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Constitutional Litigation Clinic at Rutgers-Newark Sues President Bush Over Iraq War

Newark, NJ, May 13, 2008 – The Constitutional Litigation Clinic at Rutgers School of Law–Newark filed suit today in the Federal District Court in Newark against President Bush over the war in Iraq. The Complaint seeks a Declaratory Judgment that the President’s decision to launch a preemptive war against a sovereign nation in 2003 violated Article I, Section 8 of the United States Constitution, which assigns to Congress the power to Declare War.

According to Professor Frank Askin, founding director of the clinic and attorney for the plaintiffs in New Jersey Peace Action v. George W. Bush, six law students worked with him through much of the academic year studying the issues and preparing the lawsuit.

The unusual 20-page Complaint relies very heavily on the annals of the 1787 Constitutional Convention, at which the Founders deliberately denied to the president the power to wage war except in response to a sudden attack when Congress did not have time to act. “The Founders were very clear,” said Askin, “that only Congress could make that awesome decision. They were not permitted to delegate that power to the president and thus be able later to disclaim responsibility for a decision gone bad. It was that momentous decision that allowed Thomas Jefferson to proclaim that the Convention had ‘chained the dog of war’.”

The complaint also cites 19th century Supreme Court rulings holding that an all-out, or “perfect,” war could only be declared by Congress, whereas Congress could authorize the president to wage a quasi, or “imperfect,” war under strict limits as to scope and duration without a full-scale Declaration.

Askin also noted that while several lawsuits challenging U.S. military actions without a Congressional Declaration since the end of World War II have failed, most of those were dismissed by lower courts on procedural grounds. The Supreme Court has never held that the president may wage an all-out war against a sovereign nation in the absence of such a Declaration. “In any event,” Askin added, “the Constitution may not be amended by persistent violation.”

The suit does not seek coercive relief. It does point to continuous threats by the Bush Administration of military action against Iran, and seeks a Declaration that such unilateral actions by the President violate Article I, Section 8, asserting that this is an issue “capable of repetition yet persistently evading review.”

Askin noted that the case was greatly aided by research done by Rutgers-Newark law Professor Emeritus Alfred Blumrosen, who has prepared a manuscript, along with his lawyer son Steven, about the Constitutional Convention and the origins of the “Declare War” clause.

New Jersey Peace Action, the lead plaintiff in the suit, was represented at the press conference held today at Rutgers Law School, Newark, by Madelyn Hoffman, executive director. She said: “NJ Peace Action believes that it is during difficult times that our resolve to protect our constitutional system of checks and balances is truly put to the test. The cost of war is too high, both in terms of human lives and dollars, to put decisions of such consequence in the hands of one person, particularly the executive, who, as Madison stated, is most inclined to settle differences by going to war. This lawsuit is an attempt to alert us to the perils involved in ignoring the Constitution, and to perhaps then prevent an unauthorized attack upon Iran.”

The other named plaintiffs, Anna Berlinrut of Maplewood and Paula Rogovin of Teaneck, are New Jersey spokespersons for Military Families Speak Out. Berlinrut has a Marine son who has already done two tours in Iraq and is scheduled to be redeployed there in September. Rogovin also has a son in the Marine Corps who she believes was redeployed to Iraq in March after previously serving a tour of duty there.

Berlinrut told the press conference: “When my son told me he was going to join the Marine Reserves in 2001, I was proud of him. But I told him that I didn’t trust our new president’s judgment as Commander in Chief. My son laughed at me. ‘Mom, Congress isn’t going to let him do anything stupid’.”

Berlinrut added: “But my son and other naive troops were wrong. Over 43,000 medically unfit troops have been sent into combat and as many as 300,000 others have returned home with PTSD. The director of the National Institute of Mental Health reported that more veterans of the Iraq and Afghanistan wars will probably commit suicide than are killed in combat. Over a thousand veterans are attempting suicide each month.”

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