

Frank Askin, Esq.
Constitutional Litigation Clinic
Rutgers School of Law
123 Washington Street
Newark, New Jersey 07102
Phone: 973-353-5687
Fax: 973-353-1249
Email: faskin@kinoy.rutgers.edu

Bennet D. Zurofsky, Esq.
Reitman Parsonnet, P.C.
744 Broad Street - Suite 1807
Newark, New Jersey 07102
Phone: 973-642-0885
Fax: 973-642-0946
Email: bzurofsky@reitpar.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

_____	:	
NEW JERSEY PEACE ACTION,	:	
PAULA ROGOVIN, ANNA BERLINRUT	:	Civil Action
and WILLIAM JOSEPH WHEELER,	:	
	:	
Plaintiffs,	:	Hon. Jose L. Linares
	:	
v.	:	
	:	2:08-cv-02315-JLL-CCC
	:	
GEORGE W. BUSH, PRESIDENT	:	
OF THE UNITED STATES, IN HIS	:	
OFFICIAL CAPACITY,	:	
	:	
Defendant.	:	
_____	:	

AMENDED COMPLAINT FOR 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 Congress has enacted neither a Declaration of War nor 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 opportunity to vote for or against their elected representatives based upon how their representatives voted on the issue of 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 two 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 those opinions 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. In particular, because the Bush Administration is presently threatening to wage war - this time 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.

INJURY TO PARTIES

7. NEW JERSEY PEACE ACTION (NJPA) is a New Jersey nonprofit membership corporation. NJPA has worked for more than 50 years to promote nuclear disarmament and 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.

8. The fact that no declaration of war against Iraq was ever brought to a vote in Congress, in violation of due process rights, has directly caused injury to NJPA and to its members by,

among other things, imposing a great "opportunity cost" upon the organization because its leadership felt compelled to redirect its financial resources and staff to opposition to the war and was thereby deprived of the ability to devote its resources to such other projects as promoting nuclear disarmament, promoting a "Peace Economy," opposing "Star Wars," and conducting peacemaking education programs in schools that NJPA had pursued long before the war and which it hopes to be able to pursue again some day. In addition, NJPA and its members were injured by being deprived of the opportunity to vote for or against their elected representatives based upon how their representatives voted on the issue of going to war in Iraq, and, in the case of NJPA's members and contributors, by being compelled to pay tax dollars for an unconstitutional war that they oppose.

9. 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 has just completed his second tour of duty in 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 was deprived of the opportunity to vote for or against her elected representatives based upon how they voted on the issue of going to war in Iraq since there was never a vote on an explicit

Congressional Declaration of War.

10. The fact that no Declaration of War against Iraq was ever brought to a vote in Congress in violation of due process requirements has directly caused injury to Paula Rogovin by, among other things, directly causing her to suffer emotional, physical and psychological injury for which she has received medical and pharmacological treatment arising from her concern for the safety of her son, and the children of the many other families she knows, her great anger at the President's blatant violations of the Constitution and other laws in initiating and pursuing the war, and the stress arising therefrom. Prior to the unconstitutional initiation of the Iraq War Paula Rogovin had long been active in local politics, a field of endeavor that she has had to abandon in order to pursue her activism in opposition to the war. Thus, she has paid a great "opportunity cost" whereby she has been compelled to redirect her time and financial resources to opposition to the war and has thereby been deprived of the ability to devote those resources to such other projects as local political activism and working on new books for publication in the field of education that she had pursued long before the war and which she hopes to pursue again some day. In addition, Paula Rogovin was injured by being deprived of the opportunity to vote for or against her elected representatives based upon how they voted on the issue of going to war in Iraq

and by being compelled to pay tax dollars for an unconstitutional war that she opposes.

11. 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 this September. She is a registered voter in the 10th Congressional District, and voted in the 2002 and 2004 Congressional Elections, wherein she was deprived of the opportunity to vote for or against her elected representatives based upon how they voted on the issue of going to war in Iraq since there was never a vote on a Congressional Declaration of War.

12. The fact that no declaration of war against Iraq was ever brought to a vote in Congress in violation of due process requirements has directly caused injury to Anna Berlinrut by, among other things, directly causing her to suffer emotional, physical and psychological injury for which she has received medical and pharmacological treatment arising from her concern for the safety of her son, and the children of the many other families she knows, her great anger at the President's blatant violations of the Constitution and other laws in initiating and pursuing the war and the stress arising therefrom. Her

performance at work has suffered as a result of these injuries. Prior to the unconstitutional initiation of the Iraq War Anna Berlinrut devoted a great deal of time to gardening and she was planning to fix up her house in order to prepare it for sale. She has had to abandon these activities due to the great amount of time she now devotes to activism in opposition to the war. Thus, she has paid a great "opportunity cost" whereby she has been compelled to redirect her time and financial resources to opposition to the war and has thereby been deprived of the ability to devote those resources to such other projects as she had long pursued before the war and which she hopes to pursue again some day. In addition, Anna Berlinrut was injured by being deprived of the opportunity to vote for or against her elected representatives based upon how they voted on the issue of going to war in Iraq and by being compelled to pay tax dollars for an unconstitutional war that she opposes.

13. PLAINTIFF WILLIAM JOSEPH WHEELER is a citizen of the United States and resides in Windsor, California. He served in the United States Army from May 23, 2001 until his Honorable Discharge on January 5, 2004, as a result of a "physical condition not a disability." He is subject to recall to active duty until May 2009. He served in Iraq from March 2003 to November 2003. He was part of the 240th Forward Surgical Team attached to the Fourth Infantry Division, with the rank of E-4,

also known as Specialist. He was the recipient of the following decorations, medals and citations: Presidential Unit Citation (Army); Army Good Conduct Medal; National Defense Service Medal; Armed Forces Expeditionary Medal; Army Service Ribbon; and Army Lapel Button.

14. As an active-duty soldier, William Joseph Wheeler was directly affected and harmed by the President's unconstitutional orders initiating and pursuing the War in Iraq. Along with the rest of the 240th Forward Surgical Team he was ordered to go to Kuwait and to then invade and occupy Iraq. He was among the first United States troops establishing control over the Tikrit airfield. During his time in Iraq he was directly exposed to hostile sniper fire and mortar rounds. For a significant period of time, his camp received hostile incoming mortar attacks on a nightly basis. The "physical condition not a disability" that led to his Honorable Discharge, and from which he still suffers, was caused by his service in Iraq. But for the unconstitutional actions of the President in connection with the War in Iraq, William Joseph Wheeler would not have had to endure the many emotional, psychological and physical affects arising from the ordeal of combat, the continuing affects of which still plague him.

15. William Joseph Wheeler, as a member of the Army and as an honorably discharged veteran still subject to recall, has a

due process right to insist that all of the orders that he is required to obey are lawfully given. See 10 U.S.C. §§ 890, 891 & 892; U.S.C.M.J. Arts. 90, 91 & 92. A soldier who unquestioningly follows unlawful orders may find himself subject to criminal or other sanctions in military or civilian courts or even in the courts of other nations or of international forums such as the Hague. William Joseph Wheeler therefor suffered injury by being compelled to obey orders that were unlawful because they were premised on the President's unconstitutional initiation of the War in Iraq without a Congressional Declaration of War. He is also subject to future injury if he receives an order recalling him to active duty as a result of the Iraq War or of the initiation of another war in Iran or elsewhere in the absence of a Congressional Declaration of War.

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

STATEMENT OF FACTS

17. 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.

18. On March 19, 2003, President Bush commenced war on the sovereign country of Iraq and ordered United States armed forces

to commence armed hostilities with the avowed aim of achieving "regime change" in that country. Plaintiff William Joseph Wheeler was one of the soldiers directly affected and placed in harm's way by the President's order. 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.

19. 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.

20. 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."

21. 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 a result of U.S. military operations.

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

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

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

25. 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

26. 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.

27. The debates at the Constitutional Convention establish that 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."

28. 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...."

29. 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."

30. 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.

31. 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 the 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."

32. 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.

33. 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."

34. 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.

35. 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.

36. 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

37. 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)

38. 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."

39. 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. Tinny, 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.

40. 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")

41. 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.

42. 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." (Emphasis Supplied.) It included no limits to duration or manner or place and no sunset provision.

43. 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 President interpreted the AUMF to transfer the power to commence war to the President; this was 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. Thus, the American People were deprived of the opportunity to vote for or against their elected representatives based upon how each representative voted on the issue of going to war in Iraq.

D. An additional vice of the 2002 AUMF is its vagueness. It gave the President room to assume unlimited discretion to attack Iraq. (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. This same vagueness violates the specificity requirement of the War Powers Resolution of 1973, 50 U.S.C. §§ 1541 *et seq.*, which was intended to avoid exactly the situation created by the AUMF of October 2002.

E. In sum, the AUMF cannot be considered a Declaration of War because to do so would be to grant Congress the right

to delegate its duty to determine whether or not war should be declared to the President and Article I, Section 8 of the United States Constitution does not permit any such delegation of this exclusive legislative power.

44. 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 exclusively to Congress to another branch of government.

B. It is not a Declaration of anything. In giving the President authority to make the determination to "use" the military, 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.

45. 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."

46. 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

47. 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."

48. 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."

49. As recently as April 2008, General David Petraeus, commander of U.S. forces in Iraq, and Ryan Crocker, U.S. Ambassador to Iraq, 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.

50. 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.

51. 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 for each and every Congressional representative.

52. William Joseph Wheeler, an honorably discharged veteran who remains subject to an order recalling him to active duty, may be unconstitutionally ordered to return to active duty due to the initiation of a War against Iran or the continuation of the War in Iraq, in violation of his statutory and due process rights to only be asked to obey lawful and constitutional orders.

53. Recent events and statements by the President and other members of the executive branch demonstrate that Iran is not the only nation that may soon be invaded or attacked by order of the President without a Congressional Declaration of War. In particular, such possibilities plainly exist with regard to the Republic of Georgia and Pakistan.

CAUSE OF ACTION

54. 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 exclusively to Congress the duty to Declare War.

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

56. 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.

57. The President has no authority to conduct military operations except in response to a sudden attack, other than that lawfully provided by Congress through an all-out Declaration of War, or in an explicit authorization of limited military action. The open-ended October 2002 AUMF does not qualify because it is neither. Nor does it satisfy the specificity requirement of the War Powers Resolution of 1973. 50 U.S.C. §§ 1541 *et seq.*

58. Article 1, Section 5(3) of the Constitution together with the Due Process Clause of the Fifth Amendment guarantees to every American that the lives of their service men and women and their national treasure and the very fabric of their society will not be exposed to the great risks of war except in full and unambiguous compliance with the Constitutionally mandated procedure of having Congress formally Declare War.

59. 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 to cast their votes accordingly, thereby making every representative directly accountable to his or her constituents.

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

61. As set forth more fully above in paragraphs 7 - 15 of this Amended Complaint, the plaintiffs have all suffered injury that has been proximately caused by the aforesaid violations of the United States Constitution.

62. As set forth more fully above in paragraphs 47 - 53 of this Amended Complaint, the plaintiffs all have a reasonable basis to fear that they will soon suffer further injury due to a repetition of the same or similar conduct by the President in the near future unless this Court declares that such conduct is unconstitutional in the absence of a formal and unambiguous Declaration of War by Congress.

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: September 8, 2008

/s/ Frank Askin
Frank Askin
Constitutional Litigation Clinic
Rutgers Law School
123 Washington Street
Newark, New Jersey 07102,

/s/ Bennet D. Zurofsky
Bennet D. Zurofsky
Reitman Parsonnet, P.C.
744 Broad Street
Newark, N.J. 07102

Attorneys for Plaintiffs

Counsel for Plaintiffs gratefully acknowledge 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.