

Congressmen take the President to court

by Kathleen Klenetsky

Forty-five members of the U.S. Congress have gone into federal district court in Washington, D.C. to seek an injunction barring President Bush from ordering an attack on Iraq, unless he obtains prior approval from Congress.

U.S. District Judge Harold Greene has scheduled an emergency hearing for Dec. 4 on the suit, which was endorsed Nov. 26 by a group of prominent legal experts, including Erwin Griswold, who served as U.S. Solicitor General during the Johnson and Nixon administrations.

The suit's principal goal is to get a ruling from the court that upholds the Constitution's language stating that Congress alone can declare war, and applies that ruling to the Persian Gulf deployment. If successful, the suit would enjoin the President from ordering U.S. forces to take offensive action in the Gulf without congressional approval. If Bush ignored the injunction, he could find himself in contempt of court.

Growing frictions

Since the Gulf crisis erupted, tension between the White House and Capitol Hill over which branch of government has the power to order troops into combat has steadily grown. Although Congress in general certainly can't be accused of demonstrating any great moral courage in the face of Bush's colonialist intervention in the Mideast, the administration's extreme arrogance has angered many members of both houses.

The Bush team has flatly refused to commit itself to seeking congressional approval before taking military action. Secretary of State James Baker told the House Foreign Affairs Committee that prior congressional approval would be "self-defeating." The administration has turned a deaf ear on demands for greater consultation with Congress. Moreover, the administration refused to send any witnesses to testify at Senate Armed Services Committee hearings on the Gulf situation, which began Nov. 27, on the grounds that it wanted to wait until after the U.N. Security Council voted up a resolution endorsing the use of force against Iraq.

This contemptuous attitude has caused great consternation, both among those who oppose war in the Gulf, as well as among those who don't, but who fear that failure to obtain

a formal declaration of war will lead to another Vietnam debacle, especially in light of plummeting popular support for Bush's policy.

"We're saying that the President of the United States cannot on his own make that kind of determination," Rep. Ronald Dellums (D-Calif.), the chief organizer of the suit, said in a statement. "There are millions of people in this country who have serious questions about us going to war. . . . It is with great pain that we have learned the lesson of military adventurism without the consent of the American people. We must prevent this from happening again."

Bush vs. the Constitution

The suit is based on Article I, Section 8, Clause 11 of the Constitution, which invests in Congress the authority to declare war, as well as on the debate on the issue that took place in the context of the Constitutional Convention.

Dellums's staff has distributed copies of *The Federalist*, Number 69, in which Alexander Hamilton makes it clear that the Constitution's drafters deliberately decided to deny the President the power to declare war, for fear that this would make him too much like the hated British monarch: "The President is to be commander-in-chief of the army and navy of the United States. In this respect, his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces. . . ; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies,—all of which, by the Constitution under consideration, would appertain to the legislature."

Lawyers for the plaintiffs are also expected to cite James Madison's comments on the subject: "The Constitution supposes . . . 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."

Although the suit does not ask the court to judge the administration's Persian Gulf policy, but only the constitutional issue, most of its sponsors are known to oppose U.S. use of force. Many had previously signed an Oct. 26 statement, also initiated by Dellums, explicitly opposing the military option.

According to a press release distributed by Dellums's office, the suit is seeking both an injunction to prevent Bush from declaring war without congressional approval, as well as declaratory relief, which is a declaration by the court, rather than an order. "If an injunction were issued by the federal court," the release says, "the President would be subject to contempt if he failed to obey the court order. If an injunction did not issue, but declaratory relief were granted in favor of the Congress, the President would certainly have to think twice about proceeding in the face of such a clear declaration of the relative powers of the two branches."