11-12-74 W Post

Review of Corrupt Practices Act Set

By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court agreed yesterday to hear a challenge to the constitutionality of the federal Corrupt Practices Act, which forbids political contributions from corporate or union treasuries.

A challenge to the law as an abridgment of free speech and political expression was taken to the court by Bethlehem Steel Corp. and board chairman Stewart S. Cort, who face a civil suit charging them with unlawful giving to aid the 1972 Nixon campaign.

In another case with major political consequences, the court heard arguments on the power of political parties to control delegate seating at national conventions when states assert the right to declare who shall represent voters in choosing a candidate for President.

The campaign financing case may not lead to a long-awaited showdown on the corporate-labor spending issue because the justices could throw out the Bethlehem civil suit raising the issue on other grounds.

A divided federal court of appeals in Philadelphia has held that the election law, which specifies only criminal penalties for infractions, also can be the basis for civil suits by stockholders against corporations that allegedly give corporate money illegially.

One such suit was filed by Richard A. Ash, a Philadelphia lawyer and Democrat who owns 50 shares of Bethlehem stock. A district judge dismissed the suit but the appellate court reinstated it, saying Congress meant to protect persons like Ash by giving him civil redress as well as by making corporate giving a crime.

The appellate ruling is a form of judge-created relief that the high court itself has approved in some recent cases. But the company has told the justices that their own 1973 ruling in another case should have "put the brakes on" judges who discover civil remedies not specified by Congress.

If the lower court is correct about the right to a civil suit, the company has told the justices then Ash's case confronts them directly with th constitutional issue.

The 1925 corrupt practices law, re-enacted in the campaign spending amendments of 1971, has been questioned sharply by several members of the court over the years. Four justices were prepared to strike it down in a union case in 1948. Three justices, of whom only William O. Douglas survives, condemned it in 1957. The court specifically left the question open in a 1972 decision involving the pipefitters union.

Ash invoked the law in a suit charging that a company advertisement and mailing to shareholders was a Nixon endorsement thinly disguised as a defense of large corporations from an attack by an "unnamed political candidate."

Democratic nominee George McGovern had charged that big companies failed to carry their fair share of the tax burden. Without naming McGovern, Bethlehem reacted with a call to 'keep the campaign honest, mobilize truth squads."

Cort told stockholders, "Please think twice before swallowing all of this baloney about large corporations not carrying their fair share of the tax burden."

According to the company, if that amounts to electioneering or expenditures on behalf of a candidate, the law sweeps far too broadly across the rights of individuals to associate and express themselves in politics.

Ash pleaded with the court to deny review of the case at this pretrial stage and consider the issues later on the basis of a complete trial record. But the court's action yesterday signifies that at least four justices doubt that such a trial should take place.

The McGovern campaign also stirred the dispute in the political party case heard yesterday. The case pits the 1972 convention delegation suporting McGovern against delegates led by Chicago Mayor Richard J. Daley.

Defying state court orders, the McGovernites participated as Illinois delegates in the convention under party reform rules that disqualified the Daley slate as unrepresentative of minorities, women and young voters. Under review is a court order calling for a contempt trial of the McGovern supporters.

Justice William J. Brennan Jr. told the lawyers, "I thought this case was moot. Maybe I hoped so." McGovern lawyer Wayne W. Whalen said the issue was "continuing and recurring." Brennan, a Democrat appointed by President Eisenhower, replied, "With the Democrats, I'm not surprised."

Jerome H. Torshen, attorney for the Daley forces, told the court it would be better for Illinois to have no representatives at the national conventions than to have delegates named by the party to replace those elected at the polls in the state.