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FEB 17 1976

Congress Has Until March 1 to Reconstitute Panel and Retain Subsidy System

NYTimes

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Special to The New York Times

WASHINGTON, Feb. 16— Congress returns from a holiday recess tomorrow to determine whether and how to continue the Federal Election Commission, which has less than two weeks left under last month's Supreme Court ruling. Unless the Senate and House act to reconstitute the agency within nine working days, the commission will lose all its major powers, Federal campaign subsidies to candidates and conventions will cease and the 1976 Presidential election will proceed virtually unregulated.

Legislation to make all six voting members of the agency appointive by the President, thus satisfying the Supreme Court, is expected to come up this week in the House Administration Committee, which is headed by the chief Congressional critic of the commission, Representative Wayne L. Hays, Democrat of Ohio.

Mr. Hays, his committee and House Democrats generally are under serious pressure to take positive action. Both major parties need continued convention subsidies that only the commission can authorize, and all their active national candidates are relying on an uninterrupted flow of primary matching payments from the Treasury.

Just as important, the House Democratic leadership is concerned about avoiding a public posture of blocking continuation of the campaign reform agency. President Ford sent Congress a message on the subject today, and House Republican leaders have been active in pressing for prompt floor action.

At the same time, from the viewpoint of practical political mechanics, the 1976 Presidential primaries will almost certainly be conducted without any answers to at least two critically important questions if Congress does not restore the commission's regulatory authority.

First, No one will know how much money a candidate can accept in contributions from a wealthy wife or family. The high court authorized a rich candidate to spend as much of his own money as he chose but left the question of support from his family subject to an uncertain Congressional definition.

Second, there will be no guidance as to what constitutes an "independent" expenditure by a wealthy outsider or a heavily endowed union or corporate political committee in behalf of a specific candidate. The Justices struck down a \$1,000 limit on such campaign spending but implicitly required some other agency to apply their definition of independence.

In both these areas, big money, the principal target of the 1974 campaign laws, could re-enter the Presidential picture virtually uncontrolled unless the commission is in business to issue regulations and advisory opinions.

This result might be of substantial assistance to Democratic contenders such as Sargent Shriver, whose wife, Eunice, has a share of the Kennedy fortune, or Gov. Milton J. Shapp of Pennsylvania, whose wife has been a major contributor to his campaign.

If Vice President Rockefeller should decide to enter the Republican competition, absence of any regulation would probably permit his brothers and sister to invest large amounts of money in his effort, as they have in his past state and national campaigns.

Asked by a reporter recently for his reaction to the Supreme Court's striking down the limit on family contributions, Mr. Rockefeller replied: "That's got to be a disappointment to my family."

Rival candidates or private citizens who feel that the Supreme Court decision is being violated can always go to court, but the primaries would almost certainly be over before a decision could be made at the lowest judicial level.

On the issue of contributions by a candidate to his own campaign, the Supreme Court wiped out the former statutory limits of \$50,000 for a Presidential candidate, \$35,000 for the Senate and \$25,000 for the House. It held, however, that members of his immediate family" were limited to \$1,000, with one cloudy exception.

The Justices quoted approvingly, as evidence of Congressional intent, the House-Senate conference report on the campaign bill that gave a candidate access to family resources if he was "in a position to exercise control over" such funds before he became a candidate.

At another point, the conference report indicated that a candidate who had "access to or control over" money that belonged to a family member before he announced could accept more than \$1,000; up to the ceiling in the law. Since that ceiling was eliminated by the Court, he could now presumably accept any amount, up to the over-all spending limits still in effect for candidates who accept Federal subsidies.

But, if there is no commission with power to issue rulings, who is to say what "access to or control over" means in any given situation?