A Lay Word for a Legal Term: How the Popular Definition of Charity has Muddled the Perception of the Charitable Deduction

Paul J Valentine, New York University School of Law
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A good catchword can obscure analysis for fifty years.¹

ABSTRACT

In the United States there is a deeply held conviction “that taxpayers who donate to charity should generally not be subject to the same income tax liability as similarly situated taxpayers.”² This innate sense about the Internal Revenue Code’s section 170, otherwise known as the charitable deduction, resonates with the Americans’ sense of fairness and creates strong barriers to curtailing its function.

This same sense of fairness is tied to the perceived effects of the charitable deduction. Yet, how “charitable” is the charitable deduction and how charitable do we expect it to be? This paper argues that the discrepancy between the popular meaning of the word “charitable” and the legal meaning has distorted both the perception of, and the political justifications for, the provision.

This definitional discrepancy is perhaps not immediately apparent, because often the legal and layperson’s definition of the same word are the same. However, on occasion, the legal and popular definitions vary. One such example is the difference between the tax code’s and layperson’s definition of the word “charitable.” The laypersons’ definition is simple; the Merriam-Webster dictionary defines charity as “generosity and helpfulness especially toward the needy or suffering.”³ The legal definition is not quite as succinct. The Treasury regulations define charitable as:

[r]elief of poor and distressed or of the underprivileged; advancement of religion; advancement of education or science, erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Governments and promotion of social welfare by organizations designed to accomplish any of the above purposes, or (i) to lessen neighborhood tensions; (ii) to eliminate prejudice and discrimination; (iii) to defend human and civil rights secured by law; or (iv) to combat community deterioration and juvenile delinquency.³

³ Treas. Reg. § 1.501(c)(3)-1(d)(2); see also Assistant Secretary of the Treasury for Tax Policy, Edwin S. Cohen, stated in hearings before the House Ways and Means Committee: “[w]e have tried to avoid interpreting the word charitable in a fixed, immutable fashion... we have tried to give it meaning that changes and expands as the needs of society change and expand.” Legislative Activity by Certain Types of Exempt Organizations: Hearings before the House Comm. on Ways and Means, 92d Cong., 2d Sess. 5 (1972).
Thus, although the legal definition does cover direct relief of the poor, it also has a much wider mandate including advancing religion, science and education, constructing public buildings, lessening neighborhood tensions and other public benefit purposes. These types of causes may provide a service to society, but are neither charitable under the popular meaning of the word nor would most individuals consider organizations that provide such services a charity.

This broad legal definition of “charitable” has created a misperception of where the benefits of the charitable deduction is allocated in the American psyche. The very use of the word “charitable” in the statutory language creates a powerful association in most non-lawyers that ties the deduction to churches and poverty relief organizations, when in reality this is only a small portion of the tax subsidy. Further, the emotive rhetoric used by politicians when attacking proposed amendments curtailing the charitable deduction is grossly out-of-sync with the primary beneficiaries of the provision.

This paper argues that that the definitional gap between the legal and lay definition of “charitable” impedes meaningful discussion of amendments to the charitable deduction. This has led to mistaken or underestimated assumptions about the allocation of the subsidy. In fact, as demonstrated by the calculations in this paper, only about 8% of the charitable deduction is apportioned to direct relief of poverty organizations.

A clearer understanding of where the § 170 subsidy is allocated would allow politicians and the public to more critically examine this tax expenditure. However, very little about § 170 is clear, from theoretical justifications, to the reasoning for the provision when it was codified. In light of this confusion, the Article proposes that Congress should rename § 170 to the “qualified donation deduction” - a term that would not create the same poverty relief associations as the charitable deduction misnomer.
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PART I. INTRODUCTION

In the United States there is a deeply held conviction “that taxpayers who donate to charity should generally not be subject to the same income tax liability as similarly situated taxpayers.” This innate sense about the Internal Revenue Code’s section 170, otherwise known as the charitable deduction, resonates with the Americans’ sense of fairness and creates strong barriers to curtailing its function.

This same sense of fairness is tied to the perceived effects of the charitable deduction. Yet, how “charitable” is the charitable deduction and how charitable do we expect it to be? This paper argues that the discrepancy between the popular meaning of the word “charitable” and the legal meaning has distorted both the perception of, and the political justifications for, the provision.

This definitional discrepancy is perhaps not immediately apparent, because often the legal and layperson’s definition of the same word are the same. However, on occasion, the legal and popular definitions vary. One such example is the difference between the tax code’s and layperson’s definition of the word “charitable.” The laypersons’ definition is simple; the Merriam-Webster dictionary defines charity as “generosity and helpfulness especially toward the...
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Thus, although the legal definition does cover direct relief of the poor, it also has a much wider mandate including advancing religion, science and education, constructing public buildings, lessening neighborhood tensions and other public benefit purposes. These types of causes may provide a service to society, but are neither charitable under the popular meaning of the word nor would most individuals consider organizations that provide such services a charity.

This broad legal definition of “charitable” has created a misperception of where the benefits of the charitable deduction is allocated in the American psyche. The very use of the word “charitable” in the statutory language creates a powerful association in most non-lawyers

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10 MERRIAN-WEBSTER ONLINE DICTIONARY available at http://www.merriam-webster.com/dictionary/charity (last visited April 7, 2010) (other definitions include: “benevolent goodwill toward or love of humanity; generosity and helpfulness especially toward the needy or suffering; aid given to those in need; an institution engaged in relief of the poor; public provision for the relief of the needy; a gift for public benevolent purposes; an institution (as a hospital) founded by such a gift; lenient judgment of others) (emphasis added); see also Tommy F. Thompson, 5 VIRGINIA TAX REV. 1, 14 (1985) (“[c]harity in its popular and ordinary sense admits of only one class of beneficiaries, the poor or distressed, and only one type of activity, the relief of their condition, usually through direct assistance.”).

11 Treas. Reg. § 1.501(c)(3)-1(d)(2); see also Assistant Secretary of the Treasury for Tax Policy, Edwin S. Cohen, stated in hearings before the House Ways and Means Committee: “[w]e have tried to avoid interpreting the word charitable in a fixed, immutable fashion. . . we have tried to give it meaning that changes and expands as the needs of society change and expand.” Legislative Activity by Certain Types of Exempt Organizations: Hearings before the House Comm. on Ways and Means, 92d Cong., 2d Sess. 5 (1972).

12 Despite the many ways to define poverty or neediness, this Article uses the federal poverty line as the benchmark.

13 For examples of organization that under the legal definition have been recognized as charitable but would not do so under the popular definition see JCT Historical Developments, supra note 9 at 64 (outlining various examples including organizations that are “exhibiting and selling artwork” Goldsboro Art League, Inc. v. Commissioner, 75 T.C. 337, 343-344 (1980); “providing money management advice” Rev. Rul. 69-441, 1969-2 C.B. 115; “assisting in operation of mass transportation system” Rev. Rul. 71-29, 1971-1 C.B. 150; “posting bail for individuals who were otherwise incapable of paying” Rev. Rul. 76-21, 1976-1 C.B. 147; and “providing medical and dental referral services” Fraternal Medical Specialist Services v. Commissioner, 49 T.C.M. (CCH) 289 (1984)).

14 See Miranda Perry Fleischer, Theorizing the Charitable Tax Subsidies: The Role of Distributive Justice 6 (February 24, 2009). U. Illinois Law & Economics Research Paper No. LE09-006. Available at SSRN: http://ssrn.com/abstract=1348772 (commenting that charities must provide some sort of community benefit but that does not mean it must provide services to the poor). See also TERESA ODENDAHL, CHARITY BEGINS AT HOME: GENEROSITY AND SELF-INTEREST AMONG THE PHILANTHROPIC ELITE, 3-4, 9, 11 (1990) (characterizing the donations of the very wealthy as self-serving because their gifts to elite colleges, universities and the arts augment their social status rather than provide needed social services).

15 See infra Part II C. This paper only addresses individual giving. Corporate charity is beyond the scope of the argument.
that ties the deduction to churches and poverty relief organizations, when in reality this is only a small portion of the tax subsidy.\textsuperscript{16} Further, the emotive rhetoric used by politicians when attacking proposed amendments curtailing the charitable deduction is grossly out-of-sync with the primary beneficiaries of the provision.

This paper argues that that the definitional gap between the legal and lay definition of “charitable” impedes meaningful discussion of amendments to the charitable deduction.\textsuperscript{17} This has led to mistaken or underestimated assumptions about the allocation of the subsidy. A clearer understanding of where the § 170 subsidy is allocated would allow politicians and the public to more critically examine this tax expenditure.\textsuperscript{18} In light of this confusion, the Article proposes that Congress should rename section 170 to the “qualified donation deduction” - a term that would not create the same poverty relief associations as the charitable deduction misnomer.

This Article is structured as follows: Part II looks at how Congress and commentators justify the charitable contribution, examining the historical, theoretical and political justifications of the section. Part III examines the data associated with the charitable deduction and calculates the percentage of the charitable deduction expenditure that is allocated to direct poverty relief. Part IV proposes that Congress rename the charitable deduction to break the association between the charitable deduction and poverty relief. This section also addresses the main critiques of this proposal. Part V concludes.

\textbf{PART II – WHY HAVE THE CHARITABLE DEDUCTION}

The Joint Committee on Taxation ("JCT") estimated that between 2005 and 2009, the charitable deduction saved individual taxpayers in the United States $228 billion.\textsuperscript{19} In a more recent study, the JCT estimated that the charitable deduction saved individual taxpayers in the United States $36.2 billion in 2008.\textsuperscript{20} Although these figures are admittedly small when looking

\textsuperscript{16} See infra Part III D (finding that the total percentage of the charitable deduction subsidy allocated to direct poverty relief efforts is close to 8%).
\textsuperscript{18} An assumption in this paper is that the charitable deduction is a tax expenditure. See infra note 28 and accompanying text for a discussion and definition of tax expenditure.
\textsuperscript{20} Staff of Joint Comm. on Taxation, Estimates of Federal Tax Expenditures for Fiscal Years 2009-2013 at 39-42 tbl 1 (Comm. Print 2010). [hereinafter JCT Estimates 2009-2013] The 36.2 billion figure was calculated by adding the “Deduction for charitable contributions to health organizations” (“Health Organizations”) (3.2 billion), the “Deduction for charitable contributions other than for education and health” (“Other Than”) (28.0 billion) and the “Deduction for charitable contributions to educational institutions” (“Education”) (5.0 billion). Including
at overall government expenditures, nevertheless they are a sizeable sum.\textsuperscript{21} For instance, in 2006 the deduction cost more than the government spent on “managing public lands, protecting the environment and developing new energy sources.”\textsuperscript{22}

Section 170 “costs” the government these revenues\textsuperscript{23} because it allows individuals who itemize their tax returns\textsuperscript{24} and donate to churches, § 501(c)(3) public charities and 501(c)(3) private foundations\textsuperscript{25} to reduce their taxable income by the amount contributed.\textsuperscript{26} This reduction of taxable income has been described as a tax expenditure by a number of commentators, including Professor Paul McDaniel,\textsuperscript{27} and the JCT.\textsuperscript{28} Tax expenditures are “revenue losses attributable to provision of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax or a deferral of tax liability.”\textsuperscript{29} In other words, tax expenditures are any reductions of “income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers.”\textsuperscript{30} Further, tax expenditures “are considered analogous to direct outlay

\textsuperscript{21}See Ilan Benshalom, The Dual Subsidy Theory of Charitable Deductions, 84 IND. L.J. 1047, FN 125 (2009) (explaining that although the cost of the charitable deduction is less than 1.5% of the total tax receipts in 2008, it is more than “federal government’s spending on [the] main welfare transfer program the Earned Income Tax Credit (EITC).”).


\textsuperscript{23}Professor Buckles explains that this loss in revenue must be accounted for by the federal government elsewhere and that “if all else is held constant, the availability of the charitable contribution deduction means that tax rates must be increased to compensate for the diminished income tax base.” Buckles, supra note 4 at 951.

\textsuperscript{24}Approximately 65% of taxpayers do not itemize and are thus unable to take advantage of this provision. Lily L. Batchelder, Fred T. Goldberg, Jr. & Peter R. Orszag, Efficiency and Tax Incentives: The Case for Refundable Tax Credits, 59 STAN. L. REV. 23, 53 (2006).

\textsuperscript{25}I.R.C. 501(c)(3); see also Oliver Houck, With Charity for All, 93 YALE L.J. 1415, 1429-1430 (1984) (suggesting that 501(c)(3)organizations receive a secondary benefit that is much harder to quantify, a government imprimatur on their purpose and work); Evelyn Brody, Charities in Tax Reform: Threats to Subsidies Overt and Covert, 66 TENN. L. REV. 687, 715 (1999) (noting that deduction and exemption was an expression of America’s predilection towards charitable organizations).

\textsuperscript{26}The application of § 170 is not quite this simple and is subject to a multitude of rules and regulations. These rules include ensuring that the taxpayer makes the transfer without “adequate consideration in exchange” for the gift. Hernandez v. Comm’r 490 U.S. 680, 690-92 (1989) and caps the amount of total giving an individual taxpayer can make in a tax year to 50% of taxable income. I.R.C. § 170(b)(1)(A), (b)(2). For a more thorough discussion of the mechanics of § 170 see Pozen, supra note 6 at 539.


\textsuperscript{30}JCT Estimates 2009-2013, supra note 20 at 3.
programs, and the two can be viewed as alternative means of accomplishing similar budget policy objectives.”

The charitable deduction results in a subsidy for donors, and the amount of the subsidy is a function of donors’ marginal tax rates.” For instance, suppose a taxpayer who is in the 35 percent tax bracket gives $100 to charity. Under § 170, that taxpayer can then reduce his taxable income by a $100, reducing his tax liability by $35. In real terms, the taxpayer is only out of pocket $65 and the government has paid $35 in lost revenues. For the example given above, the $35 loss of revenue is a $35 tax expenditure and is no different, assuming no transactional costs, to a situation where the taxpayer pays the charity $65 and the government paid the same charity $35.

Although there is growing consensus that the charitable deduction is a tax expenditure, there is still no accepted rationale for the charitable deduction and why the United States has some of the world’s most generous tax breaks for charitable giving. In fact, from its very inception the charitable deduction has been ideologically misunderstood. This section first looks to the legislative history of section 170 to show that the confusion between the legal and popular view of the term “charitable” existed from the enactment of the charitable deduction. Part II B provides a brief outline of the two theoretical pillars on which commentators have built their theoretical justification for the deduction. Lastly, Part II C looks at the political justifications for the deduction as currently codified.

A. Historical Justifications for the Deduction – What did Congress Mean by Charitable?

Congress first adopted the charitable deduction in 1917 to lessen the blow of an increase in the marginal rates of the still nascent income tax. Congress was worried that the increase would suppress gifts to charitable organizations and therefore provided a tax incentive to encourage taxpayers to continue to support charities. Senator Hollis explained:

[u]sually people contribute to charities and educational objects out of their surplus. After they have done everything else they want to do . . . if they have something left over, they will contribute it to a college or to the Red Cross or for some scientific purposes. Now, when war comes and we impose these very heavy

32 McDaniel, supra note 27 at 775-776.
33 Rob Atkinson, Altruism in Nonprofit Organizations, 31 B.C.L. REV. 501, 505 (1990) (explaining that viewing the charitable deduction as a tax expenditure is “[t]he emerging orthodox account.”).
34 See Pozen, supra note 6 at 533, citing CHARLES T. CLOTFELTER, FEDERAL TAX POLICY AND CHARITABLE GIVING 1, 25 (1985).
36 War Income Tax Revenue Act of 1917, ch. 63 § 1201(2).
37 55 CONG. REC. 6728 (1917). See also Lindsey, supra note 35 at 1057 (arguing that as “originally enacted, the provision was designed to allow ‘wealthy’ taxpayers to receive a deduction for charitable giving.”).
taxes on incomes, that will be the first place where the wealthy men will be tempted to economize, namely in donations to charity. They will say, “Charity begins at home.”

Thus, the charitable deduction granted individual taxpayers a deduction for gifts to organizations that “operated exclusively for religious charitable scientific or educational purposes or . . . for the prevention of cruelty to children or animals.” However, although the statutory language included other sectors, “America’s nonprofit sector at the time was far smaller and more homogenous – comprising mainly [of] churches and donative charities that provided clear public goods or aid to the poor.” The fact that the sector was at the time mainly geared towards churches and poverty relief may have inhibited analysis when codifying the section. There was little debate as to the provision and the legislative history is sparse. The statutory language itself did not clarify whether Congress originally intended the popular meaning of relief of poverty when the act was first codified. Hence, even from the section’s inception there was a degree of confusion about whether the purpose of the statute was poverty relief or had a broader mandate.

Commentator Bruce Hopkins posits that when Congress first enacted § 170 they originally intended the popular meaning of the word “charitable.” The Internal Revenue Service’s (IRS) early reading of the word buttresses Hopkins’ argument. Up until 1938, the Treasury Regulations stated that charity should be construed “in the ordinary and popular sense.” The Regulations also stated that to benefit from the deduction, the donor must give to “[c]orporations organized and operated exclusively for the charitable purposes [which] comprise, in general, [of] organizations for the relief of the poor.”

Similarly, the sponsor of 501(c)(3)’s predecessor, the code provision that defines the charities subject to the charitable deduction, stated that that the exemption was intended for organizations “devoted exclusively to the relief of suffering, to the alleviation of our people, and to all things which commend themselves to every charitable and just impulse.” Thus, even

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38 55 CONG. REC. 6728 (1917) (statement of Sen. Hollis).
39 War Income Tax Revenue Act of 1917, ch. 63 § 1201(2).
40 Pozen, supra note 6 at 538.
41 JCT Historical Developments, supra note 9 at 65.
42 Id.
43 See Bruce R. Hopkins, THE LAW OF TAX-EXEMPT ORGANIZATIONS § 5.2 (8th ed. 2003) (“[t]here is little concrete evidence to support the proposition that Congress intended the application of either definition.”); Lars F. Gustafsson, The Definition of “Charitable” for Federal Income Tax Purposes: Defrocking the Old and Suggesting Some New Fundamental Assumptions, 33 Houston L. Rev. 587, 619 (1996) (“Congress gave no indication when it passed an income tax in 1894, 1909 or 1913 of the appropriate definition of charitable for purposes of the exemption provision nor when it provided for the deductibility of charitable contributions in 1917.”)
44 Hopkins, supra note 43 at § 5.2.
45 The Treasury Regulations informs the public of the IRS’ interpretation of the Code.
46 JCT Historical Developments, supra note 9 at 65; see also Crimm, supra note 9 at 429.
47 Id. at 429, n.30 (1998) (emphasis added).
48 44 CONG. REC. 4150 (1909). Similarly, evidence for the narrow construction of the term charitable exists in Senator Willis’ proposal (which he later withdrew) to expand the narrow definition adopted by the IRS, to include: “preventative and constructive service for relief, rehabilitation, health, character building and citizenship.” 65 CONG. REC. 8171 (1924) (statement of Sen. Willis).
from Congress’ codification of both sections there existed some degree of confusion as to whether the provision covered solely poverty relief or had a wider social mandate.  

Subsequent amendments to the charitable deduction clarified this confusion. First, amendments enacted during the Great Depression encouraged charitable giving to fund the increased demands on social programs. Specifically, during this period, the definition of the provision expanded, and the legislative history expressly stated that the provision now covered not just organizations that gave relief to the poor, but also organizations that promote “general welfare.”

By 1969, there was no confusion about the charitable definition. The House Report on the Tax Reform Act of 1969 used the legal definition describing charitable as a legal term “that has been used in the law of trusts for hundreds of years.”

Thus, although the original meaning of the word charitable as used in the statute was never clear, and the IRS interpreted charitable under the narrow popular definition for many years, there is currently no debate about its legal meaning. Nevertheless, perhaps because of this muddled history, commentators have found it very difficult to provide an accepted inclusive justification for the deduction.

B. Theoretical Rationales for the Charitable Deduction

As mentioned previously, despite the numerous scholarly contributions, there is no widely accepted rationale for the charitable deduction. For purposes of length, this Article does not address all the available literature; however, the Article does examine the two main approaches towards justifying the deduction: measurement of income theories, and the subsidy theories. This subsection also summarizes the main critiques of each of the theories discussed.

49 See Hopkins, supra note 44 at § 5.2 (“[t]here is little concrete evidence to support a proposition that Congress intended the application of either definition.”); Lars F. Gustafsson, The Definition of “Charitable” for Federal Income Tax Purposes: Defrocking the Old and Suggesting Some New Fundamental Assumptions, 33 Houston L. Rev. 587, 619 (1996) (“Congress gave no indication when it passed an income tax in 1894, 1909 or 1913 of the appropriate definition of charitable for purposes of the exemption provisions nor when it provided for the deductibility of charitable contributions in 1917.”).


53 JCT Historical Developments, supra note 9 at 7 (“there is no agreed upon explanation of the rationale behind the charitable tax exemption and tax deduction.”).

54 Id.


56 See Pozen, supra note 6 at 546-47; see also Fleischer, supra note 14 at 7-10. Professor Fleischer also discusses Professors John Colombo and Mark Hall’s Donative Theory. Id. at 18. The basic premise of the Donative Theory is that institutions that are able to “attract . . . a substantial level of donative support from the public” deserve tax-
1. **Measurement of Income**

   a. **Professor Andrews’ Ideal Income Tax Model**

   Professor William Andrews’ landmark rationale for the charitable contributions deduction relies on the Haig-Simmons definition of income. He argues that taxpayers’ gifts to charities are not personal consumption because they create public or common goods, and thus, because they are not personal consumption, charitable gifts cannot be included in taxable income.

   Andrews bolsters his argument by using economic neutrality principles. He analogizes to a circumstance where a taxpayer volunteers his/her time to a charitable cause rather than provide a gift. If the taxpayer had foregone income to volunteer, the Treasury would not tax the forfeited income, and therefore the Treasury should treat financial donations in the same manner.

   Although Andrews’ theory remains a significant step in the scholarship of the charitable deduction, two main critiques weaken its normative pull. First, using Andrews’ definition of income would bar from taxation “many acts we commonly think as consumption . . . [but might not] include some forms of charitable giving.” Second, Andrews’ theory ignores the well-established tax-law principle that once a taxpayer establishes dominion over a resource, the subsequent use of that resource is irrelevant. For these reasons, although commentators largely acknowledge Andrews’ contribution in this field, his theory has been widely refuted.

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57 The corresponding theory for nonprofit entities is Boris Bittker and George Rahdert’s income measurement theory. Their theory posits that taxable income is a concept that rests on the notion of a profit seeking taxpayer. Thus, because neither the income nor expenses generated by nonprofits are done so in search of a profit, then it becomes too impractical to determine their taxable income. Boris I. Bittker & George K Rahdert, *The Exemption of Nonprofit Organizations from the Federal Income Taxation*, 85 YALE L.J. 299, 305 (1976).

58 Haig-Simon’s formula is the sum of personal consumption plus wealth accumulated over a given period of time. *Henry C. Simons, Personal Income Taxation* 49-50 (1938).

59 William D. Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. 309, 356 (1972). Andrews disagrees with valuing the taxpayer’s psychic benefit as equal to the amount the individual donates, stating that because the act is not private consumption, it is irrelevant. *Id.* at 346, 375-76.

60 *Id.* at 352-354.

61 *See, e.g.*, Pozen, *supra* note 6 at 550 (Andrews’ “article continues to frame scholarship on the charitable deduction.”).

62 *Id.* at 549 (arguing that, at times, “‘looking altruistic,’ after all, is itself a scarce resource” and thus could be included as consumption) citing Kelman, *supra* note 55 at 880.


b. Professor Bittker’s Public Service / Morality Model

Similar to Andrews, Professor Boris Bittker relies on the Haig-Simons formula to distinguish consumption from donations. He argues that, as a matter of equity, the Treasury ought to exclude charitable donations from income for three main reasons. First, regardless of the taxpayer’s motive, the taxpayer lost the benefit of his/her charitable donation, and is worse off than if he/she had not made the donation. Accordingly, he/she should not be taxed on such gift. Bittker secondly argues that “something can be said for rewarding activities which in a certain sense are selfless, even if the reward serves no incentive function.” Lastly, Bittker suggests that many donations are discharges of moral obligations. If that is the case, then they are not truly voluntary and the government should not tax involuntary transactions.

Although both theories rely on Haig-Simons definition of income, a key difference between Andrews and Bittker’s theories is Bittker’s reliance on the equitable qualities of the charitable deduction. Bittker’s reliance on equity in his argument is both a strength and a weakness. The JCT notes that the most frequent statements justifying the charitable deduction is that it “is the right thing to do.” Similarly, commentators are becoming more accepting of the idea that charitable donations are qualitatively different from regular consumption and cannot be assessed under rational, utility maximization models.

However, despite this support, Bittker’s equity rationale requires “a normative assessment of the goodness of charities’ activities,” which in turn requires “value based judgments about which activities merit a subsidy.” Whether an opera house, museum or a soup kitchen are “good” activities, or even equally “good,” is a value judgment that commentators have shied away from en masse. Nevertheless, this issue must be resolved for Bittker’s rationale to be justified. Lastly, Bittker’s proposition that the government should not

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66 Id. at 46-49.
67 Id. at 60.
68 Id. at 58-60.
69 See Pozen, supra note 6 at 553-4 (“[u]nlike Andrews, however, [Bittker] arrives at this conclusion not as a matter of logic, but as a matter of judgment . . . The equitable arguments are what mark Bittker’s theory.”).
70 See also Rob Atkinson, Altruism in Nonprofit Organizations, 31 B.C.L. REV. 501, 605 (1990) (justifying the charitable deduction because the “altruistic provision of good[s] and services [is] inherently desirable.”).
71 JCT Historical Developments, supra note 9 at 68.
72 See, e.g., Pozen, supra note 6 at 551 (commenting that Bittker’s notion that charitable giving was “qualitatively different from regular spending has gained forced among social scientists”); James Andreoni, Impure Altruism and Donations to Public Goods: A Theory of Warm-Glow Giving, 100 ECON. J. 464 (1990) (discussing that all the factors in charitable giving, such as guilt, sympathy, peer pressure and a desire for “warm glow” makes taxpayers’ donative activities very difficult to reduce to a rational utility model); Gergen, supra note 64 at 1426-28.
73 Fleischer, supra note 14 at 11.
74 See Gergen, supra note 64 at 1446 (“the distributional benefits of cultural charities such as museums, symphonies, and libraries are often overstated . . . the beneficiaries tend to be the middle class and not the poor.”).
75 Id. at 34.
76 Id. The classic example is of an eccentric millionaire(s) that donates his money to a ketchup museum. Just because a group of individuals wants it, does that mean that the government should subsidize it? Id. at 25 citing David M. Schizer, Subsidizing Charitable Contributions: Incentives, Information, and the Private Pursuit of Public Goals, 62 TAX L. REV. 221, 230 (2009). See also Benshalom, supra note 21 at 1064 (suggesting that because some
tax spending motivated by moral obligations loses force when “one considers just how many of our (non-deductible) expenditures derive from some source of felt obligation.”

2. Subsidy Theories

a. Charity Performs Government Functions

An intuitively appealing rationale for the charitable deduction is that it relieves the government of necessary public functions. A House Report from 1939 explains this rationale as follows:

[t]he exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriations from public funds, and by the benefits resulting from the promotion of the general welfare.

This theory is also evident in Treasury Regulations, which defines a charitable organization as including organizations that “lessens the burdens of government.”

There are several critics of this government subsidy theory. First, under this rationale, the charitable deduction could only fund charities that provide a substitute service of a usual government service, because the whole idea of the deduction is that it encourages individuals to “do voluntarily what we would otherwise have to coerce them to do (i.e., fund collective goods).” Thus, under this rationale, any charity that provides an activity outside the remit of government would be excluded.

charitable gifts can be consumed by the donor, then rational taxpayers will “promote and consume those activities that directly or indirectly privilege them.”

77 Pozen, supra note 6 at 551.
78 See, e.g., Duffy v. Birmingham, 190 F.2d 738, 740 (8th Cir. 1951) (“the common element of charitable purposes . . . is the relief of the public of a burden which otherwise belongs to it.”); McGlotten v. Connally, 338 F.Supp 448, 456 (D.D.C. 1972) (“the Government relieves itself of the burden of meeting public needs which in the absence of charitable activity would fall on the shoulders of the Government.”).
79 H.R. REP. No. 1869, 75th Cong. 3d Sess. 19 (1938). See also Wendy Gerzog Shaller, Tax Exemption of Charitable Organizations and the Deductibility of Charitable Donations: Dangerous New Tests, 8 U. BRIDGEPORT L. REV. 77, 77-78 (1987) (stating that the charitable deduction has been and is “justified on the ground that certain private organizations perform the same public services as public institutions.”); Treas. Reg. § 1.501(c)(3)-1(d)(2) (stating that an organization is charitable if “it lessens the burdens of government.”). But see Harvey P. Dale, Foreign Charities, 48 TAX L. 655, 660-61 (1995) (arguing that none of the tax benefits conferred to charities was ever predicated on a theory of government burden relief).
80 Treas. Reg. § 1.501(c)(3)-1(d)(2).
82 Gergen, supra note 64 at 1421
83 See, e.g., Harold M. Hochman & James D. Rodgers, The Optimal Tax Treatment of Charitable Contributions, in THE ECONOMICS OF NONPROFIT INSTITUTIONS: STUDIES IN STRUCTURE AND POLICY 227 (Susan Rose-Ackerman ed., 1986) (“external benefits must accrue in the demands for the specific services that charity finances or through prior constitutional choice, as with religious activities, to justify the public subsidization of charity.”).
Second, the government subsidy theory assumes that there is a set of “public goods that require[s] more spending.” There is also a couple of inherent assumption. First that donors are in a better position than the government to ascertain what these public goods are and where they are required. Second, that there are political or other constraints on the government funding these public goods at the optimal level if at all. However, since under the theory, contributions are determined by donors and not the government, “there may be certain cases in which some goods would be overprovided beyond the socially optimal level” or even worse, where “sectarian provincial, eccentric, or frivolous uses of money may be aided along with the most worthy.” Thus, because there is no overall oversight of the subsidy, it may not be allocated in the most efficient manner or to the neediest organizations / causes.

Third, determining where the subsidy is allocated, as this author discovered, is no easy process. This means that most taxpayers do not know where the $36 billion of subsidy is being spent and taxpayers are unaware of which charities the government is supporting. Lastly, the theory does not explain why neither non-itemizers nor low-income taxpayers benefit from the deduction. If the deduction is premised on a government subsidy, then it should be available to all donors that contribute funds to organizations providing services that the government otherwise would.

b. Professor Levmore’s Promotion of Pluralism Theory

In his seminal article, Professor Saul Levmore advanced an alternate subsidy theory—that the charitable deduction allowed individual taxpayers to effectively “vote” on which charities should receive the public subsidy by giving a donation. The taxpayers, via their charitable contributions, are able to channel the government subsidy to where they believe it is most required. These taxpayers’ direct channeling of government funds provides a secondary benefit—it signals policymakers where “public goods are undersupplied and which [non-profit organizations] warrant funding.” This leads to Levmore’s second argument: that taxpayers are in the best position to determine where government spending is lacking and this provision allows taxpayers to address these issues quickly and efficiently.

Supporters of Levmore’s theory provided two important considerations. First, Professor Eric Posner finds that when individuals support charities through a deductible donation, then it creates an increased form of self-government because it is the taxpayer who decides where their

84 Benshalom, supra note 21 at 1050.
85 Id. Professor Benshalom discusses what is the optimal level of spending in a certain public good, and posits that the charitable deduction is a non-democratic provision since it allows individuals to allocate public funds rather than submitting to democratic majoritarian discretion. Id. at 1050-51.
87 Id. at 552-554.
88 Id.
90 Id. at 406.
91 Benshalom, supra note 21 at 1050.
92 Levmore, supra note 89 at 406.
taxes are allocated. Second, Professor Peter Wiedenbeck suggested that the “reduced political visibility of a subsidy provided through the tax code may be an important advantage.” The argument being that reduced political visibility allows minority or unpopular ideas to gain traction outside of the glaring and easily manipulated eye of politics.

All the justifications for Levmore’s theory rely on, at least in part, an even distribution of giving across social and economic groups. Levmore himself recognizes these objections, explaining them as follows:

[an obvious objection to the use of the charitable deduction as a social choice mechanism to determine government spending is that many citizens effectively are disenfranchised because they need not file returns or do not benefit from itemizing their deductions. Another familiar objection in slightly new clothing is that because higher bracket taxpayers are given more reason to “vote,” and wealthier taxpayers can afford more votes, there is distasteful deviation from the one-person-one-vote ideal.

He replies to these objections by suggesting that under his theory, taxpayers will implicitly inform the government, via their donations, which hospitals, schools, social agencies the government should, via the charitable deduction, subsidize. He also believes that the taxpayers’ personal contributions will lead to a greater personal investment in that charity, thereby leading to other incidental benefits such as increased volunteering.

Approximately forty-eight percent of all charitable gifts by value are not deductible. Thus under Levmore’s theory, these donations would not be considered votes. Further, if a

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93 Richard A. Posner, Economic Analysis of Law 496 (2007) (finding that the charitable deduction is “politically important because it transfers from the government to the individual taxpayer some of the power to decide who shall be recipients of altruistic transfers, a decision that in most societies is made at the political level.”).
94 Wiedenbeck, supra note 81 at 97 (“[t]he charitable contribution deduction fosters the coexistence of non-majoritarian values -- it encourages experimentation by the private sector in new solutions to our social problems.”).
95 Levmore, supra note 89 at 405-06. But see Schizer, supra note 76 (challenging Levmore’s notion that low-income taxpayers are disenfranchised by § 170. Instead, Dean Schizer asserts that the higher proportion of wealthy beneficiaries is an advantage rather than a disadvantage). Schizer’s notes that wealthy private donors possess skill-sets that nonprofit managers could exploit and that “private donors to monitor the quality of nonprofits, so that the government can piggyback on these quality control efforts.” Id. at at 258-59, 224. However, this places the nonprofit manager in the difficult position of restricting a donor’s managerial role without alienating their funding. Although some nonprofit managers may be able to walk this manager tightrope, it is a stretch to assume that all could. See generally Robin Pogrebin, Trustees Find Boards Still Luxury Items, N.Y. Times, Apr. 2, 2010 available at http://www.nytimes.com/2010/04/03/arts/03center.html?src=me&ref=arts (reporting that many New York non-profits expect board members to donate to the organization in return for their seat on the board. For instance, the “cost” of a board seat at the Museum of Modern Art in New York is ten million dollars, a board seat at the New York Public Library is five million and the Lincoln Center’s “board members are generally asked to contribute $250,000 upfront and on an annual basis”).
96 Id.
97 Id. at 406.
98 Id.
99 Giving USA reports a total sum of donations in 2008 as 307 billion dollars. Giving USA 2009, infra note 119 at 4. The total amount subject to the deduction was 162 billion. Parisi infra 123 at 4. Expressed as a percentage, the amount subject to the deduction is 48%.
justification of the theory is that minority ideas flourish under the cloak of the deduction, then minority donations should at least proportionally benefit from the provision.

However, at least some ethnic minorities would not proportionally benefit under the current codification – thereby undercutting the argument of cultivating and nurturing minority ideas. Of the 162 billion total amount of giving in 2008 covered by the deduction, taxpayers with an income above $100,000 gave $100 billion, or 62.5%. Studies show that “minorities earn less and are more likely to be unemployed.” Thus, minorities are less likely to earn above one hundred thousand and accordingly less likely to be the main beneficiaries of § 170. When considering the groups affected by this provision, this perceived benefit becomes a strong counterargument. Thus, as currently codified, § 170 leads to the “over-representation of the views of the wealthy in the funding process, thus undercutting [the] goal of reflecting popular preferences.”

As a final note with regards to the theoretical justifications for the deduction, there may be a simpler explanation for the lack of an accepted theoretical justification for the charitable deduction. Accepting the argument that at the time of enactment charity encompassed only assistance to the poor, then the lack of satisfactory justification for the charitable deduction as currently codified makes perfect sense. Commentators have attempted to explain the current scope of the provision with limited success: measurement of income theories imply a much broader deduction, which would encompass all giving to others; subsidy arguments imply a radically different subsidy – one that is equal for all as a percentage of donations. However, none of these theories satisfactorily explain the current form and scope of the provision, particularly as invoked in the political discourse on the matter. Thus, until commentators acknowledge, and account for, the confused theoretical underpinnings of the deduction when § 170 was codified each new theory will not completely fulfill its mandate.

C. Public Justifications - The Misguiding Rhetoric in Defense of the Charitable Deduction

President Barack Obama’s 2010 budget contains a proposed reduction of the charitable deduction for the highest income-level taxpayers. The proposal planed to reduce the

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100 See infra Fn 123 and app.I, fig. 1.
101 Mylinh Uy, Tax & Race: The Impact on Asian Americans, 11 Asian L.J. 117, 125 (2004); see also Patricia A. Taylor et al., Changes in the Structure of Earnings Inequality by Race, Sex and Industrial Sector, 1960-1980, in 5 RESEARCH IN SOCIAL STRATIFICATION AND MOBILITY 105, 107 (Robert V. Robinson ed., 1986) (“[r]esearch consistently shows that racial minorities earn less than whites in the workplace, even after adjustments for education, occupation, experience and other variables.”).
102 Fleischer, supra note 14 at 20. But see Schizer, supra note 76 at 248 (proposing that providing an incentive to the rich is simply “a price we must pay” for the charitable deduction).
103 This argument is fleshed out in a forthcoming paper.
deduction value of high income-level taxpayers from the current thirty-five percent rate to twenty-eight percent. Regardless of the merits and flaws of such tax policy, the critics of the amendment all sang from the same hymnbook—the President should not penalize churches and welfare organizations because they aid those who need it most. For example, Mr. Poe, House Representative of Texas stated:

Thus, charities . . . such as churches, the YMCA and groups that that [sic] feed the hungry and help in disasters, take care of crime victims and help the homeless, will be struggling for funds.  

Similarly, Representative Mr. Pitts quoted one of his constituents in the disapproval of the proposed legislation:

“we donate a very large percentage of our income to the hungry, homeless, orphaned and widowed. We are in the top tax bracket. Any increase in our taxes or decrease in our charitable deductions will not hurt our standard of living, it will indeed, hurt the very people that the government is trying to help.”

Representative Mr. Bilirakis:

Every year, Americans give hundreds of billions of dollars to charity. In turn, they provide funding to shelters, food banks, health care clinics and a host of other charitable programs which benefit the needy. During this recession, their services are needed more than ever.

Opposition to this provision in the Senate used similar rhetoric in their critique of the bill. For instance, Senator Ensign stated:

Most Americans believe that the private sector can deal with problems in our communities person to person through charitable giving . . . We have some amazing charities that give compassionate care to those who truly need it.

Senator McConnell:

Changes would be phased in gradually over the next few years. So in 2010, instead of getting a 33 percent or 35 percent deduction for charitable donations, Americans in the top income brackets, according to a Wall Street Journal analysis, would get somewhere in the neighborhood of 28 percent.”

Id.; see also Brad Hirshfield, Obama’s Budget Devalues Charity, WASHINGTON POST, Mar. 17, 2009, available at http://newsweek.washingtonpost.com/onfaith/brad_hirschfield/2009/03/budget_devalues_charity_when_w.html (“[a]t precisely the moment when we need to reaffirm the importance of individuals stepping up to address those in need, this does the opposite - literally devalues charitable giving . . . ”).


At a time of economic distress, when more people than ever depend on these organizations, the administration’s budget reduces the incentive for people to donate to them.  

Each of the Congressmen quoted above focus on the role of charities that help the neediest members of society, and these statements represent a sample of the typical arguments against the proposed modifications of section 170. The author acknowledges that members of Congress also mentioned health and educational organizations. However, the most prevalent and impassioned rhetoric was reserved to explain how the charitable deduction helps those who need it most and that any change to this provision would cripple these organizations. Accepting that these Congressmen were simply using the best rhetoric tools available—one of which was pulling on the heartstrings of the American public—if the Congressional justification for not amending the charitable deduction is that the deduction helps the neediest, then the data should show a significant correlation between the articulated justification and § 170’s primary beneficiaries. As shown in the next section, the percentage of the charitable deduction used to benefit “those who really need it” is nowhere close to the attention it received in Congress.

PART III – DOES IT FULFILL THE PUBLIC RATIONALE

Although the JCT in its annual tax expenditure report to Congress has done some preliminary work in this area, no study has ever comprehensively subdivided § 170 donations according to their charitable purpose. The JCT’s Report subdivides the donations subject to the charitable deduction into three categories: (1) “[d]eductions for charitable contributions to educational institutions;” (2) “[d]eduction for charitable contributions other than for education and health;” and (3) “[d]eduction for charitable contributions to health organizations.” This is a useful starting point, but it does not convey an accurate picture of how the estimated $36.2 billion of tax savings from the charitable deduction is allocated among the nonprofit sector, and specifically among organizations that provide direct assistance to the poor.

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111 A quantitative analysis of the House and Senate Reports discussion of amendments to section 170 in 2008 found that Congress discussed Direct poverty Relief 44% of the time. The nearest other charitable purpose was Education on 24% followed by: Disaster / War Relief 17%; Churches 6%; Health 2% and Other 7%. The methodology of this study is found infra in Appendix II.
113 Id. at 40.
114 Id. at 42.
115 Id. at 43.
116 See supra note 20 and accompanying text.
117 This article does not account for any taxpayer reporting abuse of the charitable deduction. This Article acknowledges that this is a simplification of an increasing area of noncompliance. In a recent IRS report, IRS examiners “are seeing an upturn in instances where taxpayers try to disguise private tuition payments as contributions to charitable or religious organizations.” Internal Revenue Service, Phishing Scams, Frivolous Arguments Top the 2008 “Dirty Dozen” Tax Scams, Mar. 13, 2008, available at http://www.irs.gov/newsroom/article/0,,id=180075,00.html.
118 This article only addresses direct assistance of poverty. The author acknowledges that many programs provide indirect assistance that aid in the fight against poverty. Nevertheless, this article does not include these figures in the calculation for two reasons. First, there is no satisfactory definition of indirect assistance of poverty and this term can be as broad or as narrow as the study desires. Second, the language used by members of Congress criticizing the
In order to provide an accurate account of such giving, this Part first looks at the percentage of total giving that is subject to the charitable deduction. Section B provides a brief synopsis of total giving in the United States and discusses the sectors that provide direct assistance for poverty. Section C subdivides donors’ donative preferences according to income level. Section D compares donative preferences by income level and contrasts such figures against total giving by income level. This comparison, specifically when looking at direct poverty relief organizations, allows the study to determine the total percentage of the charitable deduction that is apportioned to poverty relief. The result is that approximately 8% of the charitable deduction is apportioned to direct poverty relief organizations. Finally, because there is a perception that many churches contribute large sums of money to poverty relief efforts, the last section looks at the role of churches in this area and attempts to quantify these efforts.

A. Amount of Giving Subject to the Charitable Deduction

The Just Giving Report, an annual survey of total giving in the United States, found that in 2008, $307 billion were donated to charities.\(^{119}\) However, according to the Internal Revenue Services’ Preliminary Data for 2008 (hereinafter “Preliminary Data”), the total amount donated in 2008 under the charitable deduction was $161.8 billion, or about fifty-two percent of all giving in the United States.\(^{120}\) As many commentators have discussed, because of itemization, total giving is not the same as the amount subject to the charitable deduction.\(^{121}\) In 2008, approximately 142.4 million residents, out of a population of 307 million,\(^{122}\) filed a tax return in the United States.\(^{123}\) Of these 142.4 million returns, 39.2 million claimed a charitable deduction on their tax return.\(^{124}\) However, tax returns can include more than one person. For instance, in 2007, approximately fifty-three percent of returns included more than one person on the return.\(^{125}\) Thus, although there were 39.2 million returns filed with the IRS, this does not fully provide the number of individuals that benefit from the deduction.


\(^{120}\) Parisi, infra 123 at 15 Tbl 1.


\(^{124}\) Id at 7 fig. A. The number of returns claiming the total standard deduction was 91,975,014 and 39,223,228 returns claimed the charitable contribution deduction. Id.

\(^{125}\) Statistics of Income: Tax Stats – Individual Statistics Tables by Filing Status available at http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96978,00.html. The calculation was as follows: of the 143 million returns in 2007, 54.0 million were “Returns of married filing jointly”; 2.7 million were “Returns of married persons filing separately, total”; 21.1 million were “Returns of head of household”; 86 thousand were “Returns of surviving spouses;” and 64.9 million were “Returns of single persons.” By adding the number of returns filed under “single persons” with “surviving spouses” and “married filing separately” results in the total number of returns that account for one taxpayer. This number was then divided by the total number of returns to give a percentage.
By conducting the simple calculation described in footnote 127, we can work out approximately how many individuals, rather than returns, benefited from the charitable deduction. For purpose of simplicity, this Article assumes that each joint return claiming a charitable deduction represents two individuals.\textsuperscript{126} This resulted in a total of 60 million individuals who made a donation to charity and benefitted from the charitable deduction in 2008.\textsuperscript{127}

In other words, out of the 307 million people in the United States, only 60 million, less than twenty percent, benefit directly from this tax deduction. This is despite the fact that during the 2009 holiday season, even though the country was experiencing an economic recession, just under ninety percent of Americans planned on giving to charity.\textsuperscript{128} Further, each year approximately 89% of American households give to charity.\textsuperscript{129} That means that as many as seventy percent of American donors give to charity without claiming a deduction. Thus, even though the charitable deduction is ingrained in the American consciousness, less than one in five individuals a year enjoy the benefits of the provision, despite that many more give to charity.

B. Breakdown of Total Charitable Giving According to Organizational Purpose

The breakdown of total charitable giving in 2008 is illustrated in Table 1:

<table>
<thead>
<tr>
<th>Type of Charitable Organization</th>
<th>Amount of Contribution (in billions of dollars)</th>
<th>Percentage of Total Charitable Giving</th>
</tr>
</thead>
<tbody>
<tr>
<td>Religion</td>
<td>106.89</td>
<td>35.0%</td>
</tr>
<tr>
<td>Education</td>
<td>40.94</td>
<td>13%</td>
</tr>
<tr>
<td>Health</td>
<td>21.64</td>
<td>7%</td>
</tr>
<tr>
<td><strong>Human Services</strong></td>
<td><strong>25.88</strong></td>
<td><strong>9%</strong></td>
</tr>
<tr>
<td>Foundations</td>
<td>32.65</td>
<td>11.0%</td>
</tr>
<tr>
<td>Arts</td>
<td>12.79</td>
<td>4%</td>
</tr>
<tr>
<td><strong>Public Society Benefit</strong></td>
<td><strong>23.88</strong></td>
<td><strong>8%</strong></td>
</tr>
<tr>
<td>Other</td>
<td>42.98</td>
<td>13%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>307.65</strong></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{126} This is likely a generous assumption. Assuming 3 donors for every 2 returns results in 16% of the population deriving a charitable deduction for their gift.

\textsuperscript{127} This figure was arrived by first taking the total number of tax returns (39.2 million) and multiply by the percentage number of tax returns that only involve one individual (47%). This resulted in 18.424 million individuals. Secondly, the total number of tax returns (39.2 million) was multiplied by the percentage number of tax returns that involve more than one individual (53%) and this figure was then multiplied by 2. This resulted in 41.552 million. The sum of these two figures equals 59.976 million.


\textsuperscript{130} Giving USA 2009, \textit{supra} 119 at 4
Religion received the largest amount, amassing thirty-five percent of total giving, which was just over $106 billion.\footnote{Id. at 4.} Excluding religious organizations, addressed in Part E, the two categories of charitable organizations that provide services to the needy are human service organizations and public /society benefit organizations. In the latest report by Giving USA 2009, this accounted for seventeen percent of the total charitable giving.\footnote{Id.}

However, human service organizations and public /society benefit organizations have a larger mandate than the direct relief of poverty. Public society charities engage in various activities including: the promotion of philanthropy and volunteerism, “conduct[ing] research in the biological, physical and social sciences, [and] public policy research. They may also engage in community and economic development, civil liberties and civil rights, voter education and consumer protection.”\footnote{Id. at 147.} Similarly, the human service sector includes organizations that:

focus on courts and legal services; employment and vocational training; food and nutrition; long-term housing and temporary shelter; public safety and community disaster relief; recreation and sports; youth development; family and children’s services; emergency assistance for families; and independent living and self-sufficiency for women seniors, veterans and individuals with disabilities.\footnote{Giving USA 2009, \textit{supra} note 119 at 119.}

There is evidence that most human service organizations “do not focus on the needs of low-income individuals, and only a small portion of human service organizations attempt to alleviate poverty by providing food, clothing, or other basic necessities.”\footnote{Id. at 138 at 13 (“[o]nly 8 percent of households’ donated dollars were reported as contributions to help meet basic needs—providing food, shelter or other necessities.”); The New York Times and other newspapers have also reported that less than ten percent of American charitable contributions address basic human needs such as providing care for indigent sick, feeding the poor, and providing shelter for the homeless. Robert B. Reich, \textit{Is Harvard a Charity}, \textit{Los Angeles Times}, Oct. 01, 2007; see also Strom, \textit{supra} note 22.} For instance, the Center on Philanthropy found that only eight percent of individuals’ donations directly address poverty relief.\footnote{See, e.g., Alice Gresham Bullock, \textit{Taxes, Social Policy and Philanthropy: The Untapped Potential of Middle-and Low-Income Generosity}, 6 Cornell J.L. & Pub. Pol’y 325, 324-44(1997) (providing a summary of studies researching patterns of giving in the United States).} Thus, according to the Center on Philanthropy, less than ten percent of total giving in the United States directly addresses the causes that so worried Congress.

C. Taxpayer’s Donative Preferences Relate to Taxpayer’s Level of Income

Individuals’ donative preferences correlate with income levels.\footnote{Patterns of Household Charitable Giving by Income Group, 2005, Prepared for Google by The Center on Philanthropy at Indiana University [hereinafter “Center on Philanthropy”], Summer 2007.} One study conducted in 2007 by the Center on Philanthropy at Indiana University [hereinafter the Indiana Study] measured individual taxpayers’ charitable donations in 2005 and broke down the donations according to income level and charitable purpose.\footnote{Id.} It found that wealthy donors\footnote{See, e.g., Alice Gresham Bullock, \textit{Taxes, Social Policy and Philanthropy: The Untapped Potential of Middle-and Low-Income Generosity}, 6 Cornell J.L. & Pub. Pol’y 325, 324-44(1997) (providing a summary of studies researching patterns of giving in the United States).} primarily
gave contributions to educational institutions (25.2%), health organizations (25.3%), and to a lesser extent the arts (15.4%). Wealthy donors gave a much smaller proportion of their charitable contributions to organizations that address basic human needs such as shelter, food, and medical care for the indigent, 3.4% for individuals with income over a million and 5.8% for individuals with income over two hundred thousand dollars.

The Indiana Study also showed that low-and-middle-income taxpayers primarily supported religious organizations. Low-and-middle-income households gave just under nine and a half billion, or about 49% of total giving, to direct assistance of poverty charities. Figure 2 illustrates the breakdown of charitable organizations giving by income level.

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139 Id at 5 (defining wealthy as individuals with income in excess of $200,000).
140 Id. (Indiana). See also CHARLES T. CLOTFELTER, FEDERAL TAX POLICY AND CHARITABLE GIVING 283 (1985); Marting Feldstein, The Income Tax and Charitable Contributions: Part II – The Impact on Religious, Educational and Other Organizations, 28 NAT’L TAX J. 209, 224 (1975); Wiedenbeck, supra note 81 at 101; see also app.I, fig.1.
141 Center on Philanthropy, supra note 138 at 17 fig. 2. See also, Strom, supra note 22 (quoting an interview with William H. Gross, a philanthropic billionaire, “I don’t think we’re getting the bang for the buck for gifts to build football stadiums and concert halls, with all due respect to Carnegie Hall and other institutions, I don’t think the public would vote on spending tax dollars on those things.”).
142 Center on Philanthropy, supra note 138 at 17 fig. 2. See also Colombo, supra note 28 at 685 (“[e]mpirical studies confirm that some organizations, particularly churches, are largely funded by relatively small donations from middle and lower-income groups, whereas arts and education organizations rely more heavily on large gifts from wealthy contributors.”); Gergen, supra note 64 at 1434-43 (providing data on donations to churches); Charles T. Coltfelter & Richard Schmalbeck, The Impact of Fundamental Tax Reform on Nonprofit Organizations, in ECONOMIC EFFECTS OF FUNDAMENTAL TAX REFORM 211, (1996) (corroborating the Indiana study’s findings that individuals’ donations to charitable organizations vary according to income level).
143 Center on Philanthropy, supra note 138 at 15 Tbl. 10, (finding that 49% of all giving by value to direct relief of poverty is provided for by individuals with income below $100,000). Lashbrooke, supra note 50 at 707-08; Todd Izzo, Comment: A Full Spectrum of Light: Rethinking the Charitable Contribution Deduction, 141 U. P.A.L REV. 2371 (1993).
D. Value of the Charitable Deduction Accruing to Organizational Engaged in Poverty Relief

In order to calculate the percentage of deductible donations given to the charities that provide direct assistance to poverty, this study used the IRS’s Preliminary Data. The Preliminary Data provides a snapshot view of tax returns in a given year, including total amount of deductions, exemptions, as well as line items. Importantly for this study, the Preliminary Data

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144 Center on Philanthropy, supra note 138 at 17 fig. 2.
145 Parisi, supra note 123.
breaks down the charitable contribution deduction, not only in number of returns and amount, but also by income level.\textsuperscript{146} Thus, by combining the total amounts given per income group with the Indiana Study, we can calculate the amount of deductible contributions given to specific subsectors of § 170.

However, to work out the amount of the charitable deduction allocated to each subsector requires one further step. Because the charitable deduction reduces a taxpayer’s taxable income, the percentage of the taxpayer’s “saving” is tied to a taxpayer’s tax bracket.\textsuperscript{147} Thus, a taxpayer in the highest tax bracket, i.e. taxed at thirty-five percent, who contributes $100 will in real terms only be contributing $65. An equally generous taxpayer in the zero tax bracket contributes the full hundred. This is known as an upside-down subsidy, and although not an intended consequence of the provision, it has subsequently been justified as an incentive for the wealthy to donate.\textsuperscript{148} Thus, in order to work out the total amount of charitable deduction expenditure allocated to organizations that provide direct assistance to the poor, we must determine which tax bracket the individual donor was likely in, allowing for applicable filing status.\textsuperscript{149}

This study used four tax filing status: Single, Married Filing Jointly, Married Filing Separately and Head of Household.\textsuperscript{150} Using the IRS’s Statistics of Income: Tax Tables it was possible to calculate the percentage amount of returns under each status, which were Single 37.8%; Married Filing Jointly 1.9%; Head of Household 14.8% and Single 45.4%.\textsuperscript{151}

The study then produced two calculations – the highest applicable tax rate estimate (“HAT estimate”) and an average applicable tax rate estimate (“AAT estimate”). The purpose of these two estimates was to provide a range of figures. The highest applicable tax rate estimate was calculated as follows: first we selected the highest applicable tax bracket under each income range for each filing status. For instance, for the income range of thirty to fifty thousand, the highest applicable tax rate to taxpayers in that income group was fifteen percent for Married Filing Jointly and twenty-five percent for the rest.\textsuperscript{152}

The purpose of using the HAT estimate was to figure out the maximum amount of allocated subsidy. The reason this provides the maximum amount of subsidy is because the amount of the subsidy is a product of the donor’s tax rate, and thus, by using the highest tax rate per income range then the amount of the subsidy would also be the highest.

\textsuperscript{146} Parisi, \textit{supra} note 123 at 15 tbl. 1. \textit{See also} app.I, fig. 1-3 for a pictorial representation of these figures.

\textsuperscript{147} Wiedenbeck, \textit{supra} note 81 at 99-100

\textsuperscript{148} \textit{See}, e.g., Eugene Steurele & Martin A. Sullivan, \textit{Towards More Simple & Effective Giving: Reforming the tax Rules for Charitable Contributions & Charitable Organizations}, 12 AM. J. TAX POL’y 399 403-04; Wiedenbeck, \textit{supra} note 81 at 100-01. \textit{But see} STANLEY SURREY, \textsc{Pathways to Tax Reform} 225 (1973) (denouncing the upside subsidy as inefficient and unfair because “the amount of public funds which a private person can allocate depends on his marginal tax bracket and hence his income position and wealth generally.”).

\textsuperscript{149} \textit{See} app.I Tbl. 3 for income ranges for each tax bracket under each filing status. Tbl. 4 lists the highest applicable tax brackets for each income range used in the calculation.

\textsuperscript{150} Although Surviving Spouse is a tax filing status it represents less than 0.06% of all filers and was excluded from the calculations.

\textsuperscript{151} SOI Tax Stats, \textit{supra} note 125. \textit{See also} app.I, tbl. 2.

\textsuperscript{152} \textit{See} app.I, tbl. 4 for each income group.
The second figure, the AAT estimate calculated what percentage of earnings by income level was in each income bracket and proportioned the tax brackets accordingly.\textsuperscript{153} Thus, the AAT estimate is more likely to produce the accurate amount of the total subsidy.

Continuing the calculation, the total amount contributed by each income range subject to § 170 was multiplied by the percentage amount in each filing status.\textsuperscript{154} For instance, the total amount given by filers from income range of zero to fifteen thousand dollars was multiplied the percentage amount of filers that were Single, Married Filing Jointly, Married Filing Separately and Head of Household. This process was repeated for each income range. These figures were then multiplying by the applicable tax rate percentage, applying both the HAT estimate and the AAT estimate. This final step resulted in two figures, the first number, which used the HAT estimate, was the maximum amount of subsidy allocated to the total charitable deduction expenditure granted to each income range.\textsuperscript{155} The second figure, which used the AAT estimate, was a figure more likely to be in the closer to the actual amount of the subsidy allocated to § 170 by income group.\textsuperscript{156}

The last step of the calculation was to multiply the amount of subsidy, under both the HAT and AAT estimate, allocated to each income group by the Indiana Study’s estimates by donor income of the share of charitable contributions made by different types of organization. Thus, the total amount of the subsidy per income range was multiplied by the percentage amount given by individuals in each income range to direct relief of poverty organizations. These two numbers were the maximum estimates (under HAT) and the likely amount (under AAT) of the charitable deduction expenditure allocated to organizations that engage in direct assistance of the poor.\textsuperscript{157}

According to the JCT’s estimates for 2008, the total cost of the deduction is $36.2 billion.\textsuperscript{158} Using the JCT’s estimates, the maximum total percentage (HAT) allocated to direct poverty relief is 10.8%\textsuperscript{159} and using the subdivided tax brackets (AAT) the total amount is 9.9%.\textsuperscript{160} However, this studies’ calculations do not account for certain effects that would lower the total amount subject to § 170.\textsuperscript{161} This Article’s calculations result in a total giving amount, assuming the highest tax rate for each income range using maximum tax bracket rate per income range of 48.2 billion, and if we used the tax bracket rate per income range, it results in a total of

\textsuperscript{153} For example, returns filed as Married Filing Separately that are in the income range of a hundred to two hundred thousand are potentially subject to three income tax rates, 35%, 33% and 28%. This study subdivides by income level the percentage in each bracket. Admittedly, this is a simplification of the calculation (assuming that taxpayers will be evenly proportioned across the income range) however, by allowing for variation allows a more accurate calculation. See app.I, tbl. 6a-c.

\textsuperscript{154} See app.I, tbl. 5.

\textsuperscript{155} See app.I, Tbl. 7a and b.

\textsuperscript{156} See app.I, Tbl. 7a and b.

\textsuperscript{157} These calculations are provided in the appendix. See app.I, tbl. 7a and b.

\textsuperscript{158} JCT Estimates 2009-2013, supra note 20 at 39-42 Tbl. 1.

\textsuperscript{159} This percentage was calculated by dividing the total number under Table 8 using the maximum amount of the deduction per income range total amount (3.9 billion) by the JCT’s estimate for the total cost of the subsidy (36.2 billion).

\textsuperscript{160} This percentage was calculated by dividing the total number under Table 8 using the amount of the deduction per income range total amount (3.5 billion) by the JCT’s estimate for the total cost of the subsidy (36.2 billion).

\textsuperscript{161} For instance the Annual Minimum Tax.
45.5 billion. These total amounts have the same internal assumptions as our total figures and thus by comparing them against each other, as a percentage these assumptions should cancel out. Accordingly, by comparing the total amount of deduction allocated to poverty relief organizations against our total amount subject to a deduction results in 8.1% under the maximum tax rate and 7.8% allocation using the subdivided tax brackets. These figures are more in tune with the research of the Indiana Study, which found that total giving to organizations that provide direct poverty assistance was approximately eight percent. Finally, although we are constrained by the data available, and cannot determine the tax rate of all charitable donors, the total amount is likely to be within the 7.8-10% range, with the actual amount for the reasons explained above being close to 8%.

E. Distribution of Contributors to Religious Organizations by Income Level

There is a presumption that churches function at least in part to provide direct relief to the poor. Undoubtedly, many churches organize soup kitchens, arrange for homeless shelters and provide other types of aid to the poor. However, not all religious organizations have this social mandate and the available evidence regarding churches’ participation in poverty relief efforts is conflicting and difficult to ascertain. Scholars that have attempted to determine religious organizations’ contribution in this field have found differing results.

Professor Charles Clotfelter found that “sacramental functions account for a preponderance of church expenditures.” He estimated that nonsacramental expenditures, such as social welfare, nonreligious education and health related activities accounted for less than 20 percent of expenditures. Professors Ram Cnaan, Jill Sinha and Charlene McGrew researched the impact of religious organizations on community services in Philadelphia. They found that:

Congregations are highly involved in social service provision. Almost nine of every ten congregations, regardless of size and ethnic composition, are engaged in at least one social service provision. Often the service is quite modest—meeting the need of some twenty community residents...

They also asked congregations to self-report the percentage of their annual budget that they allocated to social services. Of the congregations that responded, the mean was 21.6%.

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162 See app.I, tbl. 7a and b.
163 Center on Philanthropy, supra note 138.
165 This is a very large topic of research. The point of this section is to give the reader an understanding of the potential ranges of church spending in this area.
167 Id.
168 Id. at 53.
170 Id. at 53.
171 Id. at 53.
Despite the consensus between Clotfelter’s estimate and Philadelphia study, other national studies have found churches to be nowhere near as generous.

For instance, Professor Mark Chaves found that although fifty-seven percent of congregations reported participation or support of social welfare activities,\(^{173}\) spending on such projects accounted for on average between two and four percent of the total budget of the congregation.\(^{174}\) He concludes that “[e]xpecting congregations to operate social service programs in large numbers is unrealistic since most do not currently operate such programs.”\(^{175}\) Similarly, Professor Mark Gergen, citing research showing that church demographics tend to be of the same race and income level, acknowledged that although churches engage in some distribution, mostly when “well-to-do people give to churches, their donations tend to benefit people like themselves and not the poor.”\(^{176}\)

Accepting the difficulty in calculating the percentage of church’s budgets spent on poverty relief, even using Clotfelter’s high twenty percent estimate, results in an eight percent increase in the percentage of the deductible donations allocated to direct poverty relief.\(^{177}\) Recapping, even though religion receives 35% of total giving in the United States, religion represents only 25% of the charitable deductible expenditure.\(^{178}\) Using the highest estimate (20%) of congregation poverty relief spending would add 5% to the 8% to equal a total amount of 13%.\(^{179}\) Using Professor Chavez’s 4% estimate results in a 1% increase.\(^{180}\)

Clearly, the lack of a consensus on the amount churches spend on direct assistance to poverty makes any conclusion from these figures difficult. What can be ascertained is that the amount that churches spend on these social programs is nebulous. Before politicians rely on these figures to justify the charitable deduction, the author calls on more research in this area.

\(^{172}\) Id. at 55. (the study does not state whether this was the mean of all self reported percentages or the mean of the total amount of giving against the total).

\(^{173}\) Professor Chavez defined social welfare activities as providing food, housing and homelessness services. Mark Chaves, Congregations’ Social Service Activities, in Charting Civil Society 2 (The Urban Inst./Ctr. On Nonprofits and Philanthropy, Wash., D.C. Dec. 1999).

\(^{174}\) Id. (Professor Chavez’ report does acknowledge that congregations do mobilize a volunteer workforce, which provides for poverty relief services at a low cost for the congregation). Id. at 2-3. See also Ellen P. Aprill, Churches, Politics, and the Charitable Contribution Deduction, 42 B.C. L. REV. 843, 865 (2001) (noting that in most cases the churches mainly provide benefit for members).

\(^{175}\) Id. at 4. Reverend Drew Smith looked at the accessibility of church programs in Indianapolis. His study found that there was a “lack of interaction between churches and low-income families . . . .” R. Drew Smith Churches and the Urban Poor: Interaction and Social Distance 62:3 SOCIOLGY OF RELIGION 301, 310-312 (2001). Thus, even though churches may provide and spend on these services, they may not be actually connecting with their intended recipients. Id.

\(^{176}\) Gergen, supra note 64 at 1441. See also Charles T. Clotfelter, Symposium: What is Charity? Implications for Law and Policy: Article: Tax-Induced Distortions in the Voluntary Sector, 39 Case W. Res. 663, 689 (1989) (“most contributions are directed to institutions geographically close to the donor.”).

\(^{177}\) See app.I, tbl. 9.

\(^{178}\) App.I, tbl. 9.

\(^{179}\) 25 divided by 100 and then multiplied by 20 equals 5.

\(^{180}\) 25 divided by 100 and then multiplied by 4 equals 1.
Part VI – A REVENUE NEUTRAL PROPOSAL

Reviewing the literature, there is considerable discussion regarding either eliminating, changing or capping the charitable deduction. The detractors note the upside down subsidy and this research will only fuel their concerns. However, the charitable deduction may be justifiable for the simple reason that taxpayers want it, including in its present form.

For this reason, this paper does not address the normative question of whether the deduction is equitable, which is well-addressed elsewhere. Instead, the paper proposes that the word charitable dupes many Americans into believing the deduction is spent elsewhere. By changing the name of § 170 to the qualified donation deduction this misunderstanding will be reduced. Further, it allows Congress to debate the merits of the provision, including each of its individual components, and to determine whether each subsection should continue to receive the benefits of a subsidy without fear of political backlash. In short, this paper advocates transparency. Only once taxpayers know how the charitable deduction subsidy is allocated can the code provision be justified on popular grounds.

This Part discusses the power of word association, and then articulates why Congress should rename the charitable deduction to the qualified donation deduction, while addressing some potential objections to this proposal.

A. The Importance of Labels

The importance of language, word association and labeling has been a subject of research for many years. This article does not attempt to address the complexity of this field, but instead highlights a few studies to instruct the reader. Within this field of study, researchers agree that language, and in particular labels, can have a large impact on behavior. For instance, in a seminal study by John Ridley Stroop, psychologists placed a card in front of participants with the word RED written in blue and asked the participants to state the color of the word. The study showed that participants’ reaction-time to saying blue was statistically significantly slower than control participants, and a higher number of participants said the word

182 Pozen, supra note 6 at 588.
183 See, e.g., Fleisher, supra note 64 at 28-34; Wiedenbeck, supra note 81 at 115 (suggesting that the deduction be replaced for a tax dollar for dollar tax credit).
red even though they knew the color to be blue. Similarly, psychologist Paul Rozin conducted an experiment where subjects watched a researcher pour sugar from a packet into two bottles of water. Researchers then asked the subjects to label one bottle “poison” and the other “sucrose.” Despite acknowledging the irrationality, subjects were reluctant to drink from the bottle that they labeled “poison.” Thus, even when the subjects themselves labeled the product, the effect of the label “poison” was sufficient to create hesitancy in the subjects, evidenced by their reluctance to drink from the bottle.

The word “charitable” in § 170 similarly labels the provision, and the associations inherent in the word may be obfuscating taxpayers’ understanding of where their taxes are being spent. Like the subjects in Rozin’s experiment, the public understands that the charitable deduction is just a label, and in this case, a label on a provision that covers more than direct poverty relief. Nevertheless, the label, just like the label on the bottle of water, distorts individuals’ perception of reality, thereby clouding taxpayers’ ability to accurately determine where the Tax Code allocates this subsidy.

B. The Proposal

To mitigate this labeling effect, this article proposes that § 170 be renamed the “Qualified Donation Deduction.” Eliminating the word charitable from the provision would reduce confusion that has existed from the moment Congress codified the statute. Further, it would reduce any misunderstanding of where the subsidy is allocated, allowing the American public to reach a better understanding of where their effective tax dollars are spent. If they disagree with current practice once it is labeled more accurately, they can pressure their Congressmen and women accordingly to promote the goods and services they believe should be subsidized.

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189 Id. See also Richard W. Pollay and T. Dewhirst, *The Dark Side of Marketing Seemingly “Light” Cigarettes: Successful Images and Failed Fact* 11 TOBACCO CONTROL i18, i29 (highlighting an example of labeling in the marketing of cigarettes. Marketers have described cigarettes in “technically meaningless, but seemingly virtuous descriptors like ‘Mild’, ‘Ultra’, ‘Light’ or ‘Super Light’” to encourage smokers to continue or take up smoking. This works even though consumers were to some degree savvy that there was a little health benefit in these products).
190 An interesting topic for further study would be to conduct a survey asking the sample to apportion percentages to where they believe the charitable deduction allocates the tax subsidy.
191 Admittedly, the word poison carries strong connotations, however, the impact of the word charitable should not be underestimated.
192 This is not the first time a provision has been renamed to enhance understanding. For instance, the Illinois Criminal Code renamed the “Fraudulent Schemes and Artifices” section to the “Mail and Wire Fraud” section to enhance clarity. See Governor James R. Thompson, Justice Gino DiVito, Peter G. Baroni, Kathy Saltmarsh, Daniel Mayerfeld, *Symposium: The Illinois Criminal Code of 2009: Providing Clarity in the Law*, 41 J. Mar. L. Rev. 81S, 865 (2008). See also Pub. L. No. 110-246, §§ 4001-4407, 2008 U.S.C.C.A.N (122 Stat.) 1651 (to be codified at 7 U.S.C. §§ 2011-2036). (“[o]nly the name of the Food Stamp Program is changing. SNAP is not a new Program. The name change will have no effect on [individual’s] benefits.”).
193 See supra Section II A.
Another potential benefit of renaming the statute is to rectify any misunderstanding of the potency of the charitable deduction in the effort to win the war against poverty. For instance, currently, some portions of society believe that government should not allocate more funding to welfare programs because private entities, subsidized by the charitable deduction, are in place to provide such services. Overestimating the effect of the charitable deduction might lead to the overestimation of the effect of these private organizations. Thus, once the electorate understands that only eight percent of the subsidy is spent on direct poverty relief, the American public might readjust their attitude towards other welfare programs. In other words, providing the public with this information could change their perception not just on the charitable deduction but also welfare spending. Rather than just tailoring the deduction to focus on the poverty relief organizations, individuals might believe that a better solution is to leave § 170 unchanged, and increase funding for government welfare programs. They could then express these views to Congress and campaign for reform.

Critics of this proposal may suggest that such a change would be too costly, would confuse the public in what is an already bewildering area of the law, or that the public is apathetic to the allocation of the deduction. This article addresses these objections in reverse order.

Americans are not apathetic about charitable giving. The United States consistently ranks as the most generous nation in the world, and Americans are rightly proud of this tradition. In 2006, the nonprofit sector accounted for about five percent of the United States gross domestic product, and as mentioned approximately 90 percent of households in the United States give to charities. The fact that Americans’ enthusiasm for charity extends not only to giving, but also to the charitable deduction, is evident from the attention President Obama’s proposed modifications to the deduction received. The proposed reduction received a flurry of media attention in the United States, and journalists’ reactions ranged from lambasting the proposal to

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197 National Philanthropic Trust, supra note 129.

cautious support. In short, Americans closely guard and care about the charitable deduction, the very opposite of apathy.

Renaming the deduction would not confuse the American public. Instead, it would clarify an existing practice. By better describing where the charitable deduction allocates the government subsidy any existing misperceptions regarding the effect of the provision would be reduced. Accordingly, renaming the provision would reduce rather than increase confusion.

Lastly, the proposal is costless. Under Congressional rules, any proposed changes of legislation must include an estimate of cost. This cost is calculated by comparing the revenue and outlays before the legislation against the revenue and outlays after the legislative change. This proposal affects neither revenues nor outlay, and thus would be “scored” as revenue neutral. Admittedly, some administrative changes would be required to adopt this provision. However, because of the evolving nature of the tax code, the IRS is accustomed to dealing with changes in tax law. Each year technical elements of the tax code change and these changes have to be advertised and explained to the taxpayer. Changing the name of § 170 could be incorporated into these yearly edits. Further, if Congress enacts President Obama’s proposal regarding itemized deductions then it would be a perfect opportunity to rename the provision.

None of the drawbacks outlined above, either alone or in conjunction, justify retaining § 170’s name. Changing the name to qualified donation deduction will mitigate individuals’ misplaced perceptions of where the charitable deduction is allocated, and the charitable deduction’s relationship to direct poverty relief efforts. This would allow the electorate to see whether their perception of how the charitable deduction ranks the different sectors within § 501(c)(3) matches the reality of the subsidy. If it does not, they can take action via the political process. For these reasons, the charitable deduction should be renamed the qualified donation deduction.

Part VII – CONCLUSION

A former chief economist at the U.S. Department of Labor stated that if any proposed amendments curtailing the charitable deduction passed, “the government would gain billions in tax revenue, but charities and others would lose. That would lessen the ability of charities to help

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199 Id.
201 JCT Estimates 2009-2013, supra note 20 at 23.
202 By apportionment of the subsidy.
203 Another key issue with the charitable deduction is also one of the most obvious. Scholars and politicians do not want to, or have not, engaged in an analysis of what “good,” in the charitable sector means. Fleisher, supra note 64, at 20 citing Colombo & Hall, supra note 56 (“while our society superficially agrees that certain ‘good activities’ are entitled to tax exemptions [and accompanying deductions], this superficial agreement masks considerable confusion over precisely what good activities qualify as charitable and why they are deserving of tax exemption.”). Even if there was a method of placing activities in a good category, that would not be the end of the analysis. Once an activity is classed as “good,” then some “good” will be more worthy of the subsidy than others. Simply put, no one wants to rank a charity’s goals and objectives.
It is these types of misleading assertions that this article hopes to address. The neediest receive only eight percent in direct assistance from the charitable deduction. High-income individuals contribute less as a percentage of their total giving to direct assistance of poverty organizations than their middle-and-low-income counterparts. To continue justifying the thirty-five percent deduction for high-income individuals under the assumption that it protects the neediest is a fallacy and to continue advertising it as such constitutes fraud. Renaming the charitable deduction to the qualified donation deduction makes this deception more difficult and allows the American public to decide, based on more informed information, where their tax dollars are spent.

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APPENDIX I

Figure 1. Percentage of Charitable Giving Subject to the Charitable Deduction by Income Level

205 Parisi, supra note 123 at 15 Tbl 1.
Figure 2. Amount of Charitable Giving Subject to the Charitable Deduction by Income Level\textsuperscript{206}

All figures in thousands of dollars.

\textsuperscript{206} Parisi, supra note 123 at 15 Tbl 1.
Figure 3. Number of Charitable Deduction Returns and Total Amount of Giving Subject to § 170, According to Income Level
### Table 2 - Number of Returns According to Status

<table>
<thead>
<tr>
<th>Total Number of Returns</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Head of Household</th>
<th>Surviving Spouse</th>
<th>Single</th>
</tr>
</thead>
<tbody>
<tr>
<td>142,978,806</td>
<td>54,065,030</td>
<td>2,730,935</td>
<td>21,169,039</td>
<td>86,923</td>
<td>64,926,879</td>
</tr>
<tr>
<td>%s</td>
<td>37.81%</td>
<td>1.91%</td>
<td>14.80%</td>
<td>0.06%</td>
<td>45.41%</td>
</tr>
</tbody>
</table>

Total Joint Returns = 52.62%
Total Single Returns = 47.38%

### Table 3. Tax Rate Brackets According to Filing Status in 2008

<table>
<thead>
<tr>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marginal Tax Brackets</td>
<td>Marginal Tax Brackets</td>
<td>Marginal Tax Brackets</td>
<td>Marginal Tax Brackets</td>
</tr>
<tr>
<td>Tax Rate Range</td>
<td>Tax Rate Range</td>
<td>Tax Rate Range</td>
<td>Tax Rate Range</td>
</tr>
<tr>
<td>10%</td>
<td>0-16,050</td>
<td>10% 0-8,025</td>
<td>10% 0-8,025</td>
</tr>
<tr>
<td>15%</td>
<td>16,051 – 65,100</td>
<td>15% 8,026 – 32,550</td>
<td>15% 8,026 – 32,550</td>
</tr>
<tr>
<td>28%</td>
<td>131,451 – 200,300</td>
<td>28% 65,726 – 100,150</td>
<td>28% 78,851 – 164,550</td>
</tr>
<tr>
<td>33%</td>
<td>200,301 – 357,700</td>
<td>33% 100,151 – 178,850</td>
<td>33% 164,551 – 357,700</td>
</tr>
<tr>
<td>35%</td>
<td>357,701+</td>
<td>35% 178,851+</td>
<td>35% 357,701+</td>
</tr>
</tbody>
</table>

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207 SOI Tax Stats, supra note 125.
Table 4. Highest Tax Rate Brackets According to Income Level from Figure 1 in 2008

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $15k</td>
<td>10%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>$15-30k</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>$30–50k</td>
<td>15%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>$50-100k</td>
<td>25%</td>
<td>28%</td>
<td>28%</td>
<td>25%</td>
</tr>
<tr>
<td>$100-200k</td>
<td>28%</td>
<td>33%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>$200–250k</td>
<td>33%</td>
<td>35%</td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td>$250+</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
</tr>
</tbody>
</table>

Table 5. Total Number of Returns and Total Amount Donated

(All figures are in thousands of dollars)

<table>
<thead>
<tr>
<th>Category</th>
<th>Number of Returns</th>
<th>Total Amount Donated</th>
<th>Dollar Amount per Return</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under $15,000</td>
<td>1,139,605.00</td>
<td>$1,527,957.00</td>
<td>$1.34</td>
</tr>
<tr>
<td>$15,000 - under $30,000</td>
<td>2,732,665.00</td>
<td>$5,530,118.00</td>
<td>$2.02</td>
</tr>
<tr>
<td>$30,000 - under $50,000</td>
<td>5,876,730.00</td>
<td>$12,863,772.00</td>
<td>$2.19</td>
</tr>
<tr>
<td>$50,000 - under $100,000</td>
<td>14,804,523.00</td>
<td>$39,872,929.00</td>
<td>$2.69</td>
</tr>
<tr>
<td>$100,000 - under $200,000</td>
<td>10,755,712.00</td>
<td>$40,412,344.00</td>
<td>$3.76</td>
</tr>
<tr>
<td>$200,000 - under $250,000</td>
<td>1,347,292.00</td>
<td>$7,941,807.00</td>
<td>$5.89</td>
</tr>
<tr>
<td>$250,000 or more</td>
<td>2,566,701.00</td>
<td>$53,720,835.00</td>
<td>$20.93</td>
</tr>
<tr>
<td>TOTAL</td>
<td>39,223,228.00</td>
<td>$161,869,762.00</td>
<td>$4.13</td>
</tr>
</tbody>
</table>

Amount Donated to Charity Subject to s170 $161,869,762
Total Amount Donated To Charity $307,650,000.00
Percentage 52.61

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210 Parisi, supra note 123 at 15 Tbl. 1.
Table 6. Percentage Amounts in Income Tax Brackets According to Filing Status

a. Low Tax Bracket

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Amount in</td>
<td>Low Tax Bracket</td>
<td>% Amount in that tax</td>
<td>Low Tax</td>
<td>% Amount in that tax</td>
</tr>
<tr>
<td>Filing Status</td>
<td>Bracket</td>
<td>that tax bracket</td>
<td>Bracket</td>
<td>tax bracket</td>
</tr>
<tr>
<td>&lt; $15k</td>
<td>0%</td>
<td>0%</td>
<td>10%</td>
<td>54%</td>
</tr>
<tr>
<td>$15-30k</td>
<td>10%</td>
<td>2%</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>$30-50k</td>
<td>10%</td>
<td>0%</td>
<td>15%</td>
<td>8%</td>
</tr>
<tr>
<td>$50-100k</td>
<td>15%</td>
<td>19%</td>
<td>25%</td>
<td>31%</td>
</tr>
<tr>
<td>$100-200k</td>
<td>25%</td>
<td>31%</td>
<td>28%</td>
<td>0%</td>
</tr>
<tr>
<td>$200-250k</td>
<td>33%</td>
<td>0%</td>
<td>33%</td>
<td>0%</td>
</tr>
<tr>
<td>$250+</td>
<td>33%</td>
<td>0%</td>
<td>33%</td>
<td>0%</td>
</tr>
</tbody>
</table>
### High Tax Bracket

<table>
<thead>
<tr>
<th>% Amount in Filing Status</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Tax Bracket</td>
<td>% Amount in that tax bracket</td>
<td>% Amount in that tax bracket</td>
<td>% Amount in that tax bracket</td>
<td>% Amount in that tax bracket</td>
</tr>
<tr>
<td>&lt; $15k</td>
<td>10%</td>
<td>100%</td>
<td>15%</td>
<td>47%</td>
</tr>
<tr>
<td>$15-30k</td>
<td>15%</td>
<td>98%</td>
<td>15%</td>
<td>100%</td>
</tr>
<tr>
<td>$30-50k</td>
<td>15%</td>
<td>100%</td>
<td>25%</td>
<td>92%</td>
</tr>
<tr>
<td>$50-100k</td>
<td>25%</td>
<td>81%</td>
<td>28%</td>
<td>69%</td>
</tr>
<tr>
<td>$100-200k</td>
<td>28%</td>
<td>69%</td>
<td>35%</td>
<td>22%</td>
</tr>
<tr>
<td>$200-250k</td>
<td>33%</td>
<td>100%</td>
<td>35%</td>
<td>100%</td>
</tr>
<tr>
<td>$250+</td>
<td>35%</td>
<td>100%</td>
<td>35%</td>
<td>100%</td>
</tr>
</tbody>
</table>
c. **Mid Tax Bracket**
0 in a column means that there was no mid tax bracket.

<table>
<thead>
<tr>
<th>Low Tax Bracket</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
</tr>
</thead>
<tbody>
<tr>
<td>% Amount in that tax bracket</td>
<td>37.81%</td>
<td>1.91%</td>
<td>45.41%</td>
<td>14.8%</td>
</tr>
<tr>
<td>% Amount in Filing Status</td>
<td>37.81%</td>
<td>1.91%</td>
<td>45.41%</td>
<td>14.8%</td>
</tr>
<tr>
<td>&lt; $15k</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>$15-30k</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>$30-50k</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>$50-100k</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>$100-200k</td>
<td>0</td>
<td>33%</td>
<td>79%</td>
<td>0</td>
</tr>
<tr>
<td>$200-250k</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>$250+</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Table 7. Total Amount of Deduction Multiplied by Tax Bracket Rates

a. Maximum Tax Bracket Allowance

<table>
<thead>
<tr>
<th>(all figures are in thousands of dollars)</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $15k</td>
<td>$57,772.05</td>
<td>$4,377.60</td>
<td>$104,076.79</td>
<td>$33,920.65</td>
<td>$200,147.09</td>
</tr>
<tr>
<td>$15-30k</td>
<td>$313,640.64</td>
<td>$15,843.79</td>
<td>$376,683.99</td>
<td>$122,768.62</td>
<td>$828,937.04</td>
</tr>
<tr>
<td>$30-50k</td>
<td>$729,568.83</td>
<td>$61,424.51</td>
<td>$1,460,359.72</td>
<td>$475,959.56</td>
<td>$2,727,312.62</td>
</tr>
<tr>
<td>$50-100k</td>
<td>$3,768,988.61</td>
<td>$213,240.42</td>
<td>$5,069,763.18</td>
<td>$1,475,298.37</td>
<td>$10,527,290.59</td>
</tr>
<tr>
<td>$100-200k</td>
<td>$4,278,374.03</td>
<td>$270,156.52</td>
<td>$6,055,910.99</td>
<td>$1,973,738.88</td>
<td>$12,578,180.42</td>
</tr>
<tr>
<td>$200-250k</td>
<td>$990,923.08</td>
<td>$53,090.98</td>
<td>$1,190,103.60</td>
<td>$387,877.85</td>
<td>$2,621,995.52</td>
</tr>
<tr>
<td>$250+</td>
<td>$7,109,146.70</td>
<td>$359,123.78</td>
<td>$8,538,120.91</td>
<td>$2,782,739.25</td>
<td>$18,789,130.65</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$17,248,413.96</strong></td>
<td><strong>$977,257.60</strong></td>
<td><strong>$22,795,019.17</strong></td>
<td><strong>$7,252,303.19</strong></td>
<td><strong>$48,272,993.92</strong></td>
</tr>
</tbody>
</table>

(all figures are in thousands of dollars)
### b. Tax Bracket Allowance

<table>
<thead>
<tr>
<th>(all figures are in thousands of dollars)</th>
<th>Married Filing Jointly</th>
<th>Married Filing Separately</th>
<th>Single</th>
<th>Head of Household</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $15k</td>
<td>$57,772.05</td>
<td>$3,596.93</td>
<td>$85,516.43</td>
<td>$25,290.10</td>
<td>$172,175.51</td>
</tr>
<tr>
<td>$15-30k</td>
<td>$311,549.70</td>
<td>$15,843.79</td>
<td>$376,683.99</td>
<td>$122,768.62</td>
<td>$826,846.10</td>
</tr>
<tr>
<td>$30-50k</td>
<td>$729,568.83</td>
<td>$59,458.93</td>
<td>$1,429,400.09</td>
<td>$444,355.85</td>
<td>$2,662,783.70</td>
</tr>
<tr>
<td>$50-100k</td>
<td>$3,488,575.86</td>
<td>$206,066.41</td>
<td>$4,932,879.57</td>
<td>$1,475,298.37</td>
<td>$10,102,820.21</td>
</tr>
<tr>
<td>$100-200k</td>
<td>$4,134,437.31</td>
<td>$258,871.70</td>
<td>$5,464,083.32</td>
<td>$536,767.26</td>
<td>$10,394,159.59</td>
</tr>
<tr>
<td>$200-250k</td>
<td>$990,923.08</td>
<td>$53,090.98</td>
<td>$1,190,103.60</td>
<td>$387,877.85</td>
<td>$2,621,995.52</td>
</tr>
<tr>
<td>$250+</td>
<td>$7,109,146.70</td>
<td>$359,123.78</td>
<td>$8,538,120.91</td>
<td>$2,782,739.25</td>
<td>$18,789,130.65</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$16,821,973.54</td>
<td>$956,052.51</td>
<td>$22,016,787.91</td>
<td>$5,775,097.31</td>
<td>$45,569,911.27</td>
</tr>
</tbody>
</table>

Total: $45,569,911.27
Table 8. Total Amount Subject to § 170 Multiplied by Percentage Amount Donated to Charities that Directly Relieve Poverty

<table>
<thead>
<tr>
<th>(all figures are in thousands of dollars)</th>
<th>Percentage Amount Donated to Charities that Directly Relieve Poverty</th>
<th>Percentage Donated to Poverty Relief Charities times Maximum Amount Deducted According to Income Level</th>
<th>Percentage Donated to Poverty Relief Charities times Amount Deducted According to Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $15k</td>
<td>10.40%</td>
<td>$20,815.30</td>
<td>$17,906.25</td>
</tr>
<tr>
<td>$15-30k</td>
<td>10.40%</td>
<td>$86,209.45</td>
<td>$85,991.99</td>
</tr>
<tr>
<td>$30-50k</td>
<td>10.40%</td>
<td>$283,640.51</td>
<td>$276,929.50</td>
</tr>
<tr>
<td>$50-100k</td>
<td>10.40%</td>
<td>$1,094,838.22</td>
<td>$1,050,693.30</td>
</tr>
<tr>
<td>$100-200k</td>
<td>12.40%</td>
<td>$1,559,694.37</td>
<td>$1,288,875.79</td>
</tr>
<tr>
<td>$200-250k</td>
<td>5.80%</td>
<td>$152,075.74</td>
<td>$152,075.74</td>
</tr>
<tr>
<td>$250+</td>
<td>3.80%</td>
<td>$713,986.96</td>
<td>$713,986.96</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>8.10%</strong></td>
<td><strong>$3,911,260.56</strong></td>
<td><strong>$3,586,459.55</strong></td>
</tr>
<tr>
<td><strong>Percentage of total § 160 subsidy</strong></td>
<td></td>
<td><strong>8.10%</strong></td>
<td><strong>7.87%</strong></td>
</tr>
</tbody>
</table>

211 The Indiana Study and the Preliminary Data have matching income ranges up to the two hundred thousand dollars. Above two hundred thousand the Indiana Study breaks the income brackets into $200 - $1 million and one million plus. The preliminary data breaks down their result into two income ranges $200-250 and $250 and above. To our knowledge, no other recent study has subdivided the breakdown of charitable giving according to income level. Thus, although the income ranges do not exactly match, (this study pairs $200-1 million percentages with the $200-250 figures and the 1 million plus percentages with the $250 plus figures) the effect of these simplifications is the overestimation of the subsidy received by the charitable deduction. Even with this inbuilt error margin, the percentage of the subsidy remains below 9%. 
Table 9. Total Amount Subject to § 170 Multiplied by Percentage Amount Donated to Religion

<table>
<thead>
<tr>
<th>(all figures are in thousands of dollars)</th>
<th>Percentage amount donated to religion</th>
<th>Percentage Donated to Religion times Maximum Amount Deducted According to Income Level</th>
<th>Percentage Donated to Religion times Amount Deducted According to Income Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; $15k</td>
<td>66.70%</td>
<td>$133,498.11</td>
<td>$114,841.07</td>
</tr>
<tr>
<td>$15-30k</td>
<td>66.70%</td>
<td>$552,901.00</td>
<td>$551,506.35</td>
</tr>
<tr>
<td>$30-50k</td>
<td>66.70%</td>
<td>$1,819,117.52</td>
<td>$1,776,076.72</td>
</tr>
<tr>
<td>$50-100k</td>
<td>66.70%</td>
<td>$7,021,702.82</td>
<td>$6,738,581.08</td>
</tr>
<tr>
<td>$100-200k</td>
<td>57.30%</td>
<td>$7,207,297.38</td>
<td>$5,955,853.44</td>
</tr>
<tr>
<td>$200-250k</td>
<td>23%</td>
<td>$603,058.97</td>
<td>$603,058.97</td>
</tr>
<tr>
<td>$250+</td>
<td>16.90%</td>
<td>$3,175,363.08</td>
<td>$3,175,363.08</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td><strong>$20,512,938.88</strong></td>
<td><strong>$18,915,280.71</strong></td>
</tr>
<tr>
<td>Percentage of total § 160 subsidy</td>
<td></td>
<td>42.49%</td>
<td>41.51%</td>
</tr>
</tbody>
</table>
APPENDIX II

This informal study looks at the amount of attention Congress gave to debating the merits of the charitable deduction in 2009. Although it does suffer from one main methodological drawback in that the author both wrote the code for determining the classification and then subsequently did the coding, it is still valuable to illustrate the large disparity in Congress speech when discussing the charitable deduction on the floor. This section briefly explains the methodology of the study.

First, I conducted a search on Thomas: Congressional Records using the terms “Charitable Deduction” and “Charitable Contribution.” This resulted in 140 documents that possessed either of these search terms. Within these 140 documents, 16 contained a discussion of the merits of the charitable deduction. Whenever a Congress-member discussed the deduction, I categorized their justification for the deduction into one of five categories: Church, Poverty Relief, Disaster / War Relief, Education and Other. Even one word about poverty relief was sufficient to count in the applicable category. For instance, if a Congress-member stated that “this would aid in poverty relief,” then the entire sentence would be placed in the poverty relief category. To calculate the number of words, I counted all the words in the Congress-member’s sentence when discussing one of the categories listed above. If a Congress-member simultaneously used two categories then I included them under both categories. For example, if a Congress-member discussed the role of Churches and Charities in providing help to the poor and hungry, I included the amount of words in both Poverty Relief and Church. The results are displayed below.

<table>
<thead>
<tr>
<th>Congressman</th>
<th>House</th>
<th>Date</th>
<th>Church</th>
<th>Poverty Relief</th>
<th>Disaster / War Relief</th>
<th>Health</th>
<th>Education</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burton (R In)</td>
<td>Rep</td>
<td>Mar. 03, 2009</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Pitts (R Pa)</td>
<td>Rep</td>
<td>Mar. 04, 2009</td>
<td>49</td>
<td>126</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Burton (R In)</td>
<td>Rep</td>
<td>Mar. 05, 2009</td>
<td>2</td>
<td>47</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Burton (R In)</td>
<td>Rep</td>
<td>Mar. 09, 2009</td>
<td>0</td>
<td>173</td>
<td>173</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bachmann</td>
<td>Rep</td>
<td>Mar. 10, 2009</td>
<td>22</td>
<td>85</td>
<td>0</td>
<td>19</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Poe (R Tx)</td>
<td>Rep</td>
<td>Mar. 11, 2009</td>
<td>1</td>
<td>12</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Mitchell (R Az)</td>
<td>Rep</td>
<td>Mar. 12, 2009</td>
<td>0</td>
<td>0</td>
<td>65</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ensign (R Nev)</td>
<td>Sen</td>
<td>Mar. 12, 2009</td>
<td>2</td>
<td>65</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Burton (R In)</td>
<td>Rep</td>
<td>Mar. 12, 2009</td>
<td>0</td>
<td>59</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>McConnel (R Ky)</td>
<td>Sen</td>
<td>Mar. 16, 2009</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>4</td>
<td>5</td>
<td>75</td>
</tr>
<tr>
<td>Alexander (R Tenn)</td>
<td>Sen</td>
<td>Mar. 16, 2009</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>74</td>
<td>16</td>
</tr>
<tr>
<td>McConnel (R Ky)</td>
<td>Sen</td>
<td>Mar. 19, 2009</td>
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<td>4</td>
<td>193</td>
<td>0</td>
</tr>
<tr>
<td>Ensign (R Nev)</td>
<td>Sen</td>
<td>Mar. 19, 2009</td>
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<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Corynn (R Tx)</td>
<td>Sen</td>
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<td>0</td>
<td>71</td>
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<tr>
<td>Thune (R SD)</td>
<td>Sen</td>
<td>Mar. 25, 2010</td>
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<td>0</td>
<td>0</td>
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<tr>
<td>Bilirakis (R Fla)</td>
<td>Rep</td>
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<td>0</td>
<td>0</td>
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<td>0</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>--------</td>
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<td>---------</td>
<td>---------</td>
<td>---------</td>
<td>---------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>92</td>
<td>633</td>
<td>242</td>
<td>31</td>
<td>344</td>
<td>106</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PERCENTAGE</td>
<td>6.4</td>
<td>43.7</td>
<td>16.7</td>
<td>2.1</td>
<td>23.8</td>
<td>7.3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>