

drus, who won the governorship of Idaho in a contest dominated by environmental issues. For example, Paul S. Sarbanes received \$8,000 for his successful campaign in the Democratic primary against George H. Fallon of Maryland, chairman of the House Public Works Committee and friend of the "highway lobby"; Sarbanes then went on to win in the general election. In Florida, Lawton Chiles, who defeated William C. Cramer in the contest for

the Senate, received financial support from the national league through the Florida League of Conservation Voters. The environmental issue was significant in Florida, where an aroused conservation constituency has developed over such questions as the Miami jetport, the Cross Florida Barge Canal, and the siting of a power plant on Biscayne Bay.

Marion Edey, the young woman who directs the League of Conserva-

tion Voters, says that hundreds of letters were received from candidates purporting to "love the environment" and seeking league endorsements, which were given out sparingly. Environmental Action, Inc., a group formed by students and other young people, put out a list of House incumbents called "The Dirty Dozen." Of the dozen, five were defeated and a sixth was running behind with absentee ballots still to be counted.—LUTHER J. CARTER

Tax-Exempt Litigation: IRS Curbs Draw Widespread Opposition

Despite an abundance of opposition and a dearth of support, the Internal Revenue Service is continuing its investigation of the tax-exempt status of charitable organizations that litigate on public issues. Until recently only the civil rights movement brought suits on behalf of large segments of the population, but in the past few years litigation initiated by environmental and consumer groups has given citizens a voice in decisions which had been the prerogative of industry and government.* While IRS officials insist that new regulations are necessary because of the recent proliferation of groups litigating in the public interest, many opponents of the IRS action see the investigation as an attempt by the Nixon Administration to curtail lawsuits that protect the environment or the consumer at the expense of private business.

IRS concern with tax-exempt litigation came to light last February when the newly founded National Resources Defense Council (NRDC) applied for tax-exempt status to litigate in environmental matters. IRS ruled that NRDC would be exempted from tax only if it refrained from litigation. After NRDC lawyers pushed for a clarification, IRS announced on 9 October that it was investigating the tax-exempt status of all organizations "which litigate or support litigation for

what they determine to be the public good in some chosen area of national interest."

The final IRS decision, due by 9 December, could affect such diverse groups as the National Audubon Society, the Center for Law and Social Policy, the NAACP Legal Defense Fund, and the Environmental Defense Fund.

For these and similar groups the IRS decision is crucial since groups denied tax-exempt status by the IRS might encounter financial difficulties, particularly if a large part of their income is donated by tax-exempt foundations. Contributions to a nonexempt group are not deductible, and tax-exempt

foundations are prohibited from supporting activities declared noncharitable by the IRS.

Although this IRS investigation is one of a series of crackdowns on tax-exempt activity, which included the withdrawal of tax-exempt status from the Sierra Club, the issues raised here are separate and revolve around two questions:

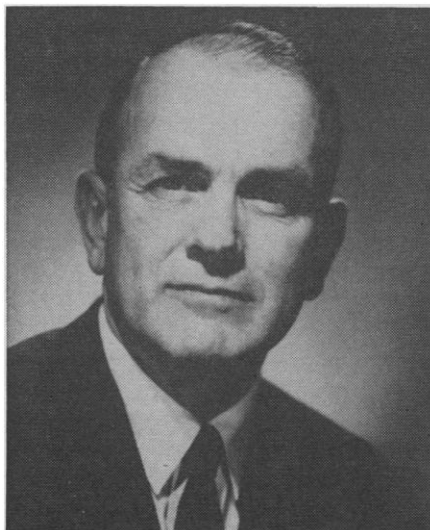
1) Are groups interested in new areas of popular concern, such as environmental and consumer protection, entitled to tax-exempt status as charitable organizations? Until now, such groups have been granted tax-exempt status as educational organizations.

2) May an organization with goals accepted as charitable by the IRS use litigation as a means to further these goals?

If IRS is, in fact, attempting to eliminate litigation which is unpopular with business interests, it is attempting delicate legal surgery, since both questions overlap areas which IRS has stated it does not want to affect. The distinctions that IRS has made so far suggest that the decision to regulate a certain type of activity is being followed by a search for justifications.

In the 9 October announcement IRS distinguished between groups which litigate broadly in the public interest and those acting on behalf of poor or underprivileged persons, declaring that those acting for the poor would not be affected. Both types of groups, however, have initiated similar environmental and consumer lawsuits, and any argument which IRS offers that litigation in the public interest is an improper tax-exempt activity would apply to both groups. (In a communication to NRDC, IRS declared that "litigation is a coercive activity, like boycotts, picketing, demonstrations, and disruptive protests and therefore should not be charitable.")

Another distinction offered in the



Randolph W. Thrower, Commissioner, Internal Revenue Service

* See "Conservation Law I: Seeking a Breakthrough in the Courts" (*Science*, 19 December 1969) and "Conservation Law II: Scientists Play a Key Role in Court Suits" (*Science*, 26 December 1969).

IRS announcement is between public interest law firms, such as the Environmental Defense Fund, which do little besides litigate, and traditional organizations that perform educational functions in such areas as conservation; here too the boundaries are vague. Many organizations educate and litigate, while public interest law firms often initiate suits on behalf of traditional conservation groups which supply the funds. These difficulties of legal surgery along with the manner in which IRS suddenly announced its concern with tax-exempt litigation have scared some foundations into withholding funds until the investigation has been completed and have led to the speculation that someone in the Nixon Administration pressured IRS into an immediate crackdown.

IRS Commissioner Randolph W. Thrower denies any outside influence or prejudice in the IRS investigation. In an interview with *Science*, Thrower stressed public interest as the primary IRS concern. He cited an example where two groups might go to court, one opposed to the construction of a highway in a certain location for ecological reasons and the other urging construction of the highway in that location to protect the ecology in another area. "Would it be correct," Thrower asks, "if the government supports by tax benefits two opposing groups each claiming to be acting in the public interest?"

Thrower's critics contend that IRS has no business defining the public's interests. Senator Sam J. Ervin (D-N.C.), in a letter to Thrower, says that IRS concern with public interest is "an assertion by the IRS of the power to impose its views on what is in the public interest, a power to decide which of the competing views of public policy is entitled to expression." Ervin goes on, "The government should do all within its power to encourage the fullest expression of all viewpoints on issues of public concern. . . ." Mitchell Rogovin, a former General Counsel of the IRS, points out that any stand on what is in the public interest will always offend someone. "IRS would better serve the country," he maintains, "by collecting revenue than by raising questions which cannot be answered."

Both publicly and privately IRS has issued assurances to various civil rights and environmental groups that their activities will not be impaired. These assurances have only increased the

Nader Colonizing Campuses

Ralph Nader and some of his associates are organizing new public interest legal groups to be financed and directed by students at various campuses. Designed to give students a more effective voice in matters of public concern, the new groups will be staffed by professionals, such as lawyers and ecologists, but will be managed by an elected board of student directors. The organizers see the groups' functions primarily as public interest litigation and Nader-style research and publicity. After the groups get started, however, they will have no connection with Nader, and their course of action will be decided by the student directors.

A pilot project, the Oregon Public Interest Research Group (OPIRG), was initiated by two Nader associates, Donald Ross and James Welch, after Nader addressed the students at Oregon State, Portland State, Lewis and Clark, Willamette, and the University of Oregon. Students at each of the five campuses are holding referenda this month on whether to tax themselves \$1 each quarter to finance OPIRG. If the measure passes at all five institutions, OPIRG will have an initial income of \$150,000 per year; students at each campus will elect two representatives to OPIRG's board of directors.

Ross and Welch offer student public interest groups as one means of breaking out of the cyclical rhythm of vacations and examinations, which has been a traditional part of student political activity. They hope that the groups will concentrate on issues for which there is a broad consensus, such as environment or consumer protection, and will thus avoid bickering and factionalism, which has often characterized student politics.—R.J.B.

confusion surrounding the IRS investigation, and the magnitude of the opposition would seem to indicate that few groups feel secure. Consumer, legal assistance, civil rights, and conservation groups, both old and new, have joined in opposing the IRS action. Several members of Congress in addition to Senator Ervin have publicly denounced the IRS action; notable among them are House minority leader Representative Gerald Ford (R-Mich.) and Senator Gaylord Nelson (D-Wis.) whose Subcommittee on Employment, Manpower, and Poverty will conduct hearings on the matter 16 and 17 November. Senator Nelson's primary concern is the effect of the IRS action on legal aid programs for the poor, but all aspects of the controversy will likely be discussed, with testimony expected from Thrower along with representatives of various organizations affected by the IRS action.

Although President Nixon has remained silent, some members of his Administration have criticized the IRS action. In his first speech as chairman of the new Environmental Protection Agency, William D. Ruckelshaus declared, "The past and present accomplishments of public interest law firms

have been profound." Nixon's Consumer Advisory Council concluded that "the elimination of these tax-exemptions would have a vast, detrimental effect upon our society." Protests also came from Nixon's Assistant for Consumer Affairs, Mrs. Virginia H. Knauer, and from Russell E. Train, chairman of the President's Council on Environmental Quality. These statements underscore the apparent conflict between the Administration's strong stand on environmental protection and the IRS action. In his February 1970 message to Congress on the environment, Nixon declared, "The tasks that need doing require money, resolve, and ingenuity—and they are too big to be done by government alone."

The IRS action, however, comes as no surprise to some environmentalists who have detected government displeasure with their court action in the past. Malcolm Baldwin, counsel for the Conservation Foundation and an expert on environmental law, notes that, in almost every case where a citizens' group has attempted to bring court action against the government in environmental matters, the government has tried to deny the group's standing in court.—ROBERT J. BAZELL