The Election LAW NEEDS REVISION

One of the authors has just completed a political campaign as the Democratic candidate for the U.S. Senate from Virginia. The winner was the very popular incumbent, Senator Harry F. Byrd, Jr., who received 55 percent of the vote. It is doubtful that he could have been defeated if more money had been available to the challenger. But the race might have been closer because it is quite clear from the experience that the financing of the campaign of the incumbent was made much easier and that of the challenger, much tougher, by the operation of the new federal election law.

It is also clear that the law gives a great advantage to a wealthy candidate. If an incumbent member of Congress also possesses a private fortune, he then has two advantages that present a fearsome obstacle to any challenger. Put another way, the present law, as modified by a Supreme Court decision, has produced a situation in which a wealthy challenger will have a much better chance than a poor one in overcoming the advantage of incumbency.

The new law limits any donor desiring to contribute to a candidate for Federal office to $1000 in the primary and another $1000 in the general election.

This means that the days are gone when a challenger can find two or three "fat cats" who are discontented with an incumbent's performance, whose assets are such that they do not fear legislative retribution from the incumbent, and who therefore are willing to bankroll a challenger's campaign with large sums of money. Such lump sum contributions used to give a challenger the opportunity to be highly competitive to the incumbent in campaign staffing and advertising expenditures. No longer is this the case. On the other hand, the new law does not inhibit the traditional advantage of the incumbent of being able to "muster" the lobbyists and officials of those organizations who believe they must show gratitude for past votes favorable to their interests and/or who believe they must curry favor to get future votes they may need. There are enough of such people who need the help that the incumbent finds it relatively easy to pick up large campaign funds. But he is also in a position to be a threat to those who have contributed or might have desired to contribute to the challenger. Major contributors to the primary campaign of the author-candidate informed him that when their names became public as a result of the reports required by the new law, they were given to believe by "friends" of the incumbent that they faced the prospect of votes unfavorable to their particular interests if these contributions were repeated in the general election. Thus the very political forces used to motivate some to contribute to incumbents serve to constrain others from helping the challenger.

However, there is a significant loophole with regard to the limit on personal contributions. Before the Supreme Court decision the law specified that a candidate might spend no more than \$35,000 of his own funds in his own campaign. But the Supreme Court ruled that that prohibition violated the First Amendment right to free speech and it was struck down as illegal. This meant that a candidate for

Federal office who was wealthy or whose spouse was wealthy had the right to spend any amount of his own funds for his own election. As a result of this decision, Tom Hayden, originally a distinct underdog in the race for the Democratic nomination for the U. S. Senate in California, by spending generous sums of his wife's money came close to defeating the incumbent, Senator John Tunney, in the primary. Moreover, these huge personal expenditures, for advertising attacking Tunney, probably contributed to Tunney's subsequent defeat by the Republican, Hayakawa. Similarly, Representative Heinz, in the Pennsylvania Senate race to succeed retiring Senator Hugh Scott, contributed large sums of his own fortune to defeat Representative Green.

In the case of the author-candidate, who is not wealthy and was running against a wealthy incumbent, this legal loophole provided a psychological disadvantage. The challenger knew throughout his campaign that if he were successful enough to overcome the easier access of the incumbent to the money of others and to begin to match the incumbent's total, Harry Byrd, exercising the "rich man's option," had only to dip into his own personal funds to restore his financial advantage in the campaign. That Byrd was not driven to do so was in part the result of the psychological deflator to fund collection that this "rich man's option" pressed on the Zumwalt campaign.

One can visualize a relatively simple means to correct the federal election law to eliminate the built-in advantages of wealth and incumbency in financing a political campaign. That would be to provide that all candidates for federal office would receive a flat sum with which to campaign in the primary and a larger sum for the general election, in both cases subject to forfeit if funds are accepted from any other source including personal fortunes of the candidates. The amount in each case should be made large enough to discourage such use of personal funds by wealthy candidates.

It is not so easy to visualize that a Congress, full of incumbents, will vote to make changes designed to benefit their future challengers.