

# Conservative Briton Takes Brown Gov't To Court To Force Lisbon Referendum

*Conservative Party member Stuart Wheeler began a legal challenge April 22 to the refusal of British Prime Minister Gordon Brown to hold a referendum on the Lisbon Treaty, as promised by all parties in election manifestos issued during the 2005 general election. Although few thought he would succeed in forcing the Brown government to change its policy on the Treaty, Wheeler was granted permission to proceed with his legal challenge on May 2. This took Brown and his cabinet by surprise, and has breathed new life into the fight to force the government to hold a referendum on the Treaty. The court challenge will be heard on June 9-10, and could influence the Irish referendum, which is to be held just two days later, on June 12.*



*Wheeler is well-known in Britain as the 1974 founder of the IG group, which specializes in speculating on commodity indexes, and he is currently the largest donor to the Conservative Party in Britain. He is also a major financial supporter of scientists and groups that oppose Al Gore's genocidal global warming hoax.*

*Wheeler is also well-known for his campaign against torture, and for supporting charities that fight torture and help the families of victims. He is appalled by the Bush Administration's use of waterboarding in the wake of 9/11, and describes the Administration's behavior as "frightful." "How can anyone think that waterboarding is not torture?" he asks. Last year, he co-financed a film, titled "Extraordinary Rendition," dealing with the Bush Administration's abuses.*

*Wheeler spoke with Gregory Murphy, associate editor of 21st Century Science and Technology, on May 29.*

## 'Legitimate Expection'

**Murphy:** How did your judicial review of the Brown government's refusal to hold the referendum on the Lisbon

Treaty—after all three parties has promised in the last election that they would hold one—how did this review begin?

**Wheeler:** Well, I've always been very interested in Europe, and I take a Euro-skeptical stance. And some people who'd actually got things going a little bit on their own, got me interested. So I went to see legal counsel, and they told me that, contrary to what we'd all expected—we'd all expected that our best argument to get a judicial review, would be that Parliament had the right to do anything it wanted, but didn't have the right to give away its own powers, which to a considerable extent this proposed treaty does. But when I went to see counsel—we saw two of them—they said: "No, that is not your best argument by any means. Your best argument is, the well-established legal doctrine of "legitimate expectation," which, in lay terms, means the government made a promise, or rather, over and over again they made the same promise in this case, and they've got to keep it. And therefore, you can ask for a judicial review, and we hope, get the declaration that you want."

**Murphy:** Is it the case that the Brown government is using sophistry, saying that the Lisbon Treaty is not the same as the EU Constitution?

**Wheeler:** Well, certainly, that is one of their arguments, and they're quite strong on that. But, we feel—to put the matter shortly—really, that we have a very good answer on that: A lot of analysis has been done, there are about—I think, exactly—250 clauses, and once you've applied the complicated form in which the Lisbon Treaty is drafted and compared it with the Constitutional Treaty, you find that 240 out of the 250 clauses are identical. And that the remaining 10—many of them are on such matters as whether to have a flag, and whether to have an anthem.

And, if you look at the matter from another angle, one after another head of state or very senior minister in Europe, had virtually gloated that the *two* treaties are, in substance, the same. And an Italian minister went so far as to say, "We had to make the Lisbon Treaty very difficult to understand, because if people had been able to understand it, we would have had to have a referendum."

So therefore, we hope that we'll be able to persuade the court, without too much difficulty, that they've failed in that

argument. And they haven't, in fact, put forward yet—and it's getting very late—any argument as to why the treaties are different.

The hearing of the judicial review itself, will be on June 9 and June 10. I don't know if you understand the sequence of events: In order to get a judicial review, you, first of all, have to apply for permission to have one. And the government opposed this; they said, we should not have permission because we had not got an arguable case.

And there was hearing on that, which went very unusually, just the best part of a day. And we had my Queen's Counsel and his junior, and the government had the senior government barrister and his junior, and I think they expected to win that. But they lost it rather conclusively, so that the judge, all he had to do was to find that we had an arguable case; and he rather emphasized that, in his judgment. But, nevertheless, his judgment was sufficiently robust, that one could almost say that he was saying we had a very arguable case. He didn't use those words, of course.

And so now, everyone's taking my case really seriously. The government is still retaining the normal top barrister, but they are putting over his head, to lead him, another QC, called Jonathan Sumption, who's a very, very well-known, able, expensive barrister. On top of that, the Speaker of the House of Commons has very unusually sought permission to intervene in the case, and I think he's more or less got that permission.

And so, when the hearing takes place on June 9, we will have two QCs for the government; and, as a separate matter, there'll be one QC—"QC" stands for "Queen's Counsel"—representing the Speaker of the House of Commons, as well as my own counsel.

**Murphy:** What does the Speaker of the Commons claim?

**Wheeler:** The reason why he has to intervene is to make sure that rights accorded by the Bill of Rights—I think that's [from] 1689—and various other documents and laws, that we don't interfere at all with Parliamentary privilege. That is, roughly speaking, we can't interfere in any way, with anything Parliament does or wants to do, or anything that's said in Parliament. And we say, we're very clearly not interfering in any way in that. And in any case, those points will be argued against us by the government's two QCs. Therefore, though we have no particular objection to the Speaker of the House of Commons being represented as well, it seems just a duplication, because those arguments will be made anyway.

### 'Upping the Ante'

**Murphy:** Yes, that's why it appears—that the government is trying to, as we say in the United States, "up the ante."

**Wheeler:** Well, the government is upping the ante. Of course, the Speaker of the House of Commons is definitely supposed to be completely independent of the government, so

his intervention should be a completely separate matter. But he does have the same Solicitor, with, I suppose, Chinese walls.

**Murphy:** Yes, that appears to be the case.

Mr. Wheeler, sources have told me, that it's possible that the judges may be reluctant to rule in your favor, on this review, raising the question, of the separation of powers within the government.

**Wheeler:** Well, it is true that the courts are very reluctant, not so much perhaps to oppose the government, as to do anything which has the slightest sniff of interfering with Parliament. Our place is entirely against the government, in the shape of the prime minister and the foreign secretary. It doesn't ask that Parliament should do anything or not do anything, and it doesn't interfere in any way with what is said, or might be said in Parliament.

And indeed, we'll make the point, if necessary, that even if I get what I would like, which is a referendum on whether the Lisbon Treaty should be ratified, and even if there is a referendum, and it went very strongly against ratification, as a matter of law, Parliament would still be entitled to go ahead with the steps needed to ratify it.

So as a matter of polity, I think it would be very difficult for the government to go ahead in that way, if the court had said that their behavior was unlawful, but they couldn't actually be prevented from doing it, not legally.

### The Appeal Process

**Murphy:** The other question I have on that same matter, is, if the judges fail to rule in your favor, and you seek for appeal, how does the appeal process work? And how far can this issue be appealed?

**Wheeler:** Oh, it can be appealed a long way. The judicial review will be in front of two judges, in what is called a "divisional court." Unusually, one of the two judges will be one of the Lord Justices of Appeal, that is, a Court of Appeal judge, the other one will be a normal High Court judge. Then the losing side, whichever it is, can appeal to what we call the Court of Appeal, which is quite higher up than the court in which this case will be heard. And then, finally, the losing side can appeal to the judicial side of the Judicial Arm of the House of Lords, which is our highest court. And indeed, I think if I win on Monday and Tuesday, it is virtually certain that the government will appeal. If I lose, there's a very high chance that I will appeal. So it's not particularly unlikely that it will go all the way to the House of Lords Judicial Arm.

But the timing makes the whole thing very tricky. Because as it so happens, certainly a coincidence, the debate in our House of Lords—that's not the Judicial Arm, it's rather confusing: One of the two arms of Parliament, the House of Lords—the debate there on an amendment seeking a referendum happens to be going to take place almost certainly on the

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11th of June—happens the day after the second day of my hearing; and the Irish referendum—at the moment, Ireland’s the country of the European Union which is having a referendum—is the day after that, upon the 12th of June. So that week’s going to be a very important one for this treaty.

I should say, however, in the permission hearing, that is, the original hearing when the government tried to get the thing thrown out, when that was heard, the judge, although he finally delivered a robust judgment, as I would characterize it, in our favor, he did “reserve judgment.” I don’t know whether I’m talking to a lawyer or not, so forgive me if I’m teaching my grandmother to suck eggs—a “reserve judgment” means that he doesn’t give the judgment on the spot; you get it ten days later, after considering the matter.

**Murphy:** My background is nuclear power. So this is all very interesting what you’re bringing up, and really explains a lot, because most media coverage is just reporting what the events have been, not necessarily what the process is.

**Wheeler:** Yes, in a way, it will be slightly unusual, but the next hearing is just like any other normal case. It goes to what’s called the Court of First Instance, I suppose, and then, as I say, it can be appealed as any other can, to the Court of Appeal.

If it goes to the Court of Appeal, and the losing side can then appeal to the House of Lords; they actually have to get permission to appeal to the House of Lords, but I think this case is now regarded as of quite big public importance, and I don’t think it would be difficult for the losing side to get that permission. But the timing is difficult, because, I think, if I win in the judicial review on [June 9-10], as a matter of politics—though not of law—I don’t think the government could really just go ahead and ratify the Treaty anyway. So therefore, they would be pressing very, very hard for a very quick hearing in the first appeal.

If, on the other hand, I lose, and decide to appeal, I think the government would not feel constrained, having won the case, and they would try to go ahead and ratify the Treaty quickly. So if I lose and have an appeal, I shall then be the one who’s asking to have it brought on quickly.

## Labour Party Losses

**Murphy:** The recent losses of the Labour Party in the London Mayoral election and the recent by-election, and

your getting granted your judicial review: In your view, does this put pressure on Brown and [Secretary of State for Foreign and Commonwealth Affairs David] Miliband to hold a referendum? Since clearly, clearly the population wants one.

**Wheeler:** I don’t think so. I think it puts big pressure on the Labour government, and particularly on Brown, whose position as prime minister is under some threat. But I wouldn’t say it puts pressure on them to have a referendum. I think they’ve been adamant that they will not have a referendum—I mean, it’s horrid, they certainly should, in my view, but they’ve maintained stoutly that they will not.

And so, I think that, without being forced to give in—in other words, without me winning my case—I think they would feel that they were making yet another circle U-turn, and that they would look very weak. They’ve made some U-turns already, I think they would be anxious not to make another one.

**Murphy:** Would this pressure, all this happening in the atmosphere, what you’re talking about the week that’s very important, with the debate in the House of Lords, and your judicial review, and the Irish referendum, does that change the geometry of how maybe the vote in the House of Lords may go?

**Wheeler:** Well, much depends on whether the court gives judgment on [June 10], that’s the day before the debate in the House of Lords. If nothing happens in court, and they reserve judgment, I’m not quite sure, unless the judges make some sort of pertinent intervention which gets reported. So I don’t know what effect that would have.

I mean, as you may have heard, the Liberal Democrat Party has behaved in a most extraordinary way in this matter. Three or four years ago, they explained with eloquence why it was essential to have a referendum at that time, even though they were keen that the Treaty should be ratified. They said the people were entitled to have a vote—this is very important.

But, nevertheless, this time round, in the House of Commons, they drafted a very unusual procedure: They used a three-line whip, it’s called—that’s the biggest sort of stick when they’re MPs—to say they should abstain. It’s a very peculiar thing to demand that your MP should abstain, rather than vote one way or the other. And, illogically, their current

intention in the debate in the House of Lords is to tell them that they've got to vote with the government. And it's really very hard to explain all these contradictions.

And if they do maintain that position of instructing or asking the members of the House of Lords to vote with the government and those members abide by it, it's going to be hard, though not absolutely impossible, for the skeptics to win a vote in the House of Lords demanding an amendment.

**Murphy:** Yes, some of the groups that are tracking the referendum, and demanding a referendum, and are currently projecting based on party instructions, and right now it's like three votes for the referendum; and if you look at another group, it's three against—I mean, it's very, very tight. I know Lord Lawson and Lord Lamont have been going around speaking in Ireland and other places, trying to organize votes to get the referendum amendment added. You know that's been reported in the press a few times. I think Lord Lawson is actually using it as a way to show that there's broader action and broader geometry on it, to try to get people who are on the fence, to come on and say, "Yes, we need to pass the referendum amendment in the House of Lords."

**Wheeler:** It's getting closer than it was. And for some reason, which I really can't remember what the reason is supposed to be, somebody was anxious to tell me that in a referendum of this type, the "no" vote always gains a bit in the last week. I don't know why that should be so, really, but if it is so, it could be very tight indeed, in Ireland.

**Murphy:** I know a lot of the unions have come out, fishing unions, and farmers unions, have come out against the Lisbon Treaty.

**Wheeler:** Our unions over here, some of them are very much against ratification of the Treaty. . . .

You asked what the effect of my case would be on the debates in the House of Lords.

I mean, if the court gives judgment straightaway, and it might, and the judgment's in my favor, I really don't know what would happen. I think the government would try to postpone debate, and want it appealed, or something of that kind. But I really can't say; it would be a dramatic situation.

**Murphy:** That's definitely the case. What if the review came in your favor; would this change the vote in the House of Lords, or the possibility of a referendum?

**Wheeler:** Yes. I think, if it came in my favor on [June 10], and the debate was the next day in the House of Lords, my guess is they might try to postpone it. But if it came the next day, after the court had declared the refusal of a referendum to be unlawful, I would have thought that might well affect the vote in the House of Lords. Yes.

—*Mr. Wheeler can be reached at his website, [www.stuartwheeler.co.uk](http://www.stuartwheeler.co.uk).*