

Press Conference, May 13, Rutgers Law School re New Jersey Peace Action v Bush

The theory of the lawsuit filed today by Professor Frank Askin and the Constitutional Litigation Clinic at Rutgers Law School, Newark, supported by a work-in-progress by Alfred W. Blumrosen, Thomas A. Cowan Professor Emeritus at the Law School, and Steven Blumrosen, entitled “Undeclared Wars” includes the following:

US Constitution, Art. 1 Sec. 8 Clause 11 gives Congress the power “to declare war.” “War” includes all hostilities between nations, including limited wars. During the 20th century, Congress declared war twice in World War I and six times in World War II. Those declarations all took the form of a Joint Resolution that included:

“..the President is *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 Government of the particular nation]; and to bring the conflict to a successful termination all of the resources of the country are hereby pledged by *the Congress* of the United States.”
[emphasis added]

Each member of Congress who took a position on going to war was recorded and subject to voter reaction when they came up for re-election.

We have not declared war since WW-2. We have been involved in five major hostile military actions since then: Korea in 1950-53, Vietnam, 1964-74, Iraq-1, 1991, Afghanistan, 2002-to date; Iraq-2, 2003 to date.

For hostile military action beginning with Vietnam, we have used the Authorization for Use of Military Force or AUMF. The AUMF for the 2003 Iraq War provided:

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 added]

In the AUMF Congress does not decide on the use of the military, the President does. No Senator or Congressperson has on his or her record a vote on the issue of going to war.

The AUMF defeats the purpose of the constitutional requirement that Congress declare war—to compel a careful consideration by Congress before we undertake war and to enable constituents to know how their representatives voted. We now have a situation where the majority party votes with the President from party loyalty and hopes of financial support in the next election. The party out of power looks like wimps if they oppose it, yet lacks full access to information before being pressed to vote on the AUMF.

Citizen’s rights to vote for or against their representatives, based on their votes in Congress on taking the nation to war, are guaranteed by Article 1 Sec. 8. Denial of this right by use of the AUMF violates the Fifth Amendment’s guarantee of due process of law. The Supreme Court has never heard a case raising this issue.

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