WXPost JAN 30 1976 JAN 31 1976

Court Upholds Election Law, Voids Portions

End Seen Near For Commission

By Stephen Isaacs
Washington Post Staff Writer

The most severely injured victim of the Supreme Court decision on the 1974 election laws yesterday is the Federal Election Commission.

The commission, established by Congress to enforce its campaign limits, is 8 months old today, and, from indications yesterday, probably will not live to see its ninth monthly anniversary.

The reason is that the key man in the House who could save the commission, Rep. Wayne L. Hays (D-Ohio), said yesterday that he intends to abolish it.

A major part of the court's decision was its declaration that the method of choosing commission members is unconstitutional.

Hays in 1974 insisted that Congress and not the White House retain control over the commission, and thus succeeded in changing the Senate bill by having four of the six commission members be congressional appointees. The original Senate bill specified that the President name all six.

The court struck down the arrangement on the basis that it violated the Constitution's separation of powers doctrine, that the Congress cannot both legislate and enforce.

It said that, unless Congress changes the way the members are chosen in the next 30 days, the commission will be limited to the functions of a congressional committee. In effect it would be reduced to the record-keeping and occasional auditing function that was performed, before the 1974 law, by the clerk of the House, secretary of the Senate and General Accounting Office.

In the Senate, staff aides planned to work through the weekend to write the legislation necessary to repair the damage, with Sens. Edward M. Kennedy (D-Mass.), Hugh Scott (R-Pa.) and Dick Clark (D-Iowa) taking the lead.

They said their intention is to submit a bill Monday.

Aides to those senators were working to reassemble the coalition of liberal senators that included those three, plus Sens. Walter F. Mondale (D-Minn.), Richard S. Schweiker (R-Pa.) and Alan Cranston (D-Calif.), to pull together another winning combination speedily.

One of the aides said yesterday that the weekend group will discuss whether to insert in the bill to be proposed Monday the public financing of all Senate and House races. Hays removed this provision in 1974. The senators also are to consider an attempt to close what some of them see as a loophole, created by the court's decision, permitting individuals to

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Spending Limits Struck Down

By John P. MacKenzie
Washington Post Staff Writer

The Supreme Court upheld major sections of the 1974 federal election law yesterday, including the public financing of presidential races, ceilings on political contributions, and financial disclosure requirements.

At the same time the court struck down limits on what candidates can spend, and it held that the method for selecting Federal Election Commission members, who enforce the law, is unconstitutional.

The court ruled that although Congress cannot compel presidential candidates to observe spending ceilings as a flat rule, it can make them observe the limits if they accept federal matching grants. As a result, most if not all of the 1976 presidential aspirants are expected to adhere to the ceilings, almost $13 million for the primaries and nearly $22 million for the general election.

Both sides claimed victory in the mixed results. John Gardner, chairman of the citizen lobby Common Cause, called it a win "for all those who have worked so hard to clean up politics in this country. The fat cats won't be able to buy elections or politicians any more."

Sen. James L. Buckley (Cons.R-N.Y.), who led a challenge on behalf of political independents and others who charged their consitutional rights were violated, said the court "struck a major blow for the forces of freedom" by permitting unlimited political spending. He added that the court had left standing "a clearly unworkable set of ground rules" that Congress must revise.

The decision created an immediate problem for Congress over whether to revive the commission, which the court said could not exercise its far-reaching powers to enforce the law so long as any of its six voting commissioners are appointed by Congress rather than the President. Now four are appointed by Congress.

The justices, who were unanimous in ruling that the makeup of the commission was unconstitutional, said their ruling would be stayed for 30 days to give Congress time to "reconstitute the commission by law or to adopt other valid enforcement mechanisms."

In the meantime the court said about $5 million given out last month by the commission in matching grants to 12 presidential candidates was valid.

The decision was spelled out in an unsigned 137-page opinion for the court and five separate opinions by justices concurring and dissenting on various issues in the complex case.

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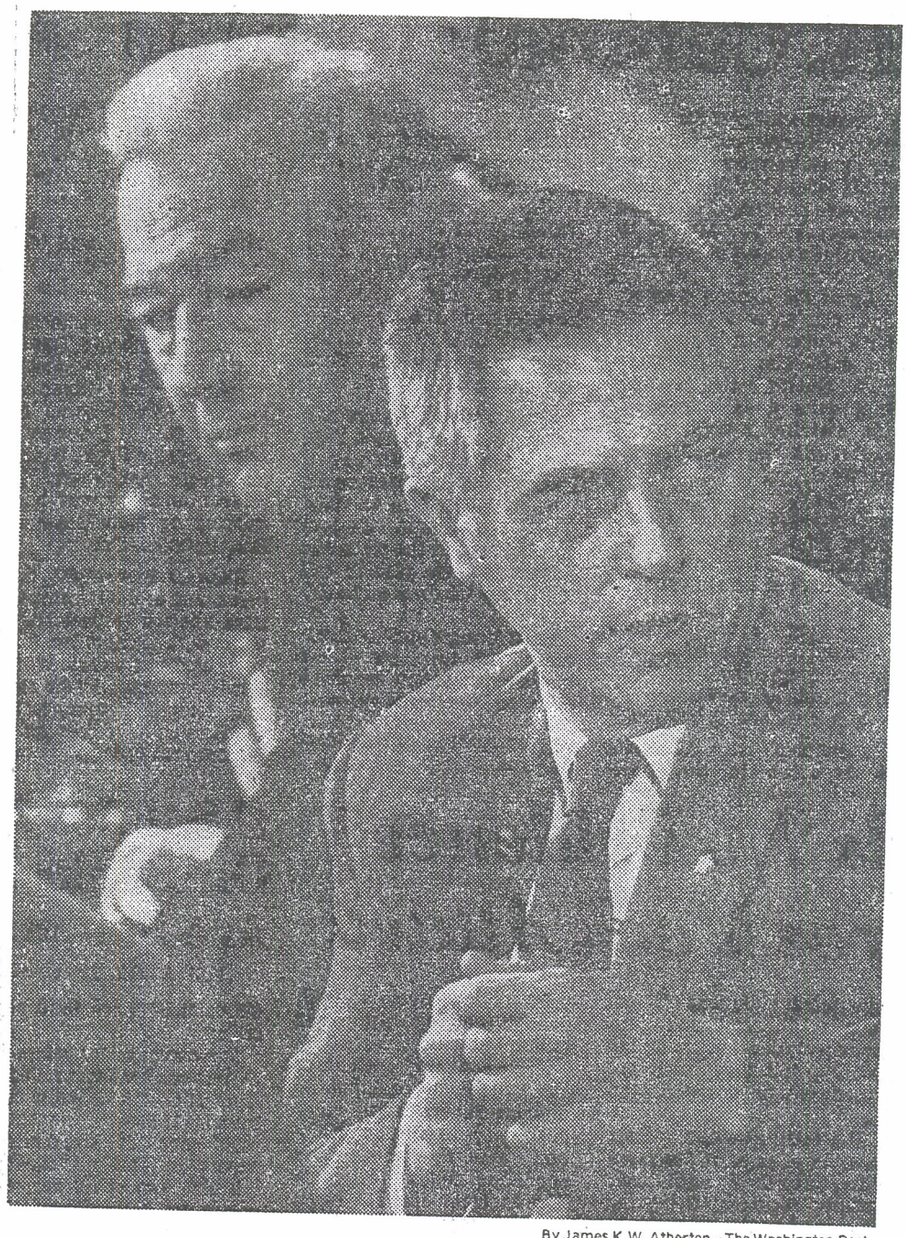

By James K.W. Atherton—The Washington Post

Former Minnesota Sen. Eugene McCarthy and Sen. James Buckley discuss the court decision.

High Court Ruling Hit Commission Hardest

IMPACT, From A1

spend any amount of money independently during a candidacy.

"The door is open a crack," one staffer said, "and we want to close it real fast before somebody slips in."

The Federal Election Commission's chairman, Thomas B. Curtis, was gloomy for the commission's prospects after yesterday's decision, saying:

"It's hard for me to believe something as complicated could be straightened out in 30 days."

Curtis, a former Republican congressman from Missouri, said that he was not optimistic "in light of the resistance of the House and Senate to many of the things the commission is trying to do. Some of them have said that, if they knew what they had created, they wouldn't have."

An aide to Kennedy insisted that critical remarks about the commission by some one-time supporters of a strong, independent election commission were "merely people letting off steam. There's nowhere near the hostility there is in the House."

Kennedy, asked about the possibility of Hays' blocking action, said that "We'll just have to take action and hope the House acts."

President Ford seemed to share the same view, issuing a statement saying that he would "ask leaders of Congress to meet with me to discuss the need for legislation to reconstitute the commission or to assure by other mechanisms enforcement of the Federal Election Act as modified by the Supreme Court's decision.

"I have asked the Attorney General to review the opinion and to advise me on what steps, if any, should be taken to ensure that our elections remain free from any abuses."

The President also said that he was asking other presidential candidates to "join with me" in adhering to the spending limits established under the 1974 law.

"I am directing the President Ford Committee to limit its expenditures to that level," he said.

Hays, meanwhile, who chairs the Committee on House Administration — the committee with jurisdiction over campaign financing laws in the House — says he will introduce his bill to do away with the election commission next week.

"From the outset," he said, "I had my doubts about the constitutionality of this law, but thought we ought to give it a chance to work."

Almost single-handedly Hays has blocked the commission's first two attempts at rule-making in the House, and berated the commission and Curtis in their third attempt at promulgating procedures this week.

The commission, Hays said yesterday, "went so far astray from congressional intent in their interpretation of the law that it appears wisest for the Congress to re-evaluate this prior approach and perhaps look toward a different way of monitoring election campaigns."

Hays said he will recommend a strict and constitutionally drawn system to monitor full disclosure of contributions and spending, but would not say how it would work.

A fellow congressman, however, Rep. Morris K. Udall (D-Ariz.), who is a candidate for the Democratic presidential nomination, said that "If Hays is against the independent commission, it will be very difficult to get it through the House."

"I hope we can patch together some sort of solution," said Udall.

The most enthusiastic response from any of the presidential contenders' camps yesterday came from that of Alabama Gov. George C. Wallace, who at one point had considered going the whole campaign route without the aid of federal matching money.

"Thank God they've upheld the federal financing," said Wallace's campaign manager, Charles Snider, in Montgomery. "We'd be in serious trouble if we couldn't get the matching funds. Our whole campaign strategy is based on receiving them."

Just Thursday the commission authorized $437,479 in new matching funds for Wallace, and he has requests for another $1.5 million pending.

Another presidential aspirant, Sen. Lloyd M. Bentsen (D-Tex.), sent a telegram to Democratic National Chairman Robert S. Strauss, asking him to assemble a meeting of the candidates "to avoid any confusion that might result" from the Supreme Court's ruling.

Fellow candidate Sargent Shriver said that his initial impression was that "the Supreme Court decision has created a vacuum" and a danger that campaigning would be governed by many rules but no enforcement.

One of those most pleased by the court's decision was philanthropist and General Motors heir Stewart Mott, who had participated in the challenge to the law.

Mott said the decision puts "fat cats" like him back in business, saying he plans to spend up to $100,000 this year on congressional races and up to another $100,000 on the presidential race.

Mott said that, while he still is limited to spending a total of $25,000 ($1,000 for a maximum of 25 candidates), he could now spend any amount he wishes on independent projects of his own.

The 134 employees of the fledgling Federal Election Commission had half expected a blow like the one they received in yesterday's decision, but were perhaps less prepared for the bomb threat that had them evacuated from their quarters at 1325 K Street N.W. just after the court had handed down its decision.

(Staff writers Spencer Rich, Mary Russell, Edward Walsh and David S. Broder contributed to this article.)

Election Act Upheld; Portions Voided

COURT, From A1

Chief Justice Warren E. Burger, who announced the judgment in a special court session yesterday, disagreed with most of it and filed a dissent that would have struck down virtually the entire law.

The vote was 6 to 2 to sustain the contribution limits as Justice Harry A. Blackmun joined Burger in dissent. The vote to strike down the expenditure ceilings was 7 to 1, with Justice Byron R. White dissenting. Justice Thurgood Marshall added a partial dissent, saying the court should have upheld restrictions on personal campaign spending by wealthy candidates.

Extensive financial disclosure and the law's plan for subsidizing presidential races were upheld, 7 to 1, over Burger's lone dissent. The vote against the commission's composition was 8 to 0. Justice John Paul Stevens, who joined the court after arguments were heard, did not take part.

The court had been under pressure to issue its ruling in advance of the current campaign season. The lawsuit was speeded through a lower court and taken to the high court on direct appeal under a provision of the 1974 law that Buckley had sponsored in hopes that the courts would quickly kill the law.

Buckley, independent candidate Eugene J. McCarthy (a former Democratic senator from Minnesota), and a host of political and civil liberties organizations contended that the law was a gross violation of their First Amendment rights of free speech and political expression.

Supporters of the law admitted that the money restrictions involved some limitation on political speech but argued that they were justified by the need to curb big-money abuses highlighted by Watergate scandals.

The court majority agreed with Buckley's argument for spending ceilings but rejected it for the contribution limits.

The difference, said the court, is that limits on contributions — $1,000 per individual for each candidate, $5,000 for political organizations and committees and a $25,000 limit for all political giving by an individual in any one year — are less direct and less serious restrictions than the limits on expenditures.

A contribution limit "entails only a marginal restriction upon the contributor's ability o engage in free communication," the court said, and it "does not in any way infringe on the contributor's freedom to discuss candidates and issues."

By contrast, the court said, restricting what a candidate can spend "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditures of money."

In a footnote, the majority opinion said, "Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline."

The same defect was found in the law's limitation of $1,000 per individual on so-called "independent expenditures" that have the effect of supporting a clearly identified candidate.

This provision, defended as a "loophole-closing" device that would thwart efforts to circumvent the contribution limits, would have made it a crime for an individual to place a quarter-page political advertisement in a metropolitan newspaper, the court noted, because such an ad would cost more than $1,000.

The court majority said the provision was ineffectual, given the "ingenuity and resourcefulness" of persons determined to skirt the restriction, and it imposed too great a burden on First Amendment rights.

The court said the independent political activity restricted by the provision "does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions."

Opponents of the law said yesterday that by striking down this provision, the court was allowing candidates' supporters to pay for duplicating advertisements, to reproduce and distribute campaign material and to lend other aid without violating the law because such activity would not require them to consult with the candidates. Consultation, they conceded, would involve the supporters in restrictions applicable to the candidates.

Disclosure provisions, which require political committees to identify everyone contributing as little as $100 to a campaign, were sustained against the charge that they would harass minor parties and bury them in red tape.

The court left open the possibility that minor parties may yet escape the requirement by showing that they are in danger of specific harassment that would deter their supporters from contributing. Otherwise, the court said, the disclosure provision serves the valid purpose of informing the public about political financing, deterring corruption and making it easier to detect violations of the law.

Public financing of presidential campaigns was upheld against claims that it favored the established parties against new political forces and favored incumbents at the expense of challengers.

Funds for the campaign subsidies come from money designated by individual taxpayers who may authorize the deduction of $1 from their tax bills for that purpose.

The distribution formula allows major-party candidates to receive their money during the campaign, but candidates of new parties receive subsidies only after the campaign is over — and then only if they have received more than 5 per cent of the popular vote. Any new party receiving more than 5 per cent of the vote in a presidential election would automatically be entitled in the next election to federal matching funds based on the percentage of vote received.

The distribution formula, the court said, "is a congressional effort, not to abridge, restrict or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process — goals vital to a self-governing people."

As for the alleged discrimination, the court said Congress was entitled to take into account, as a political "fact of American life," that for a century "no third party has posed a credible threat to the two major parties in presidential elections" with the exception of the 1912 Bull Moose campaign that split the Republican Party.

Justice William H. Rehnquist, joining Burger in a partial dissent on this point, said the law has "enshrined the Republican and Democratic parties in a permanently preferred position."