

THE NEW YORK TIMES, TUESDAY, OCTOBER 31, 1972

Appeals Court Rules That Group Seeking to Impeach Nixon Acted Within Law

By ARNOLD H. LUBASCH

An injunction against a committee seeking to impeach President Nixon was overturned here yesterday by the United States Court of Appeals for the Second Circuit.

District Judge Sylvester J. Ryan had granted a preliminary injunction on Sept. 5 to prohibit political activities by the National Committee or Impeachment until the committee provided the Government with campaign funding reports required by the Federal Election Campaign Act of 1971.

Judge Ryan's order granting the preliminary injunction was reversed by the Court of Appeals in a 13-page decision written by Judge James L. Oakes with the concurrence of Judge Paul R. Hays and Judge William H. Timbers.

The National Committee for Impeachment touched off a two-page advertisement in the New York Times to advocate a Congressional resolution to impeach Mr. Nixon because of his Vietnam policies. In requesting an injunction

to prevent the committee from soliciting and spending funds for political purposes, the Government contended that the committee had violated the Federal campaign act by failing to file an organization statement and financial reports, including lists of its contributors and expenditures.

Judge Oakes, in today's ruling, said that the Federal Election Campaign Act would apply to the National Committee for Impeachment only if that committee could be defined as a "political committee" under the new law. "We also construe the act to apply only to committees soliciting contributions or making expenditures, the major purpose of which is the nomination or election of candidates," the judge declared. "The Government had contended that the committee had used the advertisement in the Times to influence Congressional elections by citing members of Congress who, it said, supported an impeachment resolution and to influence the President and to influence the election by assailing

the President's policies on Vietnam.

Judge Oakes said that the Congressmen cited in the committee's advertisement had not authorized the use of their names and that the advertisement had focused on the impeachment issue. "Qualitatively," as well as quantitatively, Judge Oakes wrote, "the advertisement seeks support of an impeachment resolution, not the election of political candidates." "Given that conclusion," the judge went on, "we think that the publication of this advertisement alone did not make the national committee a 'political committee' within the Federal Election Campaign Act."

This ruling made it unnecessary to consider the "serious constitutional issues" raised in this case, according to Judge Oakes, who rejected the Government's contention that the campaign act applied to the impeachment committee because its advertisement had assailed President Nixon on the key election issue of Vietnam. "On this basis," he continued, "every position on any issue, major or minor, taken by anyone would be a campaign issue, and any comment upon it in, say, a newspaper editorial or an advertisement would be subject to proscription—unless the registration and disclosure regulations of the act in question were complied with."

Judge Oakes said that the "abhorrent" result of this view could make any organization wary of expressing any views, because it might be compelled to register, file reports and identify contributors.