pension to one Alger Hiss. Naturally, I was concerned when I read that statement, but I was gratified when I read the succeeding issues of the newspapers to learn that the President of the United States was the first to disavow any such intention, and to say that he was thoroughly convinced that Alger Hiss should not receive a public pension.

Very quickly thereafter, the Bureau of the Budget and the Civil Service Commission corrected what had been reported to be their positions, stating that they, also, were not in favor of giving a pension to Alger Hiss.

As the author of the first piece of proposed legislation to deny the pension to Alger Hiss, I was glad to read these disavowals.

I am happy to see on the floor the distinguished junior Senator from Kansas [Mr. CARLSON], who is chairman of the Committee on Post Office and Civil Service.

My bill has been before that committee for a long time. I sincerely hope that before this session of Congress adjourns, the Senate will take action to deny to Alger Hiss a pension at the cost of the taxpayers of America. It seems to me that there should be a unanimous opinion in high places that this should be done.

Mr. CARLSON. Mr. President, will the Senator yield?

Mr. MILLIKIN. I yield.

Mr. CARLSON. I wish to advise the Senator from South Dakota that hearings have been held and that action has been taken in the House. As soon as the bill comes from the House, the Senate Committee on Post Office and Civil Service will take immediate action.

Mr. MUNDT. I have been delighted with the excellent progress which has been made.

JOHNSON AMENDMENT (Jul. 02, 1954) TRANSCRIPTION:

On July 2, 1954, Senator Lyndon Johnson was recognized from the Senate floor and the following colloquy occurred:

Mr. JOHNSON of Texas: Mr. President, I have an amendment at the desk, which I should like to have stated.

The PRESIDING OFFICER: The Secretary will state the amendment.

The CHIEF CLERK: On page 117 of the House bill, in section 501(c)(3), it is proposed to strike out “individuals, and” and insert “individual,” and strike out “influence legislation.” And insert “influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”

Mr. JOHNSON of Texas: Mr. President, this amendment seeks to extend the provisions of section 501 of the House bill, denying tax-exempt status to not only those people who influence legislation but also to those who intervene in any political campaign on behalf of any candidate for any public office. I have discussed the matter with the chairman of the committee, the minority ranking member of the committee, and several other members of the committee, and I understand that the amendment is acceptable to them. I hope the chairman will take it to conference, and that it will be included in the final bill which Congress passes.

. . . The amendment was agreed to [Without debate].