CAMPELL V. CLINTON: THE "IMPLIED CONSENT" THEORY OF PRESIDENTIAL WAR POWER IS AGAIN VALIDATED

MAJOR GEOFFREY S. CORN[1]

I. Introduction

In the recent dismissal of the case *Campbell v. Clinton*,[2] the United States District Court for the District of Columbia adjudicated a constitutional challenge to the legal authority of the President to order the conduct of hostilities against Serbia.[3] The case against the President was filed by twenty-six members of the House of Representatives.[4] Judge Paul L. Friedman dismissed the case based on a lack of legislative standing.[5] However, a close examination of his opinion indicates that the true focus of the decision was the absence of a ripe dispute between the Congress and the President. This subtle emphasis on the lack of ripeness once again validates the reliance on the "implied consent" of Congress to support the constitutional authority of the President to order the conduct of military hostilities.[6]

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1. Judge Advocate General's Corps, United States Army. Professor, International and Operational Law Department, The Judge Advocate General's School, United States Army, Charlottesville, Virginia. B.A., 1983, Hartwick College, Oneonta, New York; J.D. *with highest honors*, 1992, National Law Center of George Washington University, Washington, D.C., LL.M., 1997, The Judge Advocate General's School, U.S. Army, Charlottesville, Virginia, Distinguished Graduate. Formerly a member of the 45th Judge Advocate Officer Graduate Course, The Judge Advocate General's School, United States Army, Charlottesville, Virginia, 1996-1997; Chief of Criminal Law, Senior Trial Counsel, and Legal Assistance Officer, Office of the Staff Judge Advocate, 101st Airborne Division (Air Assault) and Fort Campbell, Fort Campbell, Kentucky, 1993-1996; Funded Legal Education Program, 1989-1992; Future Readiness Officer, Military Intelligence Branch, U.S. Army Personnel Command, Alexandria, Virginia, 1989; S-2, 1st Battalion, 508th Parachute Infantry Regiment, Fort Kobbe, Panama, 1987-1988; Assistant S-2, 193d Infantry Brigade (Task Force Bayonet), Fort Clayton, Panama, 1986-1987; Platoon Leader, 29th Military Intelligence Battalion, Fort Clayton, Panama, 1986; Briefing Officer, G-2, 193d Infantry Brigade (Panama), Fort Clayton, Panama, 1985-1986.

2. No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (D.D.C. June 8, 1999).

3. *Id.* at *1.

4. *Id.*

5. *Id.*

II. Background

The case of *Campbell v. Clinton*[7] began on 30 April 1999, when Representative Tom Campbell, along with sixteen other members of the House of Representatives, filed a complaint for declaratory relief in the D.C. Circuit Court.[8] The complaint sought a declaration from the court that the President lacked constitutional authority for ordering continued combat operations. Accordingly, it alleged:

> The President of the United States is unconstitutionally continuing an offensive military attack by United States Armed Forces against the Federal Republic of Yugoslavia [FRY] without obtaining a declaration of war or other explicit authority from the Congress of the United States as required by Article I, Section 8, Clause 11 of the Constitution, and despite Congress' decision not to authorize such action.[9]

This challenge was based exclusively on a violation of the Constitution. However, the plaintiffs also sought a declaration that unless the President received explicit authorization from Congress to continue combat operations, the War Powers Resolution[10] mandated termination of such operations. "Additionally, [p]laintiffs seek a declaration that, pursuant to Section 1544(b) of the [War Powers] Resolution, the President must terminate the use of United States Armed Forces engaged in hostilities against the Federal Republic of Yugoslavia no later than sixty calendar days after [26 March] 1999."[11]

In response to the lawsuit, the Department of Justice, on behalf of the President, filed a motion to dismiss based on a lack of standing.[12] In a

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6. This Comment is intended to compliment the article published by the author in 1998, (Major Geoffrey S. Corn, *Presidential War Power: Do the Courts Offer Any Answers?* 157 MIL. L. REV. 180 (1998)). This article concluded that the history of judicial resolution of war power disputes indicates that unless and until the Congress explicitly opposes a war-making initiative by the President, the authority of the President should be considered constitutionally valid.

7. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630.

8. *See* Plaintiffs Complaint for Declaratory Relief (April 30, 1999)), *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

9. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630, at *3.

10. Pub. L. No. 93-248, 87 Stat. 555 (1973) (codified at 50 U.S.C.A. §§ 1541-1548 (1998)).

11. Plaintiffs Complaint for Declaratory Relief (April 30, 1999)) at 4, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

memorandum in opposition to the defendant's motion to dismiss,[13] the plaintiffs submitted a detailed argument to support their original request for declaratory relief. They asserted that because the House of Representatives had voted 213 to 213 against a concurrent resolution authorizing air and missile strikes against Yugoslavia,[14] not only had Congress explicitly declined to authorize the conflict, it had explicitly rejected support for the conflict. Thus, according to the plaintiffs, the President was acting against the express will of Congress in continuing to prosecute the war. According to the plaintiffs, this amounted to a clear violation of the Declaration Clause of the Constitution.[15]

In the alternative, the plaintiffs also asserted that continuing hostilities beyond the sixtieth day of operations, absent an express authorization from Congress for such operations, amounted to a violation of the War Powers Resolution.[16] The plaintiffs relied on the provisions of the War Powers Resolution that specifically mandates terminating hostilities sixty days after the hostilities were initiated, unless Congress has provided *explicit* legislative authority for continuation. According to the Resolution:

> The constitutional powers of the President as Commander-in-Chief to introduce United States Armed Forces into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances, are exercised only pursuant to (1) a declaration of war, (2) *specific statutory authorization*, or (3) a national emergency created by an attack upon the United States, its territories or possessions, or its armed forces.[17]

This language indicates that except for the President's authority to "repel sudden attack," only a declaration of war or its functional legislative equivalent may be treated as war-making authorization from Congress. This requirement for an express authorization appears again in Section 1541, Congressional Action. In subsection (b), it allows an unauthorized deploy-

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12. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630.

13. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

14. S. Con. Res. 21, 106th Cong. (1999).

15. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss at 12-16, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

16. Pub. L. No. 93-248, 87 Stat. 555 (1973) (codified at 50 U.S.C.A. §§ 1541-1548 (1998)).

17. *Id.* (emphasis added).

ment to continue beyond sixty days only when authorized by a declaration of war or specific statutory authorization.[18] Finally, in Section 1547, "Interpretation of Joint Resolution," the following language appears:

> (a) Authority to introduce United States Armed Forces into hostilities or situations wherein involvement in hostilities is clearly indicated by the circumstances *shall not be inferred–*
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> *(1) from any provision of law (whether or not in effect before [7 November], 1973), including any provision contained in any Appropriations Act, unless such provision specifically authorizes the introduction of United States Armed Forces into hostilities or into such situations and states that it is intended to constitute specific statutory authorization within the meaning of this chapter . . . .*[19]

Seizing on this language, the plaintiffs asserted that neither the vote by Congress defeating a resolution calling for an immediate termination of all hostilities,[20] nor the overwhelming passage of an appropriations bill specifically intended to fund the conflict through the fiscal year,[21] satisfied the constitutional requirement that Congress authorize the conflict.[22] Because this was the first large scale conflict to ostensibly violate the cited provisions of the War Powers Resolution, this case provided the first truly significant invocation of that law to restrict a presidential war-making initiative.[23]

On behalf of the President, the Justice Department filed a reply in support of the defendant's motion to dismiss.[24] The Justice Department asserted three bases to support dismissal. First, that based on the "legislator standing" test established by *Raines v. Byrd*,[25] the plaintiff legislators could not satisfy the legal standard for maintaining the challenge to the President.[26] Second, the facts did not support the conclusion that the controversy between the Congress and the President was judicially "ripe."[27] Third, that because the evidence indicated cooperation between the Presi-

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18. *Id.*
19. War Powers Resolution, 50 U.S.C. § 1547 (1988) (emphasis added).
20. H.R. Con. Res. 82, 106th Cong. (1999).
21. H.R. Res. 130, 106th Cong. (1999).
22. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss at 27-29, Campbell v. Clinton, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (D.D.C. June 8, 1999) (copy on file with author).

dent and Congress, the request for judicial intervention called for adjudication of a "political question."[28]

Although the Justice Department asserted three alternate theories supporting the motion, the theories all relied on one critical fact: there was no "impasse" between the Congress and the Executive Branch.[29] According to the filings, this lack of impasse was established by evidence that the Congress had taken measures to support the military operation against Yugoslavia:

> [C]ontrary to plaintiffs' allegation that a constitutional "impasse" exists, Congress has continued to consider and vote on legislation relating to the use of military force in the region of Kosovo, and recently expressed its support for the President's actions by providing billions of dollars in specific funds for the United States' military operations. In the face of such continued action by Congress in consultation with the President, plaintiffs cannot successfully argue that an impasse has been reached. . . .[30]

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23. Although the War Powers Resolution had been invoked in the past to oppose presidential initiatives, the cases all involved relatively small scale military deployments into environments where hostilities between U.S. forces and opposition forces was purely speculative. These cases all involved challenges to U.S. military initiatives in Central America during the 1980s. *See, e.g.*, Crockett v. Reagan, 558 F. Supp. 893, 899 (D.D.C. 1982), *aff'd*, 720 F.2d 1355 (D.C. Cir. 1983) (per curiam); Sanchez-Espinoza v. Reagan, 770 F.2d 202, 210 (D.C. Cir. 1985); Lowry v. Reagan, 676 F. Supp. 333, 339 (D.D.C. 1987), *aff'd*, No. 87-5426 (D.C. Cir. Oct. 17, 1988).

The only other military operation since the passage of the War Powers Resolution to generate a judicial challenge to the authority of the President to wage war was the Persian Gulf Conflict. *See* Dellums v. Bush, 752 F. Supp. at 1141 (D.D.C. 1990) (dismissing for lack of ripeness a challenge to the military build up in Persian Gulf, which was filed by members of both houses of Congress). However, the express legislative authorization provided for the conduct of the Gulf War ultimately mooted any War Powers Resolution issue.

24. Reply in Support of Defendant's Motion to Dismiss (June 1, 1999), Campbell v. Clinton, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (D.D.C. June 8, 1999) (copy on file with author).

25. 521 U.S. 811 (1997) (holding that legislator plaintiffs have standing for claimed institutional injury only when they demonstrate their votes were sufficient to defeat the legislation at issue, and that their votes were completely nullified by subsequent action).

26. Reply in Support of Defendant's Motion to Dismiss (June 1, 1999) at 1, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

27. *Id.*

28. *Id.*

29. In the opinion of this author, unless and until Congress explicitly opposes a presidential war making initiative, the orders of the President should be considered constitutionally authorized. *See* Corn, *supra* note 6.

This lack of "impasse" was the *sine qua non* underlying all three bases for dismissal. Regarding the "legislator standing" theory, the lack of impasse proved that continuing to wage the war was in no way a "complete nullification" of any vote cast by the plaintiffs.[31] Regarding the ripeness theory, the lack of impasse proved that no judicially ripe "case or controversy" existed between the Congress and the President.[32]

Finally, with regard to the "political question" theory, the evidence of war-making policy cooperation between the President and Congress meant that judicially resolving the case would require "this Court to declare that [U.S.] forces must be removed from the [FRY] where Congress has chosen not to do so."[33] Such premature judicial intervention would therefore contradict the will of both political branches of the government.[34] The centrality of this lack of impasse is highlighted by the following language used by the Department of Justice:

> Plaintiffs also fail to address the key factor that makes this case premature: no constitutional impasse exists to justify judicial intervention into the ongoing dialogue between the Executive and Legislative branches regarding the situation in the FRY. In advance of such an impasse, plaintiff's claims are not ripe for judicial review. It is not for the Court to confront the President on his Kosovo policy in Congress' name at the behest of a small minority of the House.[35]

There are several significant aspects of the Justice Department's approach to support the motion to dismiss. First, and most significant from the perspective of its relationship to analysis of presidential war power, is the emphasis placed on evidence of congressional support for the President's policy. As noted above, every theory asserted by the Department relied upon such evidence. This emphasis is understandable in the context of prior decisions related to the war power of the President.[36] However, it

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30. Reply in Support of Defendant's Motion to Dismiss (June 1, 1999) at 2, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

31. *Id.* at 5-7.

32. *Id.* at 9-12.

33. *Id.* at 1.

34. For an analysis of the relationship between evidence of cooperation between the Congress and the President to the application of the political question doctrine to war power cases, *see* Corn, *supra* note 6, at 218-31.

35. Reply in Support of Defendant's Motion to Dismiss (June 1, 1999) at 9-10, *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (copy on file with author).

is inconsistent with the approach taken in previous war power cases, namely that the President's inherent war making authority amounted to an independent constitutional basis for his actions.[37] While this theory of constitutionality supported the President in this case, it did so by acknowledging the constitutional importance of demonstrating some form of congressional support for the President. This seems to concede that proof of the absence of such support, in the form of express congressional opposition to a presidential war-making initiative, could deprive the President of constitutional authority.

Second, the Justice Department did not argue that the President possessed unilateral constitutional authority to order the operations at issue. As noted above, this "inherent" power argument has traditionally been asserted as a source of the President's constitutional authority to order military operations.[38] Instead, the Department emphasized the evidence of cooperation between the President and the Congress.

The final aspect of the Justice Department approach that seemed significant was the almost total disregard of the challenge to the President based on the provisions of the War Powers Resolution. The only time this issue was addressed was in relation to the Department's assertion that the case was barred by the political question doctrine, when it asserted the doctrine applied with equal force to both constitutional and statutory challenges. Apparently, the Department did not consider the War Powers Resolution issue significant. In hindsight, this appears to have been a valid conclusion.

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36. *See* Corn, *supra* note 6.

37. *See* Dellums v. Bush, 752 F. Supp. at 1141 (D.D.C. 1990); *see generally* LEON FRIEDMAN & BURT NEUBORNE, UNQUESTIONING OBEDIENCE TO THE PRESIDENT: THE ACLU CASE AGAINST THE ILLEGAL WAR IN VIETNAM (1972).

38. *See* FRIEDMAN & NEUBORNE, *supra* note 37; *see also* Turner, *War and the Forgotten Executive Power Clause of the Constitution: A Review Essay of John Hart Ely's War and Responsibility*, 34 VA. J. INT'L L. 903 (1994); Richard Nixon, *Veto of the War Powers Resolution*, 5 PUB. PAPERS 893 (Oct. 24, 1973).

III. The Decision of the Court

On 8 June 1999, Judge Paul L. Friedman of the United States District Court for the District of Columbia granted the President's motion to dismiss.[39] The stated basis for his ruling was that the plaintiffs did not have standing to raise the claims that the President's continued execution of the conflict against Yugoslavia violated the Constitution and the War Powers Resolution.[40]

In a fourteen-page decision, however, Judge Friedman revealed the underlying rationale for his decision. Like the Justice Department, Judge Friedman focused the lack of an "impasse" between the two political branches as the primary justification for dismissing the challenge. As a result, this decision supports the conclusion that while the Constitution does mandate a congressional role in war-making decisions, the "implied consent" of Congress in support of the President's war making initiatives satisfies this constitutional requirement.[41]

After an extensive discussion of the constitutional and statutory basis for the lawsuit, and a summary of facts related to Operation Allied Force, Judge Friedman discussed the rationale for the dismissal. He began by summarizing the various theories relied upon by the courts in prior war power cases to impose jurisdictional bars against such challenges. These included lack of standing, lack of ripeness, equitable or remedial discretion, and the political question doctrine.[42] He explained that applying these theories had been motivated by separation of powers concerns, and specifically the reluctance of the Judiciary "to intercede in disputes between the political branches of government that involve matters of war and peace."[43]

Judge Friedman then noted that each of these bases had been consumed by the legislative standing test established by the Supreme Court in the *Raines* case, in 1997. Under this standard, to establish standing, the legislator "plaintiffs seeking to obtain relief must allege 'personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'"[44] Judge Friedman concluded that

39. Campbell v. Clinton, No. 99-1072, 1999 U.S. Dist. LEXIS 8630 (D.D.C. June 8, 1999).

40. *Id.*

41. *See* Corn, *supra* note 6.

42. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630, at *7-*8.

43. *Id.* at *8.

because the Congress and the President were not at an "impasse" over the war-making policy related to Yugoslavia, the plaintiffs could not show that they had suffered any personal injury through vote nullification. Absent such an impasse, the plaintiffs could not establish that any vote they had cast was actually being "flaunted" by the President. Thus, it was the lack of impasse, or a ripe dispute between the Congress and the President over the war, that led to the standing-based dismissal. According to the court:

> Plaintiffs here allege that the President's actions have deprived them of "their constitutional right and duty under Article I, Section 8, Clause 11, to commit this country to war, or to prevent, by refusing their assent, the committing of this country to war," and that the President has "completely nullified their vote against authorizing military air operation and missile strikes against Yugoslavia."
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> . . . .
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> In the circumstances presented, the injury of which the plaintiffs complain–the alleged "nullification" of congressional votes defeating the measures declaring war and providing the President with authorization to conduct air strikes–is not sufficiently concrete and particularized to establish standing. To have standing, legislative plaintiffs must allege that their votes have been "completely nullified," or "virtually held for naught." *Such a showing requires them to demonstrate that there is a true "constitutional impasse" or "actual confrontation" between the legislative and executive branches*; otherwise courts would "encourage small groups or even individual Members of Congress to seek judicial resolution of issues before the normal political process has the opportunity to resolve the conflict." In the Court's view, there is no such constitutional impasse here.[45]

According to the court, the key fact relied on to conclude that no such constitutional impasse existed was that "congressional reaction over the air strikes . . . sent distinctly mixed messages, and that congressional equivo-

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44. *Id.* at *9 (quoting Raines v. Byrd, 521 U.S. 811, 818 (1997)).

45. *Id.* at *11 (citations omitted) (emphasis added).

cation undermines plaintiff's argument that there is a direct conflict between the branches."[46]

Contrary to the hopes of the plaintiffs, the court did not regard the 213 to 213 defeat of the Concurrent Resolution to authorize air and missile strikes as an unambiguous stand by Congress against the President. According to the court: "[T]he two votes at issue in this case, however, do not provide the President with . . . an unambiguous directive; neither vote facially required the President to do anything or prohibited him from doing anything."[47] Instead, the court noted that the defeat of a resolution directing the President to remove U.S. forces from operations against Yugoslavia,[48] and subsequent passage of the "Supplemental Emergency Appropriation Act that provides funding for the activities being undertaken in the [FRY],"[49] indicated Congress supported continued military operations.

This reliance by the court on absence of an impasse between the two political branches is not a new approach to deal with such cases. This analysis formed the basis of several prior dismissals of war power challenges.[50] Other aspects of the opinion do seem significant. First, as with these prior dismissals, Judge Friedman clearly indicated that should such an impasse emerge between the Congress and the President, the likelihood of judicial resolution would be significant. According to the court:

> If Congress had directed the President to remove forces from their positions and he had refused to do so or if Congress had refused to appropriate or authorize the use of funds for the air strikes in Yugoslavia and the President had decided to spend that money (or money earmarked for other purposes) anyway, that likely would have constituted an actual confrontation sufficient to confer standing on legislative plaintiffs . . . .
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> Congressional reaction to the air strikes has sent distinctly mixed messages, and the congressional equivocation undermines the plaintiffs' argument that there is a direct conflict between the branches . . . . Had the four votes been consistent and

46. *Id.* at *12.

47. *Id.*

48. *See* H.R. Con. Res. 82, 106th Cong. (1999).

49. *See* 1999 Emergency Supplemental Appropriations Act, Pub. L. No. 106-31, 113 Stat. 57.

50. *See generally* Corn, *supra* note 6.

> against the President's position, and had he nevertheless persisted with air strikes in the face of such votes, there may well have been a constitutional impasse.[51]

Second, the court indicated that the lack of standing for legislative plaintiffs did not translate into a lack of standing for any plaintiff. In fact, the court almost seemed to invite a challenge to the President's policy by a service member ordered to duty in Operation Allied Force. In a footnote inserted after concluding that the legislative plaintiffs could not show particularized harm from the actions of the President, Judge Friedman noted:

> A finding that the legislative plaintiffs in this case lack standing under these circumstances does not preclude judicial resolution of a challenge to the President's actions. Counsel for the President appears to have acknowledged that an individual alleging personal injury from the President's alleged failure to comply with the War Powers Clause or the War Powers Resolution, as for instance a service person who has been sent to carry out the air strikes against the [FRY], would have standing to raise these claims . . . The Court also notes that the political question doctrine does not apply to suits brought by individuals in their personal capacity.[52]

Although only a footnote, it seems clear that Judge Friedman was careful to limit the scope of his opinion to a legislative challenge to a war power decision, and not suggest applicability to any challenge of such a decision. This suggestion seems more significant because service members have turned to the federal courts in the past to attempt to block deployment orders on constitutional grounds,[53] and therefore could be expected to do so again in the future.

It is also significant that the court refused to treat a war power issue as a per se non-justiciable political question. The court noted that this had been one of the theories used by the Justice Department to support dis-

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51. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630, at *12.

52. *Id.* at *11 n.8.

53. *See, e.g.*, United States v. Bolton, 192 F.2d 805 (2d Cir. 1951) (challenging the legality of the Korean War); Berk v. Laird, 429 F.2d 302 (2d Cir. 1970) (challenging the legality of the Vietnam War); Orlando v. Laird, 443 F.2d 1039 (2d Cir. 1971) (challenging the legality of the Vietnam War); Holtzman v. Schlesinger, 484 F.2d 1307 (2d Cir. 1973) (challenging the legality of the Vietnam War); Ange v. Bush, 752 F. Supp. 509 (D.D.C. 1990) (challenging the legality of the Persian Gulf War).

missal of the lawsuit.[54] However, the Court succinctly rejected the routine assertion that any issue involving war-making decisions automatically falls into the category of "political question":

> In addition to standing and ripeness, the President also has argued that this case raises a non-justiciable political question. To the extent that the President is arguing that every case brought by a legislator alleging a violation of the War Powers Clause raises a non-justiciable political question, he is wrong.[55]

Of course, the court was able to avoid determining whether the President's assertion was accurate because of the standing based dismissal. However, as with the previous caveat, it is interesting that Judge Friedman went out of his way to reject the per se application of the doctrine espoused by the Justice Department. This approach is consistent with war power cases from both the Vietnam War and the Persian Gulf War, which reached the same conclusion regarding the political question doctrine as did Judge Friedman.[56]

The final interesting aspect of the decision is the almost total absence of analysis of whether the War Powers Resolution applied to the dispute. This seems particularly significant because the plaintiffs specifically invoked a violation of the Resolution as a basis for the challenge. However, in spite of what appeared to be a valid assertion by the plaintiffs–continued execution of military operations against Yugoslavia violated the Resolution–the court apparently concluded that the lack of a ripe controversy between the President and the Congress subsumed the War Powers Resolution challenge. According to the court:

> For all the reasons, plaintiffs have failed to establish a sufficiently genuine impasse between the legislative and executive branches to give them standing. The most that can be said is that Congress is divided about its position on the President's actions in the [FRY] and that the President has continued with air strikes

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54. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630, at *9 n.5.

55. *Id.* The court continued by citing *Baker v. Carr*, 369 U.S. 186 (1962): "'It is error to suppose that every case or controversy which touches on foreign relations lies beyond judicial cognizance . . . [The Court instead must conduct] a discriminating analysis of the particular question posed in order to determine whether the issue is justiciable) . . . ." *Id.* (citations omitted).

56. *See* Corn, *supra* note 6, at 186-96 (analyzing the justiciability of war power issues).

> in the face of that divide. Absent a clear impasse between the executive and legislative branches, resort to the judicial branch is inappropriate.[57]

By establishing an implied ripeness requirement for a War Power Resolution-based challenge, the court seemed to "gut" whatever significance that statute still has. In short, the court made the enforceability of the Resolution contingent upon the same facts that would support a constitutional challenge to a president's war making initiative–impasse between the President and Congress. Because such an impasse would require the affirmative action of the Congress in *opposition* to the President, the War Powers Resolution provisions indicating that the President must cease military operations absent express congressional *authorization* becomes virtually meaningless. A failure of Congress to act does not constitute such an authorization under the Resolution. However, because it also does not amount to express opposition to the President, and therefore does not result in an "impasse" between the Executive and Judicial Branches, a failure to satisfy the requirements of the Resolution results in a violation of a statute that will be considered non-justiciable by a court.

IV. Conclusion

Although dismissed for lack of standing, this judicial challenge to the President's decision to use armed force against Yugoslavia ultimately became moot because of the cease-fire that ended the conflict. As a result, the parties did not pursue further action on the case. Arguably, this decision is relatively insignificant in the landscape of constitutional war powers analysis. However, as indicated above, this case confirms a consistent course followed by the judiciary when asked to adjudicate the legality of presidential decisions to engage the United States Armed Forces in hostilities: focus on whether such a challenge presents a truly ripe issue. Unless this ripeness requirement is satisfied, the President's actions will be presumed to meet the requirements of the Constitution. A challenge will only be cognizable if Congress manifests express opposition to such action. Thus, the legality of war making is not based on a theory of unilateral pres-

57. *Campbell*, No. 99-1072, 1999 U.S. Dist. LEXIS 8630, at *14.

idential war power, but on a theory of cooperative policy making by the two branches of government who share this awesome authority.

As discussed in the article, this Comment serves to compliment, this conclusion has profound significance for military leaders who are ordered to execute such operations. The conclusion provides them with a concrete rationale to support the conclusion that their executed orders comply with the Constitution they swore to uphold, yet preserves for the Congress the power to challenge a President who it believes has acted beyond the interests of the nation.