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The Gingrich Decision

HOUSE SPEAKER Newt Gingrich won an important victory last week when Judge Louis Oberdorfer threw out a complaint from the Federal Election Commission that a political action committee Mr. Gingrich headed had violated the campaign finance laws. The judge implied that this was a case that should never have been in court; that he was being asked to clarify and perhaps extend a law that Congress itself had left muddy in an area where First Amendment considerations abound; and that the issue was one that ought to be settled by legislation, if at all. We think that's probably right.

The issue in the case was exactly when a political committee called Gopac, originally organized to help elect Republicans to state and local office, began to be involved as well in federal elections. At that point it became required to register with the commission, disclose its contributions and expenditures and live within federal contribution limits. Gopac did register in 1991 on grounds that by then some of its activities were indeed directed toward congressional elections. The FEC charged it should have done so earlier, since it was already deeply involved in the Republican effort to take over Congress—and in particular had been involved in Mr. Gingrich's own 1990 congressional race.

Judge Oberdorfer ruled that Gopac's frankly stated public purpose of developing a "farm team" of state and local legislative candidates as a prelude to taking over the House of Representatives did not constitute a direct intervention in federal elections. He also ruled that

Gopac's support activities on behalf of Mr. Gingrich's work as the group's general chairman did not constitute support for Mr. Gingrich's reelection campaign.

The complaint is that this could open up an entire new realm of unregulated political activity. Trevor Potter, a former chairman of the FEC and a Republican, suggested that the ruling would permit groups to engage in "a nationwide campaign to change Congress without disclosure and without any limit at all on amounts and sources of money." It "opens up a whole new avenue of undisclosed money," he said. Maybe so, but the question then is what you do about it. Lots of money gets spent to influence the outcome of federal elections. The law tries to distinguish between the kind either given to or spent directly on behalf of candidates, which has to be disclosed and is subject to other regulation, and expenditures of a more general kind, which are not. That's a fair enough distinction, but a harder line to draw than it sounds—and it's Congress that mainly ought to do the drawing, not the courts. That's the lesson of this case.

As for Mr. Gingrich, the investigation of him by the House Ethics Committee will continue on the remaining and rather narrow charges relating to whether tax laws were violated in the financing of a course he taught at a state college. But the most serious questions about Mr. Gingrich have always been those relating to Gopac. If Judge Oberdorfer's decision stands unchallenged, the committee ought to deal with the remaining complaints against the speaker with dispatch.