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ALERT TO POTENTIAL *AMICUS CURIAE*

The Rutgers Law School Constitutional Litigation Clinic filed a Petition for a Writ of Certiorari in the United States Supreme Court on November 4, 2010, in a case challenging the invasion of Iraq by President Bush in the absence of a Declaration of War by Congress. The plaintiffs in the case are Joe Wheeler, an Iraq War veteran; New Jersey Peace Action, a 50-year-old anti-war group; and two mothers whose sons had been deployed in Iraq, Anna Berlinrut of Nutley, New Jersey and Paula Rogovin of Teaneck, New Jersey.

This is an alert to potential *amicus curiae* that the deadline for an amicus brief must be filed within _____ days after the case is placed on the docket or a response is called for by the Court, whichever is later, and that time will not be extended.

Plaintiff's case is based on the original intent of the Framers of the Constitution to take the power of peace and war out of the hands of a single Executive, and place it in the hands of Congress. Plaintiffs' arguments rely heavily on the records of the Constitutional Convention on June 1, 1787, and the rulings of the Supreme Court in the first half of the Nineteenth Century.

The Petition argues that since the end of World War II, U.S. Presidents have regularly ignored the intent of the Framers and instituted foreign hostilities without obtaining a Declaration of War from Congress. However, the Petition also notes that in none of the prior wars did the President take the initiative to invade a sovereign nation without provocation. According to the Petition, in the first half of the Nineteenth Century, the Supreme Court emphasized that the plain language of

the Constitution meant that the President could not launch an all-out war in the absence of a Congressional Declaration.

The case was dismissed by both the Federal District Court in Newark and the U.S. Court of Appeals in Philadelphia on procedural grounds, without reaching the merits of the constitutional claim.

The case raises fundamental issues concerning the intent of the Framers of the Constitution and the role of the Supreme Court as the ultimate interpreter of our national charter. The Petition reminds the Court of the famous words of Thomas Jefferson that in Article I Section 8 of the Constitution, the Framers had provided “an effectual check to the Dog of War by transferring the power of letting it loose from Executive to Legislative body, from those who are to spend to those who are to pay.”

Attached, please find the Clinic’s Petition for a Writ of Certiorari to the United States Supreme Court.

Please note the following resources:

Supreme Court Rules, especially Rule 37 concerning *amicus*:

<http://www.supremecourt.gov/ctrules/2010RulesoftheCourt.pdf>

Public Citizen Litigation Group’s Supreme Court Assistance Project, “Getting Your Foot in the Door: The Petition for Certiorari”:

<http://www.citizen.org/documents/GettingYourFootintheDoor.pdf>

Record Press Inc., offering 25% printing courtesy discount to associated

amicus: Vincent Murphy, Jr., Esq.; Phone: 212-619-4940; Email:

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