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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

NEW JERSEY PEACE ACTION, PAULA ROGOVIN, AND ANNA BERLINRUT, Plaintiffs, v. GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, IN HIS OFFICIAL CAPACITY, Defendant.	Civil Action No.

COMPLAINT FOR A DECLARATORY JUDGMENT

PRELIMINARY STATEMENT

1. Plaintiffs seek a Declaratory Judgment that the current war in Iraq is being waged in violation of Article I, Sec. 8 of the United States Constitution ("Congress shall have the power to declare war") because there has been no Declaration of War by Congress or an explicit, intentional and discrete authorization of war prior to hostilities; because Congress may not transfer its constitutionally mandated duties to the Executive; and because the Authorization for the Use of Military Force (AUMF) of October, 2002 deprived American citizens of the right to know each legislator's vote on the decision for or against going to war in Iraq, a right protected by Article I, Section 5(3) of the Constitution as implemented by the Due Process Clause of the Fifth Amendment.

2. Plaintiffs are aware that since the end of World War II, efforts to secure a judicial determination of the President's power to wage war without such a Declaration have failed in the lower federal courts either on procedural grounds, or because Congressional financial support for military action was viewed as supporting Presidential action, or because of an unwarranted application of the political question doctrine. But only one of those prior decisions of the lower federal courts upheld on the merits the constitutional power of the President to launch an offensive war against a sovereign nation without an Article I,

Section 8 Declaration -and that opinion ignored a major piece of constitutional history. Nor were any of those prior decisions affirmed by the Supreme Court of the United States. The Constitution may not be amended by persistent evasion.

3 To avoid constant repetition of the lawless exercise of the awesome war-making power and restore the proper functioning of our constitutional system, it is necessary that the judicial branch definitively state what the Founders intended when they enacted Article 1, Sec. 8. (Marbury v. Madison.)

4. And because the Bush Administration is threatening to wage war - against Iran - without a Congressional Declaration of War, it is essential that the judicial branch act expeditiously. A decision in favor of Plaintiffs in this case will clarify the constitutional issues concerning the current war, and will impact the manner in which future hostilities are considered by Congress and the President. Our half century of experience with undeclared wars, the continued threats from the White House of a new presidential war, Congress' avoidance of its responsibility to vote on the issue of going to war, along with the heightened and continuing risks of terrorist attacks requiring a military response, makes this a classic example of an issue which is capable (and likely) of repetition yet may otherwise evade review if not now considered by the courts.

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court under 28 U.S.C. Secs. 1331 and 2201-2202 in that Plaintiffs' claims arise under the United States Constitution, Article I, Sec. 8 and the Fifth Amendment.

6. Venue is proper in this Court under 28 U.S.C. Sec. 1391 in that Plaintiffs include residents of New Jersey.

PARTIES

7. NEW JERSEY PEACE ACTION (NJPA) is a New Jersey nonprofit membership corporation. NJPA has worked for more than 50 years to promote peaceful alternatives to war. NJPA has sponsored many public discussions and events over the past 6 years in an effort to educate and inform members of the New Jersey Congressional delegation and the public about issues, causes and alternatives to the War in Iraq, the invasion of Iraq and the ongoing occupation of Iraq. Before the start of the war, NJPA communicated with numerous elected officials urging them to vote against any declaration of war against Iraq. The fact that no declaration of war of war against Iraq was ever brought to a vote in Congress deprived NJPA and its members of the opportunity to know exactly where their elected representatives stood on the issue and has forced NJPA 's members and friends to continue to pay tax dollars for something they oppose.

8. PLAINTIFF PAULA ROGOVIN is a citizen of the United States and the State of New Jersey. She resides in Teaneck and is the spokesperson for the Bergen County Chapter of Military Families Speak Out. She has a son in the United States Marine Corps, who previously served one tour of Duty in Iraq and was redeployed in March, to the best of her information and belief, to Iraq. She is a registered voter in the 9th Congressional District of New Jersey, and voted in the 2002 and 2004 Congressional Elections, wherein she could not cast informed votes because she could not know whether the incumbent Representatives did or did not support the war with Iraq since there was never a vote on a Congressional Declaration of War.

9. PLAINTIFF ANNA BERLINRUT is a citizen of the United States and the State of New Jersey. She resides in Maplewood, and is the spokesperson for the Essex County Chapter of Military Families Speak Out. She has a son serving in the United States Marine Forces Reserve who has already served two tours of duty in Iraq, and is scheduled to be redeployed there in September. She is a registered voter in the 10th Congressional District, and voted in the 2002 and 2004 Congressional Elections, wherein she could not cast informed votes because she could not know whether the incumbent representatives did or did not support the war in Iraq since there was never a vote on a Congressional Declaration

of War.

10. DEFENDANT GEORGE W. BUSH is the president of the United States. He is sued in his official capacity.

STATEMENT OF FACTS

11. On March 17, 2003, in a televised speech, President George W. Bush gave Saddam Hussein 48 hours to go into exile or face war. Saddam Hussein rejected the exile option the following day on March 18, 2003.

12. On March 19, 2003, President Bush commenced war on the sovereign nation of Iraq and ordered United States armed forces to commence armed hostilities with the avowed aim of achieving "regime change" in that nation. Iraq had not attacked the United States and posed no imminent threat to the territory of the United States. President Bush stated that he was acting pursuant to an Authorization for Use of Military Force Against Iraq (AUMF) passed by Congress more than five months earlier on October 10, 2002.

13. On March 20, 2003, the war against Iraq began at 5:30 AM Baghdad time (9:30 PM EST, March 19, 2003), when the United States launched Operation Iraqi Freedom. Called a "decapitation attack," the initial air strike of the war attempted to target Saddam Hussein and other Iraqi leaders.

14. On March 21, 2003, the major phase of the war began with heavy aerial attacks on Baghdad and other cities. The campaign was publicized in advance by the Pentagon as an overwhelming barrage meant to instill "shock and awe."

15. The United States has continued to conduct military operations in Iraq to the present time, even though the regime of Saddam Hussein has been overthrown, Hussein executed and a constitutional government elected. More than 4,000 U. S. military personnel have died in Iraq to date as well as tens of thousands of Iraqi citizens who have died as "collateral damage" of military operations.

16. In January 2007, President Bush ordered an additional 30,000 troops deployed to Iraq.

17. As of the date of this Complaint, the War in Iraq continues.

18. There has never been a Declaration of War by Congress against Iraq.

19. There has never been a judicial decision that Citizens of the United States have no right under the Constitution to have each member of Congress vote on the record his or her position on taking the nation to war.

Adoption of Article I, Section 8

20. Article I, Section 8 of the United States Constitution grants to Congress the power to "declare war." Article II, Section 2 designates the President as Commander in Chief of the Army and Navy.

21. The debates at the Constitutional Convention establish that as to the allocation of war powers the Framers feared a powerful executive with war-making powers. When the Continental Congress made the beloved and respected George Washington Commander-in-Chief in 1775, with "full power and authority to act as you shall think for the good and welfare of the service," it also directed him "punctually to observe and follow such orders and directions, from time to time, as you shall receive from this, or a future Congress of these United States, or committee of Congress."

22. In January, 1776, Tom Paine's pamphlet *Common Sense* helped convince the Colonists that Kings were enemies of self-government who conducted wars of personal ambition at the expense of their subjects' lives and treasures. Paine denounced "the corrupt influence of the Crown [that] hath ... swallowed up the power and eaten out the virtue of the House of Commons. ... In England, a King hath little more to do than make war and give away places, which, in plain terms, is to impoverish the nation...."

23. On July 4, 1776, the Declaration of Independence proclaimed that the King "has abdicated government here by declaring us out of his Protection and waging War against us."

24. The Articles of Confederation, written in 1777, which became effective in 1781, created a weak federal government without king or president. The Continental Congress had the power of "determining on peace and war," but only if at least nine of the thirteen states agreed.

25. The Constitutional Convention was convened in May, 1787 to remedy weakness in the Articles of Confederation. On June 1, the Convention discussed whether the Executive to be created should be a single person or a three-person body. All of the participants in the discussion -- delegates Charles Pinkney, John Rutledge, Roger Sherman, James Madison and James Wilson -- insisted that Executive was not to have the prerogatives of the British Crown to declare war. There was no dissent. Conforming to their conclusion, the Committee on Detail reported on August 6 that only Congress should have the power to "make war."

26. On August 11, the principle of transparency, moved by James Madison and John Rutledge, was written into the Constitution in what was to become Article I, Sec. 5(3): "Each House shall keep journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of

either House on any question shall, at the desire of one-fifth of those present, be entered on the journal." The secrecy exception can have no application to "Declarations of War," since 'declarations' are by nature public documents.

27. The discussion of transparency made it clear that the issue of war was a public matter to be debated by the nation, with each representative's vote publicly recorded, not decided in executive chambers. James Wilson of Pennsylvania summed up the debate that led to this requirement as follows: "The people have a right to know what their agents are doing or have done, and it should not be in the option of the Legislature to conceal their proceedings."

28. One week later, on August 17, the second Convention debate over the War Powers occurred. The proceedings, as recorded by James Madison, reveal that only one of the 55 delegates, Pierce Butler of South Carolina, argued that the President should have the power to declare war. Elbridge Gerry of Massachusetts responded that he "never expected to hear in a republic a motion to empower the executive alone to declare war." Butler's proposal was dropped without any vote. The only change to the Committee's recommendation that Congress should have the power to "make war" was to amend "make" to "declare." This was to assure that the Executive had the power to repel sudden

attacks, but did not give the president power to wage undeclared hostilities.

29. The Framers deliberately chose to locate the war-initiating power in the most representative branch of government. They recognized that there is always much at stake in war: the lives of the people and the well-being of the nation. They had seen these squandered too easily and too quickly by kings, and they wanted to make the process through which the nation could become immersed in war difficult and cumbersome. Despite arguments of some that greater efficiency would attach to locating the power in the Senate alone, they allocated the power to Congress as a whole, including the House of Representatives, the body elected directly by the people. The purpose, according to Thomas Jefferson, was to place "an effectual check to the dog of war." The chain that would restrain the "dog of war" was the caution that would be shown by legislators because their constituents might vote them out of office at the next election.

30. There was in the Convention no doubt about the limited scope of the president's war power. The duty to repel sudden attacks represents an emergency measure that permits the president to take actions necessary to protect the United States in situations allowing no time for congressional deliberation. The President was never vested with a general power to deploy troops whenever and wherever he thought best, and the Framers did

not authorize him to take the country into a full-scale war or to mount an offensive attack against another nation

31. In Federalist No. 69, Alexander Hamilton, a strong advocate of Executive power, wrote that the President's power as Commander-in-Chief would be "much inferior" to that of the King, amounting to "nothing more than the supreme command and direction of the military and naval forces." In Federalist No. 26, Hamilton wrote: "The Legislature . . . will be OBLIGED ... to deliberate upon the propriety of keeping a military force on foot; to come to a new resolution on the point; *and to declare their sense of the matter by a formal vote in the face of their constituents.*" (Emph. Added)

32. In a letter to Thomas Jefferson dated April 2, 1789, James Madison wrote: "The Constitution supposes, what the History of all government demonstrates, that the Executive is the branch of power most interested in war and most prone to it. It has accordingly with studied care, vested the question of war in the Legislature."

33. Throughout the Nineteenth Century, the Supreme Court rigorously carried out the Founders' intent to limit the president's power to make war in cases such as Bas v. Tingy, 4 U.S. 37 (1800), and The Prize Cases, 2 Black (67 U.S.) 635(1863). In Bas, the Court distinguished between "imperfect" or limited

wars and "perfect" or all-out wars against sovereign nations. The latter situation required a Congressional Declaration.

34. In the Steel Seizure case of 1952, Justice Robert Jackson noted that the Commander-in-Chief Clause is sometimes put forth "as support for any Presidential action, internal or external, involving use of force, the idea being that it vests power to do anything, anywhere, that can be done with army or navy." To this proposition, he said that nothing would be more "sinister and alarming than that a President whose conduct of foreign affairs is so largely uncontrolled, and often even is unknown, can vastly enlarge his mastery over the internal affairs of the country by his own commitment of the Nation's armed forces to some foreign venture."

Authorization for Use of Military Force Against Iraq Resolution of 2002 ("AUMF")

35. The Authorization for Use of Military Force Against Iraq Resolution of 2002, Public Law 107-243, House Joint Resolution 114 (the "AUMF") was signed into law by President Bush on October 16, 2002.

36. Pursuant to the "Authorization" section, subsection 3(a), of the AUMF, "The President is authorized to use the Armed Forces of the United States *as he determines to be necessary and appropriate* in order to (1) defend the national security of the United States against the continuing threat posed by Iraq; and (2) enforce all relevant United Nations Security Council

resolutions regarding Iraq." (Emph. Supplied) It included no time limit or sunset provision.

37. The AUMF cannot be considered a Declaration of War for the following reasons:

A. A Declaration of War must emanate from Congress. That was the procedure the Framers contemplated to control presidential ambition. The AUMF transfers the power to commence war to the President, a clear violation of the language and intention of the Framers.

B. The people have a right to know how each representative voted on the issue of going to war. The citizens were the beneficiaries of the requirement that each legislator place his or her vote on the record of the Congress.

C. The principle vice of the AUMF is that it denied the people knowledge of how representatives voted on war, because their representatives never cast a vote clearly and solely on the issue of going to war. As subsequent events demonstrated, the procedure allowed members of Congress who voted for the AUMF to disclaim any responsibility for the decision to go to war with Iraq.

D. The additional vice of the 2002 AUMF is its vagueness. It gave the President an unlimited discretion to attack Iraq, and when coupled with the 2001 AUMF concerning

participants and supporters of the 9/11 attack on the U.S., or any other country that was in any way related to the events of 9/11 or the consequences of 9/11 whenever he wished. (The President did not exercise that power for almost six months.) Because of this vagueness, the AUMF cannot be likened to a Declaration of War which is - in our history - a straight forward statement.

38. As a result of the foregoing, the 2002 AUMF is unconstitutional for the following reasons:

A. The AUMF is inconsistent with Article I, Sec. 8 in that it shifts a responsibility the Constitution assigns to Congress to another branch of government.

B. It is not a Declaration of anything. In giving the President authority to make war decisions, it does not compel him to do anything.

C. It denied the voters the right to evaluate how their member of Congress voted on going to war, a right guaranteed by Article I, Sec. 5(3), as implemented by the Due Process Clause of the Fifth Amendment.

D. In U.S. history, a straight-forward Declaration of all-out war is exemplified by the 1941 Declaration of War against Japan, as follows: "... That the state of war between the United States and the Imperial Government of Japan . . . is hereby formally declared; and that the

President be, and he is hereby authorized, and directed to employ the entire naval and military forces of the United States and the resources of the government to carry on war against the Imperial Government of Japan; and to bring the conflict to a successful termination all the resources of the country are hereby pledged by the Congress of the United States."

In the alternative, Congress could adopt a clearly understandable limit on the time, place and manner of a limited war, as in the quasi-war against France in 1798, as follows: "That the President of the United States shall be, and is hereby authorized to instruct the commanders of the public armed vessels which are, or which shall be employed in the armed service of the United States, to subdue, seize and take, any armed French vessel, which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas, and such captured vessel, with her apparel, guns and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited. ... And be it further enacted, That this act shall continue and be in force until the end of the next session of Congress and no longer." 1 U.S. Stat. 565.

The Threat to Attack Iran

39. The U.S. Executive appears headed down the road towards another unauthorized war - this time with Iran. In response to Iran's pursuit of nuclear weapons, President Bush has stated that "We will confront this danger before it is too late." John Bolton, the United States' Ambassador to the United Nations from 2005 to 2006 stated that President Bush "has said repeatedly that it is unacceptable for Iran to have nuclear weapons, and if he means unacceptable, then I assume he would take military action if he had to."

40. On October 1, 2007, the United States Senate approved a non-binding resolution (H.R. 1585) stating "that United States should designate the Islamic Revolutionary Guards Corps as a foreign terrorist organization." According to Senator Jim Webb of Virginia, some members of the Senate are concerned that such a designation could be seen by the president as "a de facto authorization for use of military force against Iran."

41. As recently as April 2008, General David Petreaus, commander of U.S. forces in Iraq, and U.S. Ambassador to Iraq, Ryan Crocker testified to Congress that Iran had been fueling fighting and supplying arms to insurgents in Iraq. That testimony lays the foundation for a possible Presidential request for an Authorization to Use Military Force Against Iran (AUMF),

which might precipitate a new war against the sovereign nation of Iran without a Congressional declaration.

42. The Washington Post reported as follows on April 25, 2008:

> The nation's top military officer said yesterday that the Pentagon is planning for "potential military courses of action" as one of several options against Iran, criticizing what he called the Tehran government's "increasingly lethal and malign influence" in Iraq. Adm. Michael Mullen, chairman of the Joint Chiefs of Staff, said a conflict with Iran would be "extremely stressing" but not impossible for U.S. forces, pointing to reserve capabilities in the Navy and Air Force.

43. Without a clear judicial determination of what constitutes a proper authorization for war, the U.S. is at risk of another military conflict without Congress' fully considering the risks and rewards of such action, and without a guarantee of public electoral accountability of each and every Congressional representative.

CAUSE OF ACTION

44. President Bush's authorization of an offensive military strike against the nation of Iraq violated Article I, Section 8 of the United States Constitution, which assigns to Congress the duty to Declare War.

45. The principle of Separation of Powers prohibits the Congress from transferring its war powers to the President.

46. The Constitution requires that Congress declare war in a manner clearly understandable by the legislators and by the

public. The vagueness of the AUMF violated the Fifth Amendment rights of voters to know their representatives' positions on going to war.

47. The President has no authority to conduct military operations except in response to a sudden attack, other than that lawfully provided by Congress through a Declaration of War, or a detailed authorization for limited military action. The open-ended October 2002 AUMF does not qualify because it does not specify the limits of presidential power.

48. Article 1, Section 5(3) of the Constitution together with the Due Process Clause of the Fifth Amendment guarantees to every American the right to know how his or her Congressional representatives voted on the issue of taking the nation to War, and makes every representative directly accountable to his or her constituents.

49. The continuing War in Iraq without a Congressional Declaration violates the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter an Order as follows:

(a) Declare that the President's order of March 2003 to invade the sovereign nation of Iraq, in the absence of a Congressional Declaration of War, violated Article I, Sec. 8 of the United States Constitution and the Due Process Clause of the

Fifth Amendment;

(B) Award Plaintiffs their costs and reasonable attorneys fees;

(C) Grant such other relief as may be just and proper.

Date: May 13, 2008

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Counsel for Plaintiffs gratefully acknowledges the assistance of Professor Emeritus Alfred Blumrosen and the following students enrolled in the Rutgers Constitutional Litigation Clinic in the preparation of this Complaint: Erica Davila, Denise Del Priore, Sheila Jain, Marissa Levin-Sabol, Laszlo Szabo and Kacy Wiggum.

DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER ENTITIES WITH A DIRECT FINANCIAL INTEREST IN LITIGATION

Pursuant to Federal Rules of Civil Procedure Rule 7.1, Plaintiff New Jersey Peace Action makes the following disclosure:

1. Is party a publicly held corporation or other publicly held entity?

No

2. Does party have any parent corporations?

New Jersey Peace Action is affiliated with Peace Action, which is headquartered in Washington, D.C.

3. Is 10% or more of the stock of party owned by a publicly held corporation or other publicly held entity?

No

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation?

No.

5 Is party a trade association?

No

Dated: May 13, 2008

Signature: Frank Askin