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Opponents Say Campaign Law Intrudes on Voting

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WASHINGTON, June 2—Opponents of the new Federal campaign financing law charged today that it constitutes "a massive, unprecedented intrusion" into the political process that "strikes at the heart of democratic self-government."

The challengers, including Senator James L. Buckley, Conservative-Republican of New York, and former Senator Eugene J. McCarthy, Democrat of Minnesota, made a sweeping attack on virtually every provision of the law in a brief filed before the United States Court of Appeals here.

In response, the Justice Department and other parties entered a general defense of the far-ranging statue, which would, if upheld, revolutionize the conduct of American political campaigns in an effort to prevent the recurrence of Watergate and other abuses.

But the Justice Department also appeared to concede, in a separate brief, that a key provision of the law—that establishing a Federal Elections Commission to oversee its enforcement—might be constitutionally untenable.

The commission is composed of six members, four of whom are nominated by congress and two by the President. Among other things, the commission is given the right to seek civil injunctions — a law-enforcement function that, the challengers argue, is restricted to the executive branch and therefore improper for the commission.

In its second brief, the Justice Department asserts that the question need not be decided at this point.

It adds, however, that if the court should conclude that the issue is "ripe,' the provisions of the law "which provide for the appointment of the Federal Election Commission and which purport to vest in the commission executive powers reserved by the Constitution to the President appear to violate the constitutional separaion of powers.'

Although the commission filed papers defending its right to exercise full powers, the unusual action by the Attorney General, who for a time had considered refusing to defend the law, appeared to weaken its chances for total survival.

If the commission were declared unconstitutional and other portions of the law upheld, new Congressional action to provide an enforcement mechanism would be required—required, in all probability, at a time when the 1976 election campaign will be well under way in many states.

Oral arguments in the case are scheduled for June 13 before the Court of Appeals, with eight of nine judges sitting as a group. Participants in the case hope for a decision in late July or early August. An appeal to the Supreme Court will follow, and no decision there is likely until at least December. The first Presidential primary will probably take place in New Ham shire in late February.

Defending the law in an intervening brief, a group of supporters of the legislation conceded that in attempting to remedy "the evils that flow fromm excessive campaign giv and spending"—evils, it said, that Watergate confirmed "beyond the point of surfeit"—Congress touched upon "rights and values" embodied in the First Amendment and other portions of the Constitution.

But, the supporters contended, the new law on balance "fundamentally promotes rather than impairs First Amendment and other constitutional values." Their brief added:

"The Constitution is.mot an instrument for lts own subversion. It does not condemn the nation to contlnue suffering old abuses that reached new extremes in the 1972 campaign."

At least six broad questions are raised in the challengers' suit, which is expected by legal scholars to produce one of the significant Supreme Courtopi-t nions of recent decades. In summary form, they are the following:

DISCLOSURE

The law's requirement for full disclosure of contributions is too broad, the challengers argue; such disclosure "may be required only of those contributors who may seek to influence government action unlawfully." In reply, the defenders argue that "nothing but speculation supports plaintiffs' suggestion that disclosure will 'chill' contributions."

CONTRIBUTION LIMITS

The law's opponents vigorously challenge its limitations on individual contributions to campaigns, contending that because "every effective method of political communication requires the expenditure of money, to limit the expenditure is to restrict the communication" in violation of the First Amendment. Citing the Hatch Act and other legislation as

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earlier restrictions on political activity, the defenders argue that contribution limits "are plainly essential if we are to moderate the undue influence of large contributors on candidates."

INDEPENDENT EXPENDITURES

Under the law, no person nay make an independent expenditure of more than $1,000 on behalf of a candidate—a 'stifling of the roles of individual citizens and independent groups," the challengers say, hat is "patently unconstitutional." The law's supporters describe this provision as "a necessary and constitutionally permissible limitation to prevent wholesale evasion of contribution and expenditure limits."

EXPENDITURE CEILINGS

Limitations on the amounts Federal candidates may spend, according to the plaintiffs' brief, serve "no compelling government interest" and "discriminate" against those challenging incumbents. "In only a small fraction of the 1972 and 1974 Congressional races did one or both candidates exceed the spending limits set forth in

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the new laws," the defendants respond. "The Presidential limits were exceeded in 1972—but that was the single campaign whose excesses most shocked the nation."

PUBLIC FINANCING

Public financing of Presidential elections, the challengers argue, discriminates against minor parties and independent candidates, in effect establishing the major parties as the preferred parties. Different treatment for minor and new parties is a matter of practical necessity, the defenders say; the system adopted is "the best that can b done." Equal protection of the laws, they add, "can hardly require more equality than circumstances make possible."

ELECTION COMMISSION

The opponents of the law take roughly the same position as the Justice Department's second brief. In its own brief, the commission argues by analogy that the Congressional role in the appointment of the Watergate special prosecutor provided a precedent for shared legislative-executive power in the general field of law enforcement.