

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 06-3003

TRACKWELL, *et al*
Plaintiffs, Appellants,

v.

U.S. Government
Defendants, Appellees.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
THE HONORABLE SAM A CROW, U.S. DISTRICT JUDGE
D.C. No. 04-4168-SAC

Appellant's Response And Reply Brief

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**ORAL ARGUMENT QUESTION ADDRESSED WITHIN
THIS BRIEF CONTAINS APPELLANT'S ATTACHMENT
(TABLE OF CITATIONS)**

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Plaintiffs, Appellants,

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APPEALING CASE 5:04cv-4168-SAC OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JURISDICTIONAL STATEMENT

Jurisdiction was invoked, established and defended in Appellant's Opening Brief by United States Codes 28 U.S.C. §§ 1331, 1343(a)(4), 1346(a)(2), 1361, 1367(a) and 28 U.S.C. § 1295(a)(2)

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Whether or not this Honored Court has more jurisdictional authority than a hired United States Supreme Court Clerk concerning the Right to Petition the United States Government.

STATEMENT OF THE CASE

The Appellant has presented to this Court his Application To Justice Stephen G. Breyer by his Opening Brief that the USSC Clerk will not forward unless ordered to do so by this Court. If this Court does not order the USSC Clerk to forward Appellant's Application, this Court along with the USSC Clerk will be guilty of not honoring U.S. Const. amend. I, the Bill of Rights, the Constitution and the constitutional heritage of America. That judicial embarrassment is easily avoided by trusting a Justice with a mere Application.

STATEMENT OF FACTS

The Appellant has made his concise claims, six of them including the subject matter jurisdictional claim. The Appellant with his jurisdictional statement that includes the doctrine of Ancillary and Pendent Jurisdiction as codified by 28 U.S.C. § 1367(a) has given to this Court in one jurisdictional basket, four USSC original jurisdictional claims (Opening Brief Claims II thru V) and the subject matter jurisdictional claim as specified (Opening Brief Claims I & VI).

It is the responsibility of this Court to honor the jurisdiction that has been established and act accordingly as so shall deem proper and to realize a dismissal is also a dismissal of the established USSC original jurisdictional claims that is not within the power of this Court to do so.

The Appellee cites irrelevant Cases that state on occasion criteria to be met. But on this Court's thorough reading of the Appellant's hard fought for words (*the Opening Brief and all relevant filings by Fed. R. App. P. 10(a)(1) all incorporated per FRCvP 10(c) and conveniently provided in Appellant's Table of Citations*) this Court will see clearly all those criteria have been met despite the one case (are there others?) that continues to be quoted out of context by the Defendant and the USDC. The Appellant is protecting the Constitution and the Bill of Rights and that is irrelevant to a USSC bar issue! *Borntrager v. Stevas*, 772 F.2d 419, 420 (8th Cir.1985) (affirming the lower court's conclusion that mandamus relief was unavailable to a plaintiff denied admission to the Supreme Court bar by the clerk because the plaintiff could seek Supreme Court review of the clerk's conduct).

ORAL ARGUMENTS ADDRESSED

Oral Arguments is a determination by standards set by Fed. R. App. P. 34 (2) "Standards. Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary...". By the Appellant's Docketing Statement (VIII. Plaintiff/Appellant Judge Preferences) it is requested the three judge panel be Honorable Judge Stephanie K. Seymour, Honorable Senior Judge Monroe G. McKay, and Honorable Judge Robert H. Henry.

SUMMARY OF ARGUMENT

This is simple and yet complex. If the First Amendment Right to Petition the Government is too complex to protect by this Appellant and it is lost here due to those complexities, then Addendum II, Criteria (3)(4)(5) of the Fed. R. App. P. for the Tenth Circuit Rules requires a prima facie action by this Court to honor its oath to Defend and Protect the United States Constitution. That action along with this Court's proactive undisturbed pure judicial independent thoughts would easily foster and justify a Fed. R. App. P. 35 en banc determination. Subject Matter Jurisdiction is with this honored Court, the last court the Appellant has and thus must rest his Case here and now! "Proceedings in nature of appeals are of various kinds, according to the subject matter. It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury, its proper redress. There are some injuries which can only be redressed by a writ of mandamus and others by a writ of prohibition. There must, then, be a jurisdiction somewhere competent to issue that kind of process", *William Marbury v. James Madison*, February 1803.

28 U.S.C. § 2072(a)(b), "The Supreme Court shall have power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district court and court of appeals. Such rules shall not abridge,

enlarge or modify any substantive right.” This is a United States Code and is directed to all Courts including this one. The Appellant’s substantive right under the Bill of Rights by U.S. Const. amend. I have been violated. The Appellant is unable to petition the United States Government unless this Court of last resort honors the United States Constitution by enforcing a simple clerical duty of delivering Appellant’s Application to Justice Stephen G. Breyer.

CONCLUSION

Individual liberty is an antimajoritarian right that gives to one, several, and to Class Action millions the essential liberty of petitioning the U.S. Government by U.S. Const. amend. I. Taking that right away from one and/or several is taking that right away from “We the People”.

WHEREFORE: it is prayed the USSC Clerk is ordered to deliver Appellant’s Opening Brief containing the Application to Justice Stephen G. Breyer pursuant to USSC Rule 22.1.

Respectfully submitted.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation under Rule 32(a)(7)(B). The word processing program used was Microsoft Word 2000 (9.0.6925 SP-3). There are 955 words of proportional type in this brief as counted by Microsoft Word Tools.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury under the laws of the United States of America that he is a natural born U.S. citizen and the Plaintiff/Appellant in the above action and has read that action and states that the information contained therein is true and correct.

PROOF OF SERVICE

I hereby certify that I have sent by Federal Express a true copy of the above and foregoing from Doha, Qatar on or before the 14th day of April 2006 to:

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CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 1 Dec. 20, 2004

The Honorable [Sam A Crow](#), U.S. District Judge

Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney, Topeka, KS, for Defendant.

Motion for Leave to File Complaint & Summons

This motion for this subject filing is pursuant to [Amendment I](#), the right of the people to petition the Government for a redress of grievances. By Case 04-4014-SAC, Dec. 09, 2004, Memorandum And Order, the Plaintiff's [14th Amendment right](#) to due process was unjustly taken away by a mere technicality especially when the Plaintiff, by an October 25, 2004 Email in good time (copied to this Court and parties by registered letter) initiated a proper attempt in cooperation with this Court for a proper service of a summons and complaint whereas this Court's abdication of responsibility to assist with that attempt constitutes a denial of the Plaintiff's right to have secured proper service of a summons and complaint; a denial of due process pursuant to a technicality. [FRCvP 60\(b\)](#) is quoted, "on motion and upon such terms as are just, the court may relieve a party from a final judgment, order, or proceeding for any (other) reason justifying relief from the operation of the judgment by entertaining another independent action within a year to relieve a party from an unjust judgment, especially on a technicality."

Amendment I Petition of a Complaint & Summons

1. This is an [Amendment I](#) Petition of a Complaint & Summons.
2. Jurisdiction is invoked by [28 U.S.C. § 1331](#) and/or [28 U.S.C. § 1361](#), and/or [28 U.S.C. § 1346](#), and/or [28 U.S.C. § 1343](#).
3. Commencement of this independent action is by [FRCvP 3](#) an action endorsed by the previously quoted [FRCvP 60\(b\)](#).
4. The Complaint is for Relief this Court has jurisdictional authority to grant.
5. The Brief in Support for that action is attached by [Attachment 1](#) that specifies this Complaint &

Relief sought and by due process, the Defendants have the right to respond prior to an appeal on a mere technicality.

6. Thus, the Plaintiff chooses to have the results of this action in hand prior to contemplating an Appeal to a higher court.
7. This Complaint & Summons by this Court's approval as signed by the Clerk and bearing the Seal of this Court instructs the Defendants the need to file a response within **60** days after service. Otherwise, judgment by default will be taken against you.
8. "Due Process" requires this sequential procedure:
 - a. Filing of the Complaint & Summons.
 - b. Responses by the Defendants in good time if chosen.
 - c. A ruling by this Court that incorporates the Defendants' right to respond.
9. Memorandum And Order, Dec. 09, 2004 comes off as an out of sequence [Default Judgment](#) that has denied the Defendant's right to respond and Plaintiff's right to that response, due to a frivolous technicality.
10. The Plaintiff wishes not and may not respond within [Case 04-4014-SAC](#) to the above (9) referenced prima facie [Default Judgment](#) clouded inappropriately within the title of Memorandum And Order, [Case 04-4014-SAC, Dec. 09, 2004](#).

WHEREFORE the Plaintiff prays this Court get on with "Due Process" and allow this filing to secure proper service of this summons and complaint.

Respectfully submitted.

PLAINTIFF'S BRIEF IN SUPPORT (ATTACHMENT A)

This is a Brief In Support for this Court to order the Clerk of the United States Supreme Court to transmit this Brief and its attached U.S. Supreme Court Original Jurisdiction petition promptly to Justice Stephen G. Breyer pursuant to [U.S. Supreme Court Rule 22.1](#). "Trackwell v. U.S. Government" was named so June 3, 2003 by William K. Suter, U.S. Supreme Court Clerk by signature of Jeffrey Atkins, (202) 479-3263. Eight other attempted Supreme Court filings and their responses have established the dispute between the Plaintiff and the Clerk of the U.S. Supreme Court pursuant to previous filings to this Court that have provided the subject Clerk's short incomplete response to the biggest Federal question ever presented to the Judicial Branch of Government.

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It is evident the Plaintiff's Original Jurisdiction Petition will never reach the pool memo since all the Plaintiff's petitions have been returned immediately upon receipt, but there is a route supplied by the U.S. Supreme Court Rules as the Chief Justice sends out a list of the petitions he wishes to have discussed and after that list has come around, each of the associate justices may ask to have additional cases put on this list. This determines the only way for constitutional relief to the Plaintiff's injury is pursuant to this Court's jurisdiction pursuant to **28 U.S.C. § 1361**.

The Comprehensive Summarized Judicial Story

The Plaintiff is a natural born U.S. citizen and his livelihood is in the Middle East Country of Qatar and previously through the U.S. Army had taken an oath to defend the United States Constitution. This action is pursuant to that oath. As a constituent to the Executive and the Legislative Branch this Plaintiff use to have a protected constituent voice pursuant to constitutional procedural limits within the shared war powers among the political branches. A judicial attempt to protect that voice commenced prior to the 2003 Iraqi War when other plaintiffs, active-duty members of the military, parents of military personnel, and members of the U.S. House of Representatives filed in Massachusetts District Court a complaint seeking preliminary injunction to prevent the defendants, President George W. Bush and Secretary of Defense Donald Rumsfeld, from initiating a war against Iraq. They asserted that such an action would violate the **Constitution**. On February 24, 2003 U.S. District Court of Massachusetts Judge Joseph Tauro ruled a federal court would only judge the war policies of political branches of government only when actions taken by Congress and the President are in conflict, a situation that had not occurred. On further appeal to the **U.S. Court of Appeals, First Circuit Case 03-1266**, the brief submitted on behalf of **74 concerned law professors as amici curiae** was acknowledged, emphasis added, supporting the request of appellants for reversal. These plaintiffs were up against all the available constitutional routes available to the U.S. Government as versus the alleged unconstitutional route that was taken, emphasis added. These available constitutional routes did cast a zone of twilight as prior to the U.S. Government's **March 17, 2003 non-congressional DOW to Iraq, 2003 Iraq DOW**, the Executive and the Congress had concurrent authority on Iraq by treaty through the United Nations. Did the 1st Circuit Appellate Court recognize the United Nations Jurisdiction over Iraq, as did the **October 2002 resolution**? The 1st Circuit

Appellate Court stated several United Nations References i.e. the **November 8, 2002 Security Council Resolution 1441**, which declared that Iraq remained in material breach of its obligations and offered "a final opportunity to comply with its disarmament obligations." **S.C. Res. 1441, U.N. SCOR, 57th Sess., 4644th mtg., U.N. Doc. S/RES/687 (2002)**. UN weapon inspectors were inside Iraq and subsequently the U.N. Security Council wanted that process to continue but the Executive's **2003 Iraq DOW** violated **Article 33 & 37 of the United Nations Charter** and interrupted the UN process by a treaty breach.

U.N.C. Article 33 states, "1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means." **U.N.C. Article 37** states, "Should the parties to a dispute of the nature referred to in **Article 33** fail to settle it by the means indicated in that Article, they shall refer it to the Security Council." See <http://www.un.org/aboutun/charter/>

On March 17, 2003 the United States withdrew a resolution it had presented to the Security Council seeking authorization for a war against Iraq, and the Executive ceased the **Article 1** war powers authorization and announced the **2003 Iraq DOW**, nonetheless, emphasis added, contrary to **Article II**!

United States of America became a member of the United Nations October 24, 1945 by the **Article II** treaty process as the United States President signed, and the United States Senate ratified the **United Nations Charter** and the **United Nations' participation act** on December 20, 1945 and its **October 10, 1949 Amendment** made available to the United Nations Security Council its responsibility for maintaining international peace and security. Within this, Congress laid down several rules by which America's participation would be governed. Among those rules was the requirement that before the President of the United States could deploy United States Armed Forces in service of the United Nations, he was required to submit to Congress for its specific approval the numbers and types of Armed Forces, their degree of readiness and general location, and the nature of the facilities and assistance including rights of passage to be made available to the United Nations Security Council on its call for the purpose of

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maintaining international peace and security. Congress' statute offers further validation of this U.S./U.N. treaty arrangement per to [22 U.S.C. § 287](#).

March 13, 2003, the 1st Circuit Appellate Court dismissed the Case, as there was no resolute conflict between the branches. Collision between the legislative and executive branches was not suitable for judicial review, because there was not a ripe dispute concerning the President's acts and the requirements of the [2002 October Resolution](#), [107th Congress H.J. Res. 114](#), passed by Congress. A resolution with defined narrowed limits as the [2002 October Resolution](#) could not have authorized the 2003 Iraq DOW. These narrow limits were recognized by the Appellate 1st Circuit Judge Lynch's March 13, 2003 ruling:

“The week after his September 12 (2002) speech at the United Nations, President Bush proposed language for a congressional resolution supporting the use of force against Iraq. Detailed and lengthy negotiations between and among congressional leaders and the Administration hammered out a revised and much narrower version of the resolution to evaluate this claim now ... We would need to assume that the Security Council will not authorize war, and that the President will proceed nonetheless.”

WITH STRONG EMPHASIS, The United Nations Security Council did not authorize war and the President announced the **2003 Iraq DOW** nonetheless. This Case became justiciable as the **2003 Iraq DOW** raised the specter of undermining the United States constitutional structure of this constitutional republic, the United States of America. Given this "amalgam of powers," the **Constitution** overall "envisages the joint participation of the Congress and the executive in determining the scale and duration of hostilities." See: [Massachusetts v. Laird](#), 451 F.2d 26 (1st Cir. 1971). Joint participation on Iraq required that the Executive and the Legislative would have honored the recognized narrowly focused [October 2002 Resolution](#), tied by a treaty to the United Nations. The plaintiffs did manage to present their case in the requested ripened version "squarely" to the First Circuit U.S. Court of Appeals prior to the Iraqi Invasion by stating:

The plaintiffs' claim is now ripe for this Court's review. "[T]he available facts make it possible to define the issues with clarity." Id. at 18. This Court noted that its opinion, as facts stood on March 13, 2003, did not mean that challenges such as that of the Plaintiffs would never be ripe for decision before military action began. Doe I, at 18, n.9. If, however,

in light of the ripening of the circumstances in this case, this Court were still to decline to reach the merits of Plaintiffs' claim, it would essentially be conceding that courts may never review these matters before military action begins.

The March 18, 2003 ruling acknowledged a "New Case" with dramatic changes and answered the biggest Supreme Court federal question in the history of America in panic fashion! Appellate 1st Circuit Judge Lynch's March 18, 2003 ruling is quoted completely:

“ORDER OF COURT, Entered March 18, 2003, Plaintiffs have filed a "petition for rehearing on an emergency basis," relying on events which have occurred since the court's Opinion of March 13, 2003. As we said in that opinion, "Ripeness doctrine involves more than simply the timing of the case. It mixes various mutually reinforcing constitutional and prudential considerations." Although some of the contingencies described in our opinion appear to have been resolved, others have not. Most importantly, Congress has taken no action which presents a "fully developed dispute between the two elected branches." Thus the case continues not to be fit for judicial review. See [Massachusetts v. Laird](#), 451 F.2d 26, 34 (1st Cir. 1971). The petition is denied.”

This **extremely short ruling**, a legal precedent by definition, accordingly becomes a Judicial/Political Branch set precedent of such imperative public importance, see [Sup.Ct. R. 11](#), in absence of the deprived overlooked [Article III](#) original jurisdiction of the U.S. Supreme Court. As it is obvious where appellate jurisdiction is declared where Supreme Court original jurisdiction has preeminence, turns the **Constitution** into words without substance and the subject lower court's ruling into an unconstitutional precedent, one that is easily countered by Judge Lynch's March 13, 2003 own written words:

“[T]he Constitution vested power in the legislative branch as a necessary check on the power of the executive branch, and that Congress is not free to upset the careful balance by giving power to the executive. See 524 U.S. at 452 (Kennedy, J., concurring) ("That a congressional cession of power is voluntary does not make it innocuous. . . . Abdication of responsibility is not part of the constitutional design."); cf. [New York v. United States](#), 505 U.S. 144, 182 (1992) ("The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment.").”

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This single-voiced opposition asks why was Judge Lynch's March 18, 2003 ruling on a war powers issue of such imperative public importance so short and so undecipherable, emphasis added?

In *Baker v. Carr*, 369 U.S. 186 (1962), Justice Brennan states, "There are sweeping statements to the effect that all questions touching foreign relations are political questions. Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand SINGLE-VOICED STATEMENT of the Government's views. Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action...."

The well-known checks and balances provided by the framers of the **Constitution** have supplied to the Supreme Court the necessary centrifugal forces, particularly its Original Jurisdiction, to ensure that the Supreme Court is the court with the greatest degree of independence from the political branches. It is the only Court where a Federal Question of such imperative public importance, such as a war power issue, may be pondered in depth for establishing the judicial branch's duty as a full partner in the tripartite system of federal government ordained by the **Constitution**. A constitutional framer spoke of this independence, James Madison, in his prepresidential days by **The Federalist, No. 51**:

"But the great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the constitutional means and personal motives to resist encroachment of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place."

That independence has not hesitated the U.S. Supreme Court to rule against the political branches when the **Constitution** required such a ruling. The 1952 *Steel Seizure Case* was a stinging rebuff to President Truman. In *United States v. Nixon* in 1974, the Court held that even the president to turn over

relevant evidence in connection with a Court proceeding. In the case of *Chadha v. Immigration and Naturalization Service*, decide in 1983, the Court held unconstitutional the so-called "legislative veto".

The Plaintiff's Injury

From *William Marbury v. James Madison*, February 1803 Chief Justice Marshall is quoted: "There are some injuries which can only be redressed by a writ of mandamus and others by a writ of prohibition. There must, then, be a jurisdiction somewhere competent to issue that kind of process. Where are we to look for it but in that court which the **Constitution** and laws have made supreme, and to which they have given appellate jurisdiction? Blackstone, vol. 3, p. 110, says that a writ of mandamus is "a command issuing in the king's name from the court of king's bench, and directed to any person, corporation or inferior court requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court has previously determined, or at least supposes, to be consonant to right and justice. It is a writ of a most extensively remedial nature, and issues in all cases where the party has a right to have any thing done, and has no other specific means of compelling its performance."...The first writ of mandamus is not peremptory, it only commands the officer to do the thing or show cause why he should not do it. If the cause returned be sufficient, there is an end of the proceeding; if not, a peremptory mandamus is then ordered. It is said to be a writ of discretion. But the discretion of a court always means a sound, legal discretion, not an arbitrary will. If the applicant makes out a proper case, the courts are bound to grant it. They can refuse justice to no man.... The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain the king himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court."

The U.S. Supreme Court is the only court the Plaintiff has available for seeking redress to his injury as "**stare decisis**" has left this only option open for addressing the loss of his protected constitutional constituent voice when constitutional procedural limits were stretched beyond constitutional limits by the **2003 Iraq DOW**. A constitutional impasse was reached and by *War Powers Resolution of 1973*, 50 U.S.C. § 1541, the Legislative Branch had 48 hours to rectify this constitutional impasse (March 17-19, 2003) on behalf of their constituents but unfortunately did not,

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emphasis added. In his concurring opinion [Justice Powell in *Goldwater v. Carter*, 444 U.S. 996 \(1979\)](#), stated that courts should decline, on ripeness grounds, to decide "issues affecting the allocation of power between the President and Congress until the political branches reach a constitutional impasse." Ripeness pursuant to the **2003 Iraq DOW** establishes the fitness of this war power issue and thus a judicial decision is required to alleviate the injury the Plaintiff has withstood, as a bypassed constituent of the Legislative, and is continually withstanding by the **2003 Iraq DOW** set precedent in U.S. History that will erroneously affect the shared constitutional War Powers as long as a comprehensive judicial intervention fails to remove this established constitutional impasse, a precedent that will forever pose a substantial threat to constitutional procedural limits for declaring war, maintaining treaties & maintaining accountability to the constituents of the Legislative. If this established War Powers Precedent fails to reach the U.S. Supreme Court, then this constitutional injury and grief, emphasis added, will disrespect the Supreme Court of the United States of America as this alleged transgression beyond constitutional boundaries on the political branches' shared war powers, as demarcated by the [Constitution](#), will continue on as a Judicial Blotch throughout U.S. History. The disclaimer of the [1973 War Powers Act](#) acknowledges provisions of existing treaties and simply states any route within that act does not grant any war power actions whatsoever as quoted:

"Nothing in this joint resolution is intended to alter the constitutional authority of the Congress or of the President, or the **provision of existing treaties**; or shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution."

There is a somber and weighty issue to consider now that the alleged unconstitutional act, **2003 Iraq DOW**, has come and gone. The Plaintiff by prima facie is in statutory alliance with all constituents of the Legislative Branch pursuant to [FRCvP Rule 23](#).

"(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or

defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." ***Plaintiff's comment:*** (1), (2), (3) are apparent and so is (4) if the Supreme Court hears this Case of such imperative public importance!

By A Washington Post-ABC poll just prior to the Iraqi invasion found that six in 10 Americans harbored doubts about using force in Iraq, while 40 percent were opposed to any invasion.

<http://www.cnn.com/2003/US/02/15/spri.irq.protests.main/> CNN/U.S.News: Cities jammed in worldwide protest of war in Iraq Demonstrations follow divided day at United Nations Sunday;: Huge crowds of anti-war demonstrators jammed into midtown New York on Saturday as protesters in dozens of U.S. cities joined large crowds worldwide in voicing opposition to war with Iraq;: CNN's Maria Hinojosa said the crowd was diverse, with older men and women in fur coats, parents with young children, military veterans and veterans of the anti-war movement. February 16, 2003 Posted: 1:21 PM EST (1821 GMT).

<http://msnbc.msn.com/id/6363692/> "Victorious Bush vows to reach out to Kerry voters" NBC, MSNBC and news services Updated: 8:19 p.m. ET Nov. 3, 2004. Bush tried to reach out to the **55 million voters** who chose Democratic Sen. John Kerry instead of him. Many of those voters said they were not so much enthusiastic backers of Kerry as rather strong opponents of the president's policies, **including the invasion of Iraq.**"

But it is not about polls and votes to this antimajoritarian branch of government, it is about the U.S. Government's Established War Power Precedent that has injured this Plaintiff as a constituent requesting accountability to an issue acted and legally ruled upon setting a war powers precedent in defiance to the original jurisdiction of the U.S. Supreme Court. Does it matter whom the parties are when a request is made from the U.S. Supreme Court? From [William Marbury v. James Madison, February 1803](#) Chief Justice Marshall is quoted, "It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a mandamus is to be determined."

U.S. Supreme Court Original Jurisdiction

[William Marbury v. James Madison, February 1803](#)
Chief Justice Marshall is quoted:

"In the distribution of this power it is declared that the Supreme Court shall have original jurisdiction in all cases affecting ambassadors, other public

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ministers and consuls, and those in which a state shall be a party. In all other cases, the Supreme Court shall have appellate jurisdiction...If it had been intended to leave it in the discretion of the legislature to apportion the judicial power between the supreme and inferior courts according to the will of that body, it would certainly have been useless to have proceeded further than to have defined the judicial power, and the tribunals in which it should be vested. The subsequent part of the section is mere surplusage, is entirely without meaning, if such is to be the construction. If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original, and original jurisdiction where the constitution has declared it shall be appellate; **the distribution of jurisdiction, made in the constitution, is form without substance...** When an instrument organizing fundamentally a judicial system, divides it into one supreme and so many inferior courts as the legislature may ordain and establish; then enumerates its powers, and proceeds so far to distribute them, as to define the jurisdiction of the Supreme Court by declaring the cases in which it shall take original jurisdiction, and that in others it shall take appellate jurisdiction; the plain import of the words seems to be, that in one class of cases its jurisdiction is original, and not appellate; in the other it is appellate, and not original. If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction and **for adhering to their obvious meaning.**"

Original jurisdiction cases pursuant to [Article III Section 2 Clauses I & II](#) are specified by the precise language of the **Constitution** as Gouverneur Morris the chief draftsman and editor of the **Constitution** ensured the **U.S. Constitution** to be as clear and **obvious** as our language would permit. When the Appellate 1st Circuit Judge Lynch on March 17, 2003 was faced with the requirement to hold up the **2003 Iraq War** for proper jurisprudence, contemplating such action probably accounted for the distasteful incomplete non-comprehensive short ruling as it was out of the scope of the Appellate Court's power to render a sole U.S. Supreme Court's right of judicial action that would of "**obviously & drastically**" **affected ambassadors, other public ministers and consuls.** [William Marbury v. James Madison, February 1803](#) Chief Justice Marshall is quoted:

"The powers of the legislature are defined and limited, and that those limits may not be mistaken, or forgotten, the **Constitution** is written. To what

purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the **Constitution** controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act...The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

The Political Question

Marshall's political question doctrine is rooted in separation of powers concerns. It is in force for not questioning the political branches plenary powers. However, for a shared authority, a constitutional judicial resolution is valid as that resolution will not usurp the other branches. The court is just setting constitutional limits on the President's exercise of his shared power and serves as a check on the political branches and is consistent with the separation of powers principles. [William Marbury v. James Madison, February 1803](#) Justice Marshall is quoted:

"But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others."

In [Wayman v. Southard, 23 U.S. \(10 Wheat.\) 1 \(1825\)](#) Justice Marshall noted limits on Congressional delegation, "It will not be contended that Congress can delegate... powers which are strictly and exclusively legislative." The constitutional framers determined to deny the war power to the President and to deny it even to a single house of Congress. They chose, instead, to locate that power exclusively in the full Congress. One constitutional framer, Alexander Hamilton (1755-1804), was a very strong advocate of Executive power and our **Constitution** and only a few people have made a comparable contribution to the substance of American government. Hamilton emphasized that the President's power as Commander in Chief would be much inferior to that of the King, by [The Federalist No. 69](#) he wrote in New York, Friday, Mar. 14, 1788:

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“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, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.”

James Madison another framer wrote, “The **Constitution** supposes, what the History of all Government demonstrates, that 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.” Letter from James Madison to Thomas Jefferson, Apr. 2, 1798, in 6 The Writings of James Madison 312-13 (G. Hunt ed. 1906).

Even Abraham Lincoln, while a Congressman, said more than half a century later that “no one man should hold the power of bringing” war upon us. *The Collected Works of Abraham Lincoln* 452 (R. Basler, ed. 1953) (letter to William H. Herndon) (emphasis in original).

Marbury v. Madison was extensively quoted as it is the linchpin of constitutional law and has left the Supreme Court a genuinely coequal branch of a tripartite national government, having added to its normal function of a court of last resort the awesome responsibility of being the final arbiter of the meaning of the **Constitution**.

The Plaintiff has Standing and the issue is Ripened!

The Supreme Court has established a two-part test for determining standing under **Article III** of the **Constitution**. The plaintiff must allege: (1) that he personally suffered actual or threatened injury, and (2) that the “injury ‘fairly can be traced to the challenged action’ and ‘is likely to be redressed by a favorable decision.’” *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 70 L.Ed. 2d 700, 102 S.Ct. 752 (1982); *Allen v. Wright*, 468 U.S. 737, 751, 82 L.Ed. 2d 556, 104 S.Ct. 3315 (1984).

Two factors are used to evaluate ripeness related to standing one is the fitness of the issues for judicial decision and the other is the hardship to the parties of withholding court consideration. The Plaintiff was harmed by the challenged action, the **2003 Iraq**

DOW, a legally-cognizable injury loss of a democratic constituent voice when Congress failed to respond to the 48-hour deadline for protecting the Congress’ right to vote on a war powers issue, the **2003 Iraq DOW** of such imperative public importance entrusted to their respective chambers by the **Constitution**. In *Moore v. United States House of Representatives*, 236 U.S. App. D.C. 115, 733 F.2d 946, 950 (D.C. Cir. 1984), Moore pointed out explicitly that a congressional plaintiff suffers “unconstitutional deprivations of constitutional duties or rights . . . if the injuries are specific and discernible,” *Id.* at 952. See also, *Humphrey v. Baker*, 270 U.S. App. D.C. 154, 848 F.2d 211 (D.C. Cir. 1988); *Melcher v. Federal Open Market Committee*, 266 U.S. App. D.C. 397, 836 F.2d 561 (D.C. Cir. 1987); *Gregg v. Barrett*, 248 U.S. App. D.C. 347, 771 F.2d 539 (1985).

The Plaintiff’s harm is an injury-in-fact, both real, immediate and continuing and thus withholding judicial review on the merits will allow the **2003 Iraq DOW** to be an abiding precedent for giving up the Senate’s **Article II** right to vote on war power treaty issues and Congress’ longstanding **Article I** right to formally Declare War. Thus, the Plaintiff claims “Standing & Ripeness” to challenge the adequacy of this **2003 Iraq DOW** precedent has set for preventing further hardship to the Constitution and its constituents, see *Blum v. Yaretsky*, 457 U.S. 991, 1001-2, 73 L.Ed. 2d 534, 102 S.Ct. 2777 (1982).

The Steel Seizure Case

Has there been a case that successfully challenged the executive’s broad use of war powers? This constituent has the same rights of the plaintiffs of the Steel Seizure Case, *Youngstown Sheet & Tube Co., et al. v. Sawyer*, 343 U.S. 579 (1952). May 12, 1952 the Supreme Court set aside five hours for oral argument to hear The Steel Seizure Case in the Supreme Court at noon on that Monday, every seat in the public section of the courtroom was filled, and the lawyer’s section in front of the bar was populated on each side with attorneys for the respective parties. All the law clerks were in their “pews”. The justices came on the bench, and after the announcement of the two opinions, the Court was ready to hear the arguments. Two hundred additional people were allowed into the courtroom to stand around the walls and listen to the arguments, while hundreds more waited in line outside. **“Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.” John Milton.**

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The **2003 Iraq DOW** should have been a job for the Nation's lawmakers, not for its military authorities and as such constitutional congressional intervention would have prevented this alleged unbearable disrespect to the separation of powers. Taken from "Justice Burton" in The Steel Seizure Case, Concurring Opinion w/minor changes as to relate to this **2003 Iraq DOW** Case: The controlling fact here is that Congress, the **Constitution** & related Laws prescribes to the President specific procedures, exclusive of "Declaration of War", for his use in meeting the "UN/Iraq situation". Congress "as always" by [Article 1 Section 8 Clause 11](#) reserves the right to determine where and to whom a "Declaration of War" is issued. Under these circumstances, the President's "March 17, 2003 Declaration of War to Iraq" and the Legislative inability and/or unwillingness in 48 hours to do anything about it invaded the jurisdiction of Congress and violated the principle of the separation of powers. This demonstrates this Case clearly defines the issues for a judicial intervention for nullifying the set **2003 Iraq DOW** precedent. The **Constitution** has given the lawmaking power to Congress, and has given to the executive certain other powers, which do not include formally making a Declaration of War. Since Congress did not and could not give that power away, the Executive's 2003 Iraq DOW usurped the Legislative.

Summation to the USDC of Topeka, Kansas

The "Federal Questions" are apparent, did the Executive Branch bring Iraq into compliance with its international obligations by honoring the [October 2002 Resolution](#)? Were those War Power Actions by the **2003 Iraq DOW** in accordance with the **Constitution**, relevant laws and/or the provision of existing treaties of the United States pursuant to the [1973 93rd Congress War Powers Act H. J. Res. 542](#)?

The Vietnam War was a slow to grow war by a product of jointly supportive actions of the political branches. The cases against the Vietnam War as unconstitutional were denied, see [Massachusetts v. Laird, 451 F.2d 26 \(1st Cir. 1971\)](#). Massachusetts v. Laird came under the original, as opposed to the appellate, jurisdiction of the Supreme Court. Although the Court denied the motion to file a complaint, Justice Douglas's dissenting opinion is noteworthy for constitutional adjudication for this case, "we stated in [Powell v McCormack \[1969\]](#), *** the question of a textually demonstrable commitment and "what is the scope of such commitment are question [this Court] ... must resolve." *** It may well be that it is for Congress, and Congress alone, to

determine the form of its authorization, but if that is the case we should only make that determination after full briefs on the merits and oral argument..... Both Powell and the [Steel Seizure Case \[1952\]](#), *** however, demonstrate that the duty of this Court is to interpret the **Constitution**, and in the latter case we go behind an executive order to determine authority.*** It is far more important to be respectful to the **Constitution** than to a coordinate branch of government."

[Mitchell v. Laird, 159 U.S. App. D.C. 344, 488 F.2d 611, 614 \(D.C. Cir. 1973\)](#), In Mitchell, the Court of Appeals for this Circuit stated, "Here the critical question to be initially decided is whether the hostilities in Indo-China constitute in the Constitutional sense a "war". . . [If the plaintiffs' allegations are true,] then in our opinion, as apparently in the opinion of President Nixon, . . . there has been a war in Indo-China. Nor do we see any difficulty in a court facing up to the question as to whether because of the war's duration and magnitude the President is or was without power to continue the war without Congressional approval." In short, Mitchell stands for the proposition that **courts do not lack the power and the ability to make the factual and legal determination of whether this nation's military actions constitute war for purposes of the constitutional War Clause**. See also, [Orlando v. Laird, 443 F.2d 1039 \(2d Cir. 1971\)](#); [Berk v. Laird, 429 F.2d 302 \(2d Cir. 1970\)](#).

Sure there are lots of cases for all the previous Wars where no unconstitutional faults were found by the Courts. But the big difference to be noted is that those cases were looking for an unspecified "Declaration of War" whereas for this Case, the constitutional congressional plenary "Declaration of War" was provided by the Executive contrary to specified constitutional procedural limits. Commitments to Iraq are now apparent as now the Congress has been executively committed to appropriate large sums of money to "**make Rules concerning Captures on Land and Water**" by [Article I](#), a mechanism after the fact that in no way suggest there was a congressional vote for authorizing the **2003 Iraq DOW**. And now this Plaintiff as a constituent is enduring this established precedent until a favorable ruling from the U.S. Supreme Court relieves the injury.

Relief the USDC of Topeka, Kansas May Provide

Constitutional law requires only common sense vision of original intent for seeking this sought careful legal analysis for Federal Questions of such imperative

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public importance on the political branches shared war powers posed to the Supreme Court. These Federal Questions touches on [Article I](#) (Declaration of War), [Article II](#) (U.S./U.N. Treaty), [Article III](#) (Supreme Court Original Jurisdiction), the [93rd Congress War Powers Act H. J. Res. 542](#) and the [107th Congress H.J. Res. 114](#) pursuant to class action law that involves approximately 55 million register voters. The final Federal Question will never go away until the Supreme Court answers it in depth after oral arguments, that question is, "Were the U.S. Government actions pursuant to the 2003 Iraq War contrary to the United States **Constitution**?" When Federal Questions encompasses three Articles of all three branches, two legislative laws on a war power issue **that drastically affects ambassadors, other public ministers and consuls**, it is easily concluded that the Supreme Court by **Original Jurisdiction** should review this case. The requested Supreme Court Case will not harm no individual, will strengthen the nation and put a page in America's History that will honor the Third Branch of Government as it has never been honored before! The Plaintiff believes this is what the constitutional framers wished, and that decision should be laid to rest with at least one Justice that naturally has independent judicial wisdom for making that call, not those hired clerk(s) that have treated this Plaintiff with total disrespect. The legal relief is specified but for it to have a chance the personal relief that will satisfy this Plaintiff is required. This Plaintiff will be relieved when Justice Stephen G. Breyer has officially read this Brief and its attached U.S. Supreme Court Original Jurisdiction petition. I pray this Court uses its jurisdiction pursuant to [28 U.S.C. § 1361](#) for ordering the Clerk of the United States Supreme Court to transmit this Brief and its attached U.S. Supreme Court Original Jurisdiction petition promptly to Justice Stephen G. Breyer pursuant to [U.S. Supreme Court Rule 22.1](#).

Respectfully Submitted.

(ATTACHMENT A CONTINUED)
THE NINTH USSC ATTEMPTED FILING
UNCONSTITUTIONALLY REJECTED
BY THE USSC CLERK
WRIT OF PRECIPAE

It is demanded the Clerk of this Court adhere to his job description and the law as concisely defined at law or to be held liable at law. Otherwise, transmit this petition promptly to Justice Stephen G. Breyer pursuant to [Rule 22.1](#) by this petition's application and redress this sought relief from the Clerk who has

refused to comply with [Rule 22.1](#). Delivering this petition as stated will:

1. Prevent violation of [42 U.S.C. § 1983](#) and [U. S. Const., Amdt. 1](#), "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".
2. Prevent this Clerk from squashing the Constitutional Rights of this plaintiff, an action that is patently unconstitutional. "If a law has no other purpose than to chill assertion of Constitutional Rights by penalizing those who choose to exercise them, it is patently unconstitutional." ([Shapiro v. Thompson, 89 S.Ct. 1322, 394, U.S. 618, 22 LEd. 2d 600](#)).
3. Prevent the Clerk of this Court from inappropriately exercising the discretionary powers of this Court as discretionary powers to address this petition requires consideration of issues from the [Constitution, U.S. Codes](#) and [FRCvP\(s\)](#) (i.e. [FRCvP Rule 5](#)); along with the merits of this case that are out of the scope of [Rule 1.1](#) and this Clerk's job description.
4. Provide "Fundamental Rights (**that**) do not hang by a tenuous thread of a layman's knowledge of the niceties of law. It is sufficient if it appears that (**the plaintiff**) is attempting to assert his Constitutional privilege. The plea, rather than the form in which it is asserted . . ." ([U.S. v. St Pierre, 578 F.Supp. 1424 \(D. S.D. 1983\)](#)).

Wherefore, the plaintiff reasserts the demands of this Writ of Precipae and begs the Clerk of this Court to comply with his job description as concisely defined at law or to be held liable at law. Otherwise, redress this grievance and transmit this petition promptly to Justice Stephen G. Breyer pursuant to [Rule 22.1](#) by application of this petition.

Application to Justice Stephen G. Breyer

This application's sought relief is for Justice Stephen G. Breyer to review this petition and accordingly add this case to the discuss list that the Chief Justice maintains as any Justice may add a case to that list as granted relief from the **Clerk**. [\[FN1\]](#)

[FN1. June 2, 2004; RE: Trackwell v. U.S. Government](#); Dear Mr. Trackwell: Your application to an individual justice received June 2, 2004 is herewith returned for the following reason(s): For the reasons stated in previous correspondence from this office. Sincerely, William K. Suter, Clerk by: Troy D. Cahil (202) 479-3024.

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Plaintiff: What are you talking about, sounds like vagueness flowered by stratagem for not honoring our **Constitution**. Then reprint it w/o changing the date as if it were a statutory valid response, Get Real! Besides, I do not have all your responses to refer to, so attach them all next time, especially **the continually reported missing one** pursuant to FedEx Priority Envelope signed for by L. Johnson April 27, 2004.

This Case is summarized for Justice Stephen G. Breyer:

1. Jurisdiction by Original Jurisdiction of this Court pursuant to **U.S. Const. art. III, § 2, cl. 2**. All cases affecting Ambassadors, other public Ministers and Consuls invoke this Court's original jurisdiction. The March 17, 2003 non-congressional U.S. Declaration of War to Iraq, alleged unconstitutional, drastically affects Ambassadors, other public Ministers and Consuls.
2. The Government's precedence as set down by the 2003 Iraq War is now a substantial threat to constitutional procedural limits for declaring war & maintaining treaties pursuant to **U.S. Const. art. I, § 8, cl. 11** and **U.S. Const. art. II, § 2, cl. 2** respectively. Relief is only available by Original Jurisdiction & Judicial Review of this Court as such power was deemed necessary by Case Law in 1803 by **Marbury v. Madison** subject only to the **Article V** process.
3. The merits of this case per academics of law mandates consideration by this Court as this current unresolved problem is of such imperative public importance that it urges this Court to have the ultimate word on what the **Constitution** means.
4. The plaintiff has a strong vested interest pursuant to his U.S. Army oath for defending the **Constitution**. A vested interest for letting this Court know our **Constitution** does not live by **Article V** alone as the heartbeat of the **Constitution** is within this Court. Keep that heart a beating and place an honorable page in History by hearing this cry for **popular sovereignty**. Let America know the HONOR within this Court.

Motion for Leave to File Amendment I Grievance Complaint

This motion for Leave to File this **Amendment I** Grievance Complaint is pursuant to **Amendment I**, the right of the people to petition the Government for a redress of grievances. A constitutional redress is only

available pursuant to **Original Jurisdiction** of this Court.

Amendment I Grievance Complaint

1. This is an **Amendment I** grievance pursuant to the **U.S. Constitution**.
2. **Original Jurisdiction** is invoked to this Court pursuant to **U.S. Const. art. III, § 2, cl. 2**.
3. Commencement of this civil action is initiated to this Court pursuant to (**FRCvP Rule 3**). **[FN2]**
[FN2. (FRCvP Rule 3)] A civil action is commenced by filing a complaint with the court.
4. The Supreme Court Case, **Marbury v. Madison**, established **Judicial Review** in 1803. **Original Jurisdiction** is established to this Court as invoked by (**U.S. Const. art. III, § 2, cl. 2**). **[FN3]** It is acknowledged by (**28 U.S.C. § 1251(b)(1)**) **[FN4]** & (**Supreme Court Rule 17**). **[FN5]**

[FN3. (U.S. Const. art. III, § 2, cl. 2)] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make. **Plaintiff:** The alleged unconstitutional 2003 Iraq War has affected many Ambassadors, public Ministers and Consuls. Public Ministers enormously affected include: President of USA, President of U.S. Senate, President pro tempore and Speaker of the U.S. House. Thus, **Original Jurisdiction** is properly invoked to this Court.

[FN4. (28 U.S.C. § 1251(b)(1))] The Supreme Court shall have original (**but not**) exclusive jurisdiction of All actions or proceedings to which ambassadors, other public ministers, consuls, or vice consuls (of foreign states are parties). **Plaintiff: (but not)** should be removed as **U.S. Const. art. III, § 2, cl. 2** states, "In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make." Supreme Court Original Jurisdiction Cases are separated from all the other Cases and is excluded from the lower courts. Also, (**of foreign states are parties**) should be

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removed and replaced by **(are affected)** as to give constitutional preeminence to **U.S. Const. art. III, § 2, cl. 2.**

FN5. (Supreme Court Rule 17) 17.1 This Rule applies only to an action invoking the Court's original jurisdiction under **Article III** of the **Constitution** of the United States. 17.2. The form of pleadings and motions prescribed by the Federal Rules of Civil Procedure is followed. **Plaintiff:** This Court acknowledges **USSC Original Jurisdiction, FRCvP**, and this petition's format.

This supreme Court **Original Jurisdiction** and **Judicial Review** only authorize this Court to address constitutional issues as raised by this **Amendment I** grievance question. "Were the U.S. Government actions pursuant to the 2003 Iraq War contrary to the U.S. Constitution?"

5. Did the 2003 U.S. Government Declaration of War to Iraq violate **The United States Constitution, 93rd Congress War Powers Act H. J. Res. 542**, and the **107th Congress H. J. Res. 114**? These constitutional concerns from distinguished historians & law professors, members of Congress, and **protesters**, **FN6** begs this Court to consider this case! **FN6.**

<http://www.cnn.com/2003/US/02/15/sprj.irq.protes.ts.main/> **CNN/U.S. News:** Cities jammed in worldwide protest of war in Iraq Demonstrations follow divided day at United Nations Sunday: Huge crowds of anti-war demonstrators jammed into midtown New York on Saturday as protesters in dozens of U.S. cities joined large crowds worldwide in voicing opposition to war with Iraq.; CNN's Maria Hinojosa said the crowd was diverse, with older men and women in fur coats, parents with young children, military veterans and veterans of the anti-war movement. February 16, 2003 Posted: 1:21 PM EST (1821 GMT).

6. 1,200 historians signed and delivered a September 17, 2002 petition to Congress against the upcoming Iraq War alleged contrary to the original intent of the **United States Constitution** for balancing the President's power as commander-in-chief against the authority of the people's representatives to determine whether or not to commit the nation to war. Such historians as Sanford Levinson of the University of Texas, Jack Rakove of Stanford University, David Beito of the University of Alabama, David DeLeon of Howard University, Melani McAlister of George Washington University, David Levering Lewis of Rutgers

University, Teresa Meade of Union College and more.

7. **Seventy-four distinguished law professors** supporting an injunction against the 2003 Iraq War submitted a Brief As Amici Curiae. That Case is **JOHN DOE, ET AL., Plaintiffs-Appellants, v. PRESIDENT GEORGE W. BUSH, ET AL., Defendants-Appellees** on appeal from The United States District Court for The District Of Massachusetts; Judge Joseph Tauro, presiding. The February 2003 U.S. civil lawsuit was initiated by three members of the military, six parents of U.S. troops and six members of Congress, that sought an injunction to stop potential U.S. military action on the grounds that only Congress has the right to declare war. Pursuant to that case, **Original Jurisdiction** for honoring this Court should have been invoked. Rep. Jim McDermott was the lead plaintiff in the case; other congressional plaintiffs included Reps. John Conyers of Michigan & Jesse Jackson Jr. of Chicago.

8. Did the 2003 U.S. Government Declaration of War to Iraq:

a. Violate **(U.S. Const. art. I, § 8, cl. 11)?** **FN7**

b. Violate **(U.S. Const. art. II, § 2, cl. 2)?** **FN8**

c. Violate the **93rd Congress War Powers Act H. J. Res. 542**?

d. Violate the **107th Congress H.J. Res. 114**?

FN7. (U.S. Const. art. I, § 8, cl. 11) The Congress shall have Power To declare War, grant Letters of Marque & Reprisal, & make Rules concerning Captures on Land & Water.

FN8. (U.S. Const. art. II, § 2, cl. 2) The President shall have Power, by and with the Advice and Consent of the Senate, "to make Treaties", provided two-thirds of the Senators present concur. **Plaintiff:** "to make Treaties" by prima facie may be substituted by "to make & break Treaties with the UN".

9. **War Powers Act, Section 2 (c)(1)(2)(3)** states, "**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 a declaration of war, specific statutory authorization or a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.**" We are down to "**specific statutory authorization**". Specific statutory authorization pursuant to the **2002 H. J. Res. 114** is not a

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Declaration of War and did not specifically say in 5 months disrespect the [UN Charter](#) and issue a non-congressional U.S. Government DOW to Iraq!

10. [War Powers Act, Section 4\(b\)](#) states, **“The President shall provide such other information as the Congress may request in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States Armed Forces abroad.”** How could the congressional process for fulfillment of constitutional responsibilities be taken within a 48-hr time frame after an issued U.S. Government Declaration of War against Iraq?
11. [War Powers Act, Section 8\(d\)\(2\)](#) states, **“Nothing in this joint resolution is intended to alter the constitutional authority of the Congress or of the President, or the provision of existing treaties; or shall be construed as granting any authority to the President with respect to the introduction of United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circumstances which authority he would not have had in the absence of this joint resolution.”** Only Congress can make a Declaration of War.
12. [The 107th congressional H.J. Res. 114](#) explicitly states military action will be **“in accordance with the Constitution”** and **“consistent with the United States and other countries”** which supported ongoing efforts to **“strictly enforce through the United Nations Security Council all relevant Security Council resolutions”**. The [2002 H.J. Res. 114](#) is not a Declaration of War and alleged contrary to the March 17, 2003 U.S. Government Declaration of War against Iraq.
13. This ([U.S. Const. amend. I](#)) [\[FN9\]](#) grievance case is painstakingly sought to:
 - a. Honor **this Court**.
 - b. Honor the **judicial independence** of this Court. [\[FN10\]](#)
 - c. Honor the **Constitution** of this Court. [\[FN11\]](#)

[FN9. \(U.S. Const. amend. I\)](#) Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[FN10.](#) The Framers understood the need for judicial independence. Independent judges,

as my colleague Justice Ginsburg recently put it, do not act on behalf of particular persons, parties, or communities. They serve no faction or constituency, and they must strive to do what is right in each individual case, even if the case in question should find the least popular person in America opposed by the most powerful government in the world-**Justice Stephen G. Breyer, July 15, 2002.**

[FN11. \(U.S. Const. art. VI, § 2\)](#) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

WHEREFORE the Plaintiff prays this Court hears Trackwell vs. The United States Government whereas the Plaintiff seeks a YES ruling for redressing this Amendment I grievance question, “Were the U.S. Government actions pursuant to the 2003 Iraq War contrary to the United States Constitution?”

Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

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CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 9 Feb. 15, 2005

The Honorable [Sam A Crow](#), U.S. District Judge
Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro
se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney,
Topeka, KS, for Defendant.

PLAINTIFF'S REPLY BRIEF

This reply brief is in support of [Motion for Leave to File Complaint & Summons](#) filed December 20, 2004 that also replies to the filed December 09, 2004 [Memorandum And Order](#) closing plaintiff's related Case: 5:04cv4014. What is being asked for from this Court is the prevention of an [Amendment 1](#) violation that would allow this plaintiff to petition the Government for a redress of grievances, currently prevented by the Clerk of the Supreme Court under color of Law invoking [42 U.S.C. § 1983](#).

The U.S. Supreme Court may only act upon the plaintiff's petition as it has sole jurisdiction pursuant to [U.S. Const. art. III, § 2, cl. 2](#); Supreme Court original jurisdiction. [\[FN1\]](#)

[FN1](#). "As the Court pointed out in Marbury, Congress has the power to change the appellate jurisdiction of the Supreme Court, but its original jurisdiction can be altered only by constitutional amendment." [The Words We Live By](#), Linda R. Monk, Copyright © 2003 Linda R. Monk and The Stonesong Press, Inc. at page 99. Also, it is axiomatic the plaintiff's petition has only one option, The Supreme Court, as [U.S. Court of Appeals, First Circuit Case 03-1266](#) has set a precedent that invokes [stare decisis](#).

The plaintiff's brief and petition within his [Motion for Leave to File Complaint & Summons](#) filed December 20, 2004 alleges the Executive branch ceased the Legislative branch's [U.S. Const. art. I, § 8, cl. 11](#) plenary right to formally declare war that resultantly added to the Article I violation, the U.S./U.N. [Article II](#) treaty violation. [\[FN2\]](#)

[FN2](#). In [Goldwater v Carter](#), December 13, 1979, Mr. Justice Powell, concurring opinion stated, "The present case involves neither

review of the President's activities as Commander in Chief nor impermissible interference in the field of foreign affairs. Such a case would arise if we were asked to decide, for example, whether a treaty required the President to order troops into a foreign country."

This case satisfies Justice Powell's criteria as prudent judicial constitutional U.S./U.N. treaty considerations would have prevented the president on his own unconstitutional accord from formally Declaring War on Iraq and ordering U.S. troops to invade Iraq.

An [Article III](#) violation is alleged as the [U.S. Court of Appeals, First Circuit Case 03-1266](#) ceased the Original Jurisdiction of the U.S. Supreme Court. That court of appeals did not whatsoever delve into [Article I, II, and III](#) concerns that was constitutionally and axiomatically meant for the U.S. Supreme Court, but unfortunately in extreme contrast to what was judicially required, Judge Lynch with one short indecipherable paragraph answered the biggest justiciable Supreme Court Original Jurisdiction Federal Question ever to face the Judicial Branch of Government in defiance of [U.S. Const. art. III, § 2, cl. 2](#). [U.S. Court of Appeals, First Circuit Case 03-1266](#) became a justiciable original jurisdiction Supreme Court case when it was presented ripened March 17, 2003 by [Plaintiffs/Appellants' Petition For Rehearing On An Emergency Basis](#) that axiomatically demanded by USSC Rule 11 [\[FN3\]](#)

[FN3](#). [Supreme Court Rule 11](#), "A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court."

a Supreme Court constitutional consideration of the political branches shared war powers over Iraq, an issue of **such imperative public importance**, but instead the judicial lack of Supreme Court [Article I, II and III](#) prudential considerations disapprovingly **affected ambassadors, other public ministers and consuls** of the U.N. Security Council when the Commander and Chief violated [Article 33 & 37 of the United Nations Charter](#) by a Declaration of War to Iraq that resorted to an **aggressive war** [\[FN4\]](#)

[FN4](#). "We must make clear to the Germans that the wrong for which their fallen leaders are on trial is not that they lost the war, but

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that they started it. And we must not allow ourselves to be drawn into a trial of the causes of the war, for our position is that no grievances or policies will justify resort to **aggressive war**. It is utterly renounced and condemned as an instrument of policy." U.S. Supreme Court Justice Robert L. Jackson, Chief U.S. Prosecutor at the Nuremberg Tribunals, August 12, 1945.

by the invasion of Iraq. An unconstitutional political/judicial precedent that has injured and continues to injure all constituents of the Legislative Branch, We the People, when this set legal precedent turned the distribution of jurisdiction, made in the **Constitution**, into a form without substance [\[FN5\]](#)

[FN5](#). "If congress remains at liberty to give this court appellate jurisdiction, where the constitution has declared their jurisdiction shall be original, and original jurisdiction where the constitution has declared it shall be appellate; the distribution of jurisdiction, made in the constitution, is form without substance..." Chief Justice Marshall; William Marbury v. James Madison, February 1803.

that resultantly from March 17, 2003 onward has and continues to rip away the constituents' voices of the Legislative within the political branches shared war powers that by prima facie invokes class action law by "We the People" pursuant to [FRCvP Rule 23](#).

Answering specific "quotes" of this Court's December 09, 2004 Memorandum And Order closing plaintiff's related Case: 5:04cv4014
Specific referenced "quotes" are answered:

"In the plaintiff's proposed summons attached motion to reconsider (12/02/2004), the plaintiff's alleges for the first time that the court has jurisdiction under [28 U.S.C. § 1361](#)."

Plaintiff's answer: No, it is not the first time! See Docket Report #7 dated 9/28/2004 Declaration To Court & Docket Report #8 dated 11/17/2004 Supplement (Brief in Support).

"Section 1361 (28 U.S.C. § 1361) provides a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendants owe him a clear nondiscretionary duty" that requires the Clerk to transmit an application only when "an individual Justice has authority to grant the sought relief."
Plaintiff's answer: the only avenue for plaintiff's relief is through the Clerk of the U.S. Supreme Court for transmitting an application to an individual

Justice. Three attempts to have plaintiff's case summarized by a pool memo through the Sup.Ct. Clerk were received May 30, 2003; June 23, 2003 and August 12, 2003 and the responses [\[FN6\]](#)

[FN6](#). **Letter dated June 3, 2003:** *Note this letter was used twice to respond to the plaintiff's submissions received May 30 and June 23 of 2003.* Dear Mr. Trackwell: In reply to your letter of submission, received May 30, 2003, I regret to inform you that the Court is unable to assist you in the matter you present. Under [Article III](#) of the **Constitution**, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. Your papers are herewith returned. The Rules of this Court are enclosed. Sincerely, William K. Suter, Clerk By: s/Jeffrey Atkins (202) 479-3263.

Letter dated August 12, 2003: Dear Mr. Trackwell: In reply to your letter or submission referred to this office by the Chief Justice on August 12, 2003, I regret to inform you that the Court is unable to assist you in the matter you present. Under [Article III](#) of the **Constitution**, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. Sincerely, William K. Suter, Clerk By: s/ Troy D. Cahill (202) 479-3024.

indicates that route was exhausted. Six application attempts to Justice Stephen G. Breyer were sent to the Sup.Ct. Clerk and received February 3, 2004; April 07, 2004; April 27, 2004; June 02, 2004; June 30, 2004 and July 28, 2004. The responses to those applications were used twice in some instances and are presented. [\[FN7\]](#)

[FN7](#). **Letter dated February 3, 2004:** Dear Mr. Trackwell: Your application addressed to Justice Breyer was received on February 3, 2004 and is herewith returned for the following reasons. [Rule 22](#) of the [Rules of this Court](#) does not give a single Justice the authority to order the Clerk to file an action. The original jurisdiction of this Court generally extends only to cases or controversies between two or more states or between the United States and one or more

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states. See [28 U.S.C. 1251](#) and [Rule 17](#) of the [Rules of this Court](#). Sincerely, William K. Suter, Clerk By: s/ Cynthia Rapp (202) 479-3031.

Letter dated June 2, 2004: Dear Mr. Trackwell: Your application to an individual Justice received June 2, 2004 is herewith returned for the following reason(s): For the reasons stated in previous correspondence from this Office. Sincerely, William K. Suter, Clerk By: s/ Troy D. Cahill (202) 479-3024.

Letter dated July 29, 2004: Dear Mr. Trackwell: Your application to an individual Justice received July 28, 2004 is herewith returned for the following reason(s): For the reasons stated in correspondence from this office dated February 3, 2004, and June 2, 2004. If you continue to resend the same papers they will not be returned to you. Sincerely, William K. Suter, Clerk By: s/ Cynthia Rapp (202) 479-3031.

An evaluation of those responses to the plaintiff's attempt to protect his [amendment 1 right](#) to petition the U.S. government through the Sup. Ct. Clerk has thus become exhausted. Let us proceed on that evaluation:

Further specific evaluation:

The duties of the Sup.Ct. Clerk are presented by footnote [\[FN8\]](#)

[FN8](#). "The principal tasks of law clerks are to write short memoranda on each petition, and to help edit or make suggestions on Court opinions or dissents written by the justice they served. Each of the thirty-odd law clerks have the task of writing memos outlining the facts and contentions of each petition and these memos (referred sometimes to as pool memos) are then circulated to the chambers of the justices." [Rule 1.1](#) allows the Clerk to reject any submitted filing that does not comply with these Rules and is required to point out the **specific technical deficiencies only** within the scope of the Supreme Court Rules without making any jurisdictional or discretionary statements that are out of the Clerk's capacity as an employee of the U.S. Supreme Court. In quotes are summarized from [pages 8 & 233](#); [The Supreme Court; New Edition by William H. Rehnquist](#);

[Alfred A. Knopf, New York 2003](#). The rest of the footnote is obviously axiomatic.

for reference to this evaluation to confirm that indeed the Sup.Ct. Clerk owes the plaintiff the nondiscretionary duty [\[FN9\]](#)

[FN9](#). It is nondiscretionary to transmit an application to a justice as by definition is the formality of making a request and the request in question is to add the plaintiff's U.S. Supreme Court Original Jurisdiction petition to the Chief Justice's discuss list. A quote, "Shortly before each such conference (to dispose petitions), the Chief Justice sends out a list of the petitions he wishes to have discussed. After the Chief's "discuss list" has come around, each of the associate justices may ask to have additional cases put on this list." [The Supreme Court; New Edition by William H. Rehnquist; Alfred A. Knopf, New York 2003 at page 234](#).

to transmit the plaintiff's application and supporting brief promptly to Justice Stephen G. Breyer pursuant to [U.S. Supreme Court Rule 22.1](#) since an individual Justice has authority to grant the sought relief for protecting the plaintiff's [amendment 1 right](#) to petition the U.S. government and that the 9 attempts through the Sup.Ct. Clerk is an effort that has axiomatically become exhausted [\[FN10\]](#)

[FN10](#). Exhausted as the Sup.Ct. Clerk five referenced responses, see footnotes 6 & 7, fails to provide any **specific technical deficiencies** pursuant to the [Supreme Court Rules](#) and throws out haphazardly discretionary evaluations of jurisdiction which literally means "the power to say what the law is" [The Words We Live By, Linda R. Monk, Copyright © 2003 Linda R. Monk and The Stonesong Press, Inc. at page 99](#). Thus it goes without saying the Sup.Ct. Clerk does not have that jurisdictional power and thus his responses are just mere vagueness flowered by stratagem for not honoring the plaintiff's [Amendment 1 right](#) to petition the government. Thus the plaintiff within his application has presented an outline of the plaintiff's facts and contentions of his petition. See Plaintiff's case summary Motion for Leave to File Complaint & Summons filed December 20, 2004 at page 16 column 2.

for presenting the plaintiff's petition by a memo circulated to the chambers of all the justices outlining

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the facts and contentions of the plaintiff's class action petition. This would allow those justices to determine the worthiness of the petition whereas it would take 4 of them to express an interest prior to any judicial action. [\[FN11\]](#)

[FN11](#). Thus alleging the plaintiff is ordering somehow an action to the Supreme Court is a disappointment by this Court's true but irrelevant statement of "it seems axiomatic that a lower court may not order the judges or officers of a higher court to take an action."

The [Amendment 1 right](#) to petition the government constitutionally/judicially requires the plaintiff's supreme court original jurisdiction petition is viewed by the authorities whom have the jurisdictional power to act, a quorum of four out of nine justices, thus, [U.S. Const. amend. I](#) clearly require the plaintiff's petition to be circulated to the nine justices.

Why 28 U.S.C. Sec. 1361 & Sup.Ct. R. 22.1 gives this Court Jurisdiction to Act:

[28 U.S.C. Sec. 1361](#) - Action to compel an officer of the United States to perform his duty. The *district courts* shall have *original jurisdiction* of any action in the nature of mandamus *to compel an officer or employee of the United States* or any agency thereof *to perform a duty owed to the plaintiff*.

[Sup. Ct. R 22.1](#) - "An *application* addressed to an *individual Justice* shall be filed with the *Clerk*, who will transmit it promptly to the Justice concerned if an individual Justice has *authority to grant the sought relief*."

Sup.Ct. Clerk's duty, that this *officer/employee of the United States* failed to do was to write a memo outlining the facts and contentions of the plaintiff's U.S. Supreme Court original jurisdiction petition so that memo may be circulated to the chambers of the justices for discretionary evaluation, a clerical duty owed to the plaintiff! If that clerical duty were performed, there would be a chance that the plaintiff's petition would be placed on the Chief Justice's "*discuss list*". Since that chance has been taken away from the plaintiff by the Sup. Ct. Clerk's failure to perform his clerical duty, thus note by the Chief Justice's written words, "each of the *associate justices* may ask to have additional cases put on this *discuss list*." Thus, the plaintiff by application has requested Justice Stephen Breyer to place the plaintiff's petition on the Chief Justice's "*discuss list*" a power an individual Justice has *authority to grant* and that is the *sought relief* the plaintiff is seeking. This Court (*district courts*) has *original jurisdiction* to

compel the *Sup. Ct. Clerk/officer/employee of the United States* to perform a duty he has failed to do that is axiomatic *owed to the plaintiff*.

WHEREFORE, I pray this Court orders the Supreme Court Clerk to transmit promptly to Justice Stephen G. Breyer, Plaintiff's Brief In Support, Writ Of Precipae, Application to Justice Stephen G. Breyer, Motion for Leave to File Amendment I Grievance Complaint, Amendment I Grievance Complaint of plaintiff's 12/20/2004 filing referred to by Civil Docket #1 as COMPLAINT (Attachments: # 1 Plaintiff's Brief In Support # 2 Writ Of Precipae).

Respectfully Submitted.

- [5:04cv4168](#) (Docket) (Dec. 20, 2004)

END OF DOCUMENT

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CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 12 Mar. 17, 2005

The Honorable [Sam A Crow](#), U.S. District Judge
Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro
se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney,
Topeka, KS, for Defendant.

PLAINTIFF'S MOTION TO DENY & TO ORDER

The Plaintiff moves this Court for an order denying
Defendant's February 7, 2005 Motion To Dismiss as
Plaintiff's clarification of subject matter jurisdiction
per [FRCvP Rule 12\(b\)\(1\)](#) and claim per [FRCvP Rule
12\(b\)\(6\)](#) is by Plaintiff's memorandum in support.
Forthwith it is motioned to this Court to order the
Supreme Court Clerk to transmit promptly to Justice
Stephen G. Breyer, all pleadings hereby incorporated.
[\[FN1\]](#)

[\[FN1\]](#), Plaintiff's Complaint filed to this Court
on 12/20/2004; Plaintiff's Reply Brief
filed/delivered to this Court February 15,
2005; this Pleading; and Memorandum In
Support Of Motion To Deny And To Order
are all hereby incorporated in Support of
Plaintiff's motion.

In Support of this motion Plaintiff has filed his
Memorandum in support.

CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al [\[FN1\]](#)
v.
Defendant,
U.S. Government
Docket 13 Mar. 17, 2005

MEMORANDUM IN SUPPORT OF MOTION TO DENY AND TO ORDER

[\[FN1\]](#), et al.,[†] The class is so numerous, into
the millions (see below CNN article at the
end of this Endnote), that joinder is
impracticable but plausible if the Plaintiff's
opponent, the powerful Executive Branch,
would honor equal coverage for extending

apparent fairness, oral arguments anytime
anyplace pursuant to ADR controls. This
standard of care pleading and what was
incorporated into it has presented questions
of law or fact common to millions of
protesting constituents and thus this Plaintiff
claims to be the representative of this Class
and with all his constitutional heart will
fairly and adequately protect the interests of
the Class. Therefore by liberal privileges
this pro se Plaintiff has hereby states this is a
constituted separate motion for a
determination under [Fed. R. Civ. P. 23\(c\)\(1\)](#)
for a Class Action determination pursuant to
[D.Kan. Rule 23.1 \(b\)](#), **so motioned**. s/ Byron
L. Trackwell (Plaintiff pro se).

CNN/U.S. News: Cities jammed in
worldwide protest of war in Iraq
Demonstrations follow divided day at United
Nations Sunday;: Huge crowds of anti-war
demonstrators jammed into midtown New
York on Saturday as protesters in dozens of
U.S. cities joined large crowds worldwide in
voicing opposition to war with Iraq.;: CNN's
Maria Hinojosa said the crowd was diverse,
with older men and women in fur coats,
parents with young children, military
veterans and veterans of the anti-war
movement. February 16, 2003 Posted: 1:21
PM EST (1821 GMT).TTT

The Plaintiff has moved this Court for an order
denying Defendant's Motion To Dismiss as Plaintiff
clarifies subject matter jurisdiction per [FRCvP Rule
12\(b\)\(1\)](#) and claim per [FRCvP Rule 12\(b\)\(6\)](#) by this
memorandum in support. Forthwith it was motioned
to this Court to order the Supreme Court Clerk to
transmit promptly to Justice Stephen G. Breyer, all
pleadings previously incorporated in *Plaintiff's
Motion To Deny And To Order*. This here
memorandum from the Plaintiff counters Defendant's
February 7, 2005 memorandum; is in support of the
Plaintiff's motion; and submits the following fact, law
and argument.

I. Claim, Subject Matter Jurisdiction & Sought Relief

Plaintiff's claim is the Clerk of the Supreme Court
has violated [U.S. Const. Amdt. 1](#) by withholding a
valid [Sup.Ct. Rule 22.1](#) application from Justice
Stephen G. Breyer. See page 15 column 2 of
Plaintiff's Complaint where the *Writ Of Precipae*
states, "Delivering this petition as stated will prevent
violation of ... [U.S. Const. Amdt. 1](#)." The subject
matter jurisdiction is this alleged [U.S. Const. Amdt. 1](#)

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violation. Thus, Plaintiff's complaint per presented jurisdictional codes requests this Court's action as motioned for providing Plaintiff's sought relief [EN2]

[EN2]. That relief is discussed in Plaintiff's December 20, 2004 Complaint on Page 14 Column 2, Relief the USDC of Topeka, Kansas May Provide.

of ordering the Supreme Court Clerk to perform a legal duty of responsibility owed to the Plaintiff. This sought relief becomes concrete when Justice Stephen G. Breyer receives all pleadings as motioned pursuant to [Sup.Ct. Rule 22.1](#) & [U.S. Const. Amdt. 1](#).

II. Jurisdiction by [28 U.S.C. § 1331](#), [28 U.S.C. § 1343](#) and [28 U.S.C. § 1346](#)

By federalism, federal district courts are courts of limited jurisdiction as defined by constitutionally supported jurisdictional codes. Plaintiff's presented jurisdictional codes have established the basis of this Court's jurisdiction the Defendant is attempting to steal away. Thus this honorable Court's jurisdiction over the subject matter of this Case is appropriately defended. That support points out the specific statute(s) that prevents Sovereign Immunity from nullifying these jurisdictional codes.

[28 U.S.C. § 1331](#) *Federal question*-The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. The Federal Question: Should the Clerk of the U.S. Supreme Court be allowed to violate Plaintiff's [U.S. Const. Amdt. 1](#) right to petition the Supreme Court under its original jurisdictional code, [U.S. Const. art. III, § 2, cl. 2?](#) The Plaintiff says, "NO"! emphasis added. This is a valid Federal Question since all other avenues to petition the U.S. Government alleging the Executive's March 17, 2003 Declaration of War to Iraq as unconstitutional are blocked by "stare decisis" pursuant to the March 18, 2003 ruling by the [U.S. Court of Appeals, First Circuit Case 03-1266](#). Addressing a [U.S. Const. Amdt. 1](#) right definitely rises under the [Constitution](#).

[28 U.S.C. § 1343 \(a\) \(4\)](#) *Civil Rights*- The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights. The specific civil rights statute or authorization by law is [U.S. Const. Amdt. 1](#) within the [Bill of Rights](#) (the [Bill of Rights](#) is Civil Rights) [EN3]

[EN3]. Residual Applicable United States Codes are presented: [42 U.S.C. § 1981 \(a\)](#); [42 U.S.C. § 1983](#); [42 U.S.C. § 1985 \(3\)](#); [42 U.S.C. § 1986](#) and [42 U.S.C. § 1988 \(a\)](#).

proposed September 25, 1789, ratified December 15, 1791. Ratification constitutes the [Bill of Rights](#) were enacted by Congress and the States of these United States. Definitely meets the definition of statute, a federal or state written law enacted by the Congress or state legislature, respectively.

[28 U.S.C. § 1346 \(a\) \(2\)](#) *United States as defendant*-The district courts shall have original jurisdiction ... of any ... civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, ... or upon any express or implied contract with the United States. This action is founded upon the Constitution, the Amendment 1 right to petition the government; does not exceed \$10,000 and is pursuant to an expressed & implied contract for the Clerk of the United States Supreme Court to enforce the [Rules of his Court](#), namely [USSC Rule 22.1](#), as not to violate the expressed & implied contract of not interfering with the people's rights as ordained by the [Bill of Rights](#), a Supreme Law of the Land pursuant to [U.S. Const. art. VI, § 2](#).

III. Supreme Court Clerk's Duties

Those duties are presented [EN4]

[EN4]. "The principal tasks of law clerks are to write short memoranda on each petition, and to help edit or make suggestions on Court opinions or dissents written by the justice they served. Each of the thirty-odd law clerks have the task of writing memos outlining the facts and contentions of each petition and these memos (referred sometimes to as *pool memos*) are then circulated to the chambers of the justices." [Rule 1.1](#) allows the Clerk to reject any submitted filing that does not comply with these Rules and is required to point out the **specific technical deficiencies only** within the scope of the Supreme Court Rules without making any jurisdictional or discretionary statements that are out of the Clerk's capacity as an employee of the U.S. Supreme Court. In quotes are summarized from [pages 8 & 233](#); [The Supreme Court; New Edition by William H. Rehnquist; Alfred A. Knopf, New York 2003](#). The rest is obviously axiomatic.

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to confirm that the U.S. Supreme Court Clerk owes the Plaintiff a nondiscretionary duty [\[EN5\]](#)

[EN5](#). It is nondiscretionary to transmit an application to a justice as by definition is the formality of making a request & the request in question is to add the Plaintiff's U.S. Supreme Court Original Jurisdiction petition to the Chief Justice's discuss list. A quote, "Shortly before each such conference (to dispose petitions), the Chief Justice sends out a list of the petitions he wishes to have discussed. After the Chief's "discuss list" has come around, each of the associate justices may request additional cases put on this list." [The Supreme Court; New Edition by William H. Rehnquist; Alfred A. Knopf, New York 2003](#) at page 234.

The Plaintiff's 9 attempts by memoranda to secure that duty through the U.S. Supreme Court Clerk equals total exhaustion [\[EN6\]](#)

[EN6](#). Exhausted as the Sup.Ct. Clerk responses, see endnote 7 below, fails to provide any **specific technical deficiencies** pursuant to the Supreme Court Rules and throws out haphazardly discretionary evaluations of jurisdiction which literally means "the power to say what the law is" [The Words We Live By, Linda R. Monk, Copyright © 2003 Linda R. Monk and The Stonesong Press, Inc.](#) at page 99. Thus it goes without saying the Sup.Ct. Clerk does not have that jurisdictional power and thus his responses are just mere vagueness flowered by stratagem for not honoring the Plaintiff's [Amendment 1](#) right to petition the government. Thus the Plaintiff within his application has presented an outline of the Plaintiff's facts and contentions of his petition. See Plaintiff's COMPLAINT filed December 20, 2004 at page 16 column 2.

for transmitting the Plaintiff's papers as motioned, to Justice Stephen G. Breyer pursuant to [U.S. Supreme Court Rule 22.1](#) even though an individual Justice has authority to grant the sought relief, notwithstanding that, the responses [\[EN7\]](#)

[EN7](#). **Letter dated June 3, 2003:** *Note this letter was used twice to respond to the Plaintiff's submissions received May 30 and June 23 of 2003.* Dear Mr. Trackwell: In reply to your letter of submission, received May 30, 2003, I regret to inform you that the Court is unable to assist you in the matter

you present. Under [Article III](#) of the [Constitution](#), the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. Your papers are herewith returned. The Rules of this Court are enclosed. Sincerely, William K. Suter, Clerk By: s/ Jeffrey Atkins (202) 479-3263.

Letter dated August 12, 2003: Dear Mr. Trackwell: In reply to your letter or submission referred to this office by the Chief Justice on August 12, 2003, I regret to inform you that the Court is unable to assist you in the matter you present. Under [Article III](#) of the Constitution, the jurisdiction of this Court extends only to the consideration of cases or controversies properly brought before it from lower courts in accordance with federal law and filed pursuant to the Rules of this Court. Sincerely, William K. Suter, Clerk By: s/ Troy D. Cahill (202) 479-3024.

Letter dated February 3, 2004: Dear Mr. Trackwell: Your application addressed to Justice Breyer was received on February 3, 2004 and is herewith returned for the following reasons. [Rule 22](#) of the Rules of this Court does not give a single Justice the authority to order the Clerk to file an action. The original jurisdiction of this Court generally extends only to cases or controversies between two or more states or between the United States and one or more states. See [28 U.S.C. 1251](#) and [Rule 17](#) of the Rules of this Court. Sincerely, William K. Suter, Clerk By: s/ Cynthia Rapp (202) 479-3031.

Letter dated June 2, 2004: Dear Mr. Trackwell: Your application to an individual Justice received June 2, 2004 is herewith returned for the following reason(s): For the reasons stated in previous correspondence from this Office. Sincerely, William K. Suter, Clerk By: s/ Troy D. Cahill (202) 479-3024.

Letter dated July 29, 2004: Dear Mr. Trackwell: Your application to an individual Justice received July 28, 2004 is herewith returned for the following reason(s): For the reasons stated in correspondence from this office dated February 3, 2004, and June 2, 2004. If you continue to resend the same

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papers they will not be returned to you. Sincerely, William K. Suter, Clerk By: s/ Cynthia Rapp (202) 479-3031.

also determines further correspondences with the U.S. Supreme Court Clerk would only generate continued vacuous legalities, or no responses at all as warned pursuant to the Sup. Ct. Clerk's dissonant last response dated July 29, 2004. Thus, the sought relief requires the necessity to compel an officer of the United States to perform his duty.

IV. Jurisdiction by [28 U.S.C. § 1361](#)

[28 U.S.C. § 1361](#) *Action to compel an officer of the United States to perform his duty*-The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff. [Sup. Ct. R 22.1](#) - An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the sought relief. Enforcing [Supreme Court Rule 22.1](#) extraordinarily is within the power of this Court pursuant to all the jurisdictional codes presented. The alleged unconstitutional Declaration of War to Iraq is extraordinarily obvious and this Plaintiff has extraordinarily worked hard to "HONOR" this Court with the power to relieve this extraordinary grief by placing it where it belongs without worrying about discretion or prudential concerns as trusting a Justice with those "We the People" concerns of an issue of such imperative public importance is simply a non-discretionary duty this Court has power to fulfill.

V. Waiver Of The Government's [Sovereign Immunity](#) [\[EN8\]](#)

[EN8](#). [Sovereign Immunity](#) is a doctrine from English common law that no governmental body can be sued unless it gives permission, a defense to liability rather than a right to be free from trial. Since English common law generated this immunity, it is often referred to as a common law anachronism as American Common Law commenced on the ratification of the [Constitution](#) giving [Sovereign Immunity](#) a questionable legal basis. That Immunity resulted in terrible injustices, since public hospitals, government drivers and other employees could be negligent with impunity (free) from judgment. The [1948 Federal Tort Claims Act \(FTCA\)](#) and state waivers of immunity have negated this rule. [FTCA](#) provides a

limited waiver of the federal government's [sovereign immunity](#) when its employees are negligent within the scope of their employment. Under the [FTCA](#), **the government can only be sued under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place** where the act or omission occurred. The [FTCA](#) applies to conduct that the Supreme Court Clerk has allegedly done. [FTCA](#) waiver is enforce as the conduct involves no discretionary issues, and the relief requested prescribes a federal statute & a U.S. Supreme Court Rule for a course of action an employee is to follow.

The Supreme Court has ruled that in a case involving the government's [sovereign immunity](#) the statute in question ([U.S. Const. Amdt. 1](#) for Plaintiff's Case) can only be "**strictly construed**" in favor of the sovereign and may not be enlarged beyond the waiver its language expressly requires. See [United States v. Nordic Village, Inc., 503 U.S. 30, 33-35 \(1992\)](#). Furthermore, in [Erie R. Co. V. Tompkins, 304 U.S. 64 \(1938\)](#) Mr. Justice Brandeis delivered the opinion of the Court and stated, "Because of the importance of the question whether the federal court was free to disregard the alleged rule of the Pennsylvania common law, we granted certiorari. [302 U.S. 671, 58 S.Ct. 50, 82 L.Ed. --, Swift v. Tyson, 16 Pet. 1, 18](#), held that federal courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the unwritten law of the state as declared by its highest court; that they are free to exercise an independent judgment as to what the common law of the state is-or should be..." "Experience in applying the [doctrine of Swift v. Tyson](#), had revealed its defects, political and social; and the benefits expected to flow from the rule did not accrue. Persistence of state courts in their own opinions on questions of common law prevented uniformity; and the impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties." See http://www.agh-attorneys.com/4_erie_railroad_v_tompkins.htm. In [Marbury v. Madison](#), Chief Justice

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Marshall makes it clear that [sovereign, absolute, and qualified immunities](#) cannot be based on common-law and that these immunities do not exist in the United States. He said, “Is it to be contended that where the law in precise term, directs the performance of an act, in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country? Whatever the practice on particular occasions may be, the theory of this principle will certainly never be maintained. No act of the legislature confers so extraordinary a privilege, nor can it derive countenance from the doctrines of the common law.”

The Plaintiff asks this honored Court its consent to waive the government’s [sovereign immunity](#) pursuant to this constitutional basis, “Congress shall make no law... prohibiting the free exercise thereof; or abridging the freedom of... the right of the people...to petition the Government for a redress of grievances.” [U.S. Const. Amdt. 1](#). Thus, there are no laws prohibiting the Plaintiff’s right to petition the Government. The government’s [sovereign immunity doctrine](#) is not a law but just a doctrine for court’s to consult and certainly does not order this Court to disregard [U.S. Const. Amdt. 1](#) or to disregard established constitutionally based jurisdictional codes since viz. the Constitution, it concludes there are (no doctrines), no rules or principles of law or any precedents for prohibiting the Plaintiff’s right to petition the Government via the U.S. Supreme Court pursuant to [U.S. Const. Amdt. 1](#). It is one of our most comprehensive Rights; and one of the ways the [Constitution](#) guards against Government abuses, in order to prevent Government officials who are vested with authority from becoming oppressors. In [Edwards v. South Carolina](#) decided by the Supreme Court on February 25, 1963, Mr. Justice Stewart acknowledges in the opinion of the Court that the right “to petition the Government for a redress of grievances” is a separate right. In this opinion Mr. Justice Stewart writes, “South Carolina infringed the petitioners’ constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances. It has long been established that these [First Amendment](#) freedoms are protected . . .” Thus using inappropriately [Sovereign Immunity](#) in this Case would unconstitutionally inhibit Plaintiff’s [First Amendment](#) freedom to

petition the government and unfairly continue this personal, particularized, concrete injury that this Court’s jurisdiction has power to relieve.

VI. Plaintiff’s Application Maintains Honor To The Supreme Court

Plaintiff’s application does not evaluate, judge or appraise the Supreme Court Rules. It honors [Supreme Court Rule 22.1](#) by using it as a last resort avenue for protecting the Plaintiff’s civil rights pursuant to [U.S. Const. Amdt. 1](#). All the Defendant’s statements that a lower court lacks subject matter jurisdiction and does not have the authority to order higher courts, judges & officers of higher courts to take an action and/or review their actions are true but out of context to this Case. Let us use equivalent words to point this out. It is agreed that a lower court lacks subject matter jurisdiction to order the Supreme Court to put forth a judicial proceeding, as this requires concurrence of 4 out of 9 Justices. [\[EN9\]](#)

[\[EN9\]](#). [Supreme Court Rule 17](#) and its reference to [Rule 20](#) determines the Supreme Court uses its appellate jurisdictional procedures to address presented Original Jurisdiction Petitions falling under [U.S. Const. art. III, § 2, cl. 2](#).

Enforcing [Supreme Court Rule 22.1](#) to protect the Plaintiff’s [U.S. Const. Amdt. 1](#) rights by transmitting an application is just delivering a formal request to one Justice with the discretionary authority to grant it. It is not an order, *emphasis added*, to take an action. The process of delivering Plaintiff’s application to a Justice is a plain non-discretionary clerical duty devoid of judgment as the formality of making a request to a Justice will place any judgment and/or discretion within the highest trusted honored post of the Judicial Branch of Government. This Court’s requested order to have delivered an application to Justice Stephen Breyer does not interfere with the Supreme Court’s [plenary](#) supervisory authority over its law clerks. One case quoted out of context by the Defendant points out such a [plenary](#) authority pursuant to the Supreme Court’s own internal business, [Borntrager v. Stevas, 772 F.2d 419, 420 \(8th Cir.1985\)](#) (affirming the lower court’s conclusion that mandamus relief was unavailable to a plaintiff denied admission to the Supreme Court bar by the clerk because the plaintiff could seek Supreme Court review of the clerk’s conduct). [\[EN10\]](#)

[\[EN10\]](#). This case was quoted out of context by the Defendant at page 11, second paragraph, line 8 of his February 7, 2005 Memorandum In Support Of Motion To

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Dismiss. Failed to mention the issue was about the Supreme Court bar.

VII. U.S. Supreme Court Original Jurisdiction, U.S. Const. art. III, § 2, cl. 2

Off the real issue of [1st Amendment](#) privileges as the arguments about the unconstitutional Declaration of War to Iraq on March 17, 2003 falls under the U.S. Supreme Court Original Jurisdiction, [U.S. Const. art. III, § 2, cl. 2](#). The Plaintiff acknowledges the Defendant's willingness to give credibility to Plaintiff's contentions by his desires to engage in moot arguments. Defendant states pursuant to [Mottola v. Nixon, 464 F.2d 178, 179 \(9th Cir. 1972\)](#) standing to challenge military action, courts have held that "only those military orders to report to a theater of hostilities have the requisite standing to challenge the legality of military operations in such a theater..." **Plaintiff's Answer: Once again out of context.** The Plaintiff is not challenging the legality of military actions in Iraq as those actions were ordered by the Commander and Chief; what is challenged is the March 17, 2003 Declaration of War to Iraq issued by the President [\[EN11\]](#)

[EN11](#). President Bush gave Iraqi President Saddam Hussein 48 hours for him and his sons to leave Iraq before military action begins "at a time of our choosing". The 48-hour deadline arrived at Wednesday March 19, 2003 at 8 p.m. EST. Thus, the President issued this obvious **Declaration of War** on March 17, 2003 at 8 p.m. EST. This evidence is pursuant to <http://www.cnn.com/2003/WORLD/meast/03/17/sprj.irq.main/>

that constitutionally has exceeded executive Power as it is alleged to have violated the sole plenary power of the Legislative to issue a Declaration of War pursuant to [U.S. Const. art. I, § 8, cl. 11](#). A Declaration Of War is not a military action, it is a legislative action and if it were issued contrary to constitutional law, any constituent of the legislative has standing to challenge such inappropriate action.

The Defendant thinks addressing Plaintiff's objections to the Mar. 17, 03 DOW to Iraq invokes the [political question doctrine](#) [\[EN12\]](#)

[EN12](#). The [Political Question doctrine](#) is definitely in force when a plenary power of one of the branches of government is questioned. For a shared power among the political branches, such as war powers, great care must be taken to invoke it. Please see

discussion on The Political Question page 12 column 2, Plaintiff's complaint Dec 20, 04.

pursuant to [Massachusetts v. Laird](#) and other assorted cases that counsels courts to abstain from recognizing jurisdictional codes. Like all doctrines appropriately disregarded at the will of the court. In 1968 Judge Charles Wyzanski [[United States v. Sisson, 294 F. Supp. 511 \(D. Mass. 1968\)](#)], appeal on other grounds dismissed, [396 U.S. 1035 \(1970\)](#).] confronted a Vietnam war-power question as justiciable by disregarding the "[political question doctrine](#)". Judge Wyzanski recognized, as the Supreme Court has, that to pronounce a question "[political](#)" is itself a profound act of constitutional interpretation; justiciability and substance are "so close as often to overlap". See [Baker v. Carr, 369 U.S. 186 \(1962\)](#).

The Defendant thinks if a court were to find that it had jurisdiction, the Plaintiff had standing, and the case was justiciable, Plaintiff's underlying claims would fail on the merits. **WOW!!** The Defendant has written all the Justice's memoranda of dissents and has delivered the opinion of the Supreme Court. A ± nine-month exercise of destiny "We the People" are begging for pursuant to this cry for [popular sovereignty](#) from the Judicial Branch on this issue of such imperative public importance. The Defendant, has placed nine Justices' honorable robes on, has read all the accepted friend of the court briefs this Supreme Court case would generate and has conducted the oral arguments but has failed to let America know if it were close? Was it 4 to 5?

VIII. CONCLUSION

Plaintiff has established subject matter jurisdiction and contends all necessary elements are in place for invoking all presented jurisdiction codes authorizing this Court to relieve the Plaintiff's injury. It is agreed this Court has an extraordinary determination, one this Plaintiff has painstakingly submitted pursuant to a proud military oath to Defend the [United States Constitution](#). That oath has required this standard of care presentation for honoring this Court.

WHEREFORE, the Plaintiff prays from this honored Court **1)** a denial of Defendant's Motion To Dismiss; **2)** to order the United States Supreme Court Clerk to transmit promptly to Justice Stephen G. Breyer, all pleadings previously incorporated in Plaintiff's Motion To Deny And To Order; **3)** such other and further relief as this Court shall deem proper.

Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

END OF DOCUMENT

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CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 14 Apr. 28, 2005

The Honorable [Sam A Crow](#), U.S. District Judge

Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney, Topeka, KS, for Defendant.

AMENDMENT AS OF RIGHT

This amended complaint adds new claims as to plead the cause of action for the legal basis for suing. Claim #1 was clarified by Documents #12 & #13. Claims #2 thru #6 below are added and amends document #1 (COMPLAINT) and is exercised pursuant to [FRCvP Rule 15\(a\)](#). The jurisdiction to this Court remains the same pursuant to [28 U.S.C. § 1331](#); [28 U.S.C. § 1343 \(a\) \(4\)](#); [28 U.S.C. § 1346 \(a\) \(2\)](#); and [28 U.S.C. § 1361](#). All pleadings incorporated into Document #12 are incorporated into this amendment. Pleadings incorporated are:

Doc. 01 (COMPLAINT).

Doc. 09 (Plaintiff's Reply Brief).

Doc. 12 (Plaintiff's Motion To Deny & To Order).

Doc. 13 (Memorandum In Support Of Motion To Deny And To Order).

This Document (Amendment As Of Right).

The Claims Against The U.S. Government

1. The Supreme Court Clerk has violated [U.S. Const. Amdt. 1](#) by withholding a valid [Sup.Ct. Rule 22.1](#) application from Justice Stephen G. Breyer.
2. These claims affect U.S. & foreign Ambassadors, other public Ministers and Consuls invoking USSC Original Jurisdiction by [U.S. Const. art. III, § 2, cl. 2](#).
3. The U.S. Government Executive's March 17, 2003 Iraq DOW usurped the Legislative by ceasing the [U.S. Const. art. I, § 8, cl. 11](#) right to declare war.
4. The U.S. Government by the Executive's March 17, 2003 DOW to Iraq violated a [U.S. Const. art. II, § 2, cl. 2](#) expressed treaty with the United Nations.
5. The U.S. Government by [U.S. Court of Appeals First Circuit Case 03-1266](#) violated [Article III](#) and set an unconstitutional legal precedent that turned the distribution of jurisdiction, made in the [Constitution](#), into a form without substance.

6. This Court has [28 U.S.C. § 1331](#); [28 U.S.C. § 1343](#); [28 U.S.C. § 1346](#); and [28 U.S.C. § 1361](#) jurisdictional power to order the USSC to docket this Case so that all claims may be jurisdictionally addressed pursuant to the prima facie requirements of [FRCvP Rule 8\(d\)](#), by enforcing a, substantive right, [28 U.S.C. § 2072\(a\)\(b\)](#), duty pursuant to [U.S. Const. amend. I](#).

Fact, Law & Argument In Support Of Claim #1

1. This claim has been presented and is presented again by referring this Court to Document #12 (Plaintiff's Motion To Deny And To Order) and Document #13 (Memorandum In Support Of Motion To Deny And To Order). Those documents and all pleadings incorporated provide Fact, Law And Argument In Support Of Claim #1. This Amendment allows this Court to address this claim and its relief separately from Claims #2 thru #6.

Fact, Law & Argument In Support Of Claim #2

1. These claims determines violations of [Article I, II, & III](#) per the U.S. government's March 17-19, 2003 Iraq war powers precedent that drastically affected U.S. and foreign ambassadors, other public ministers and consuls.

a. The U.S. ambassadors, other public ministers and consuls drastically affected by this alleged unconstitutional war powers precedent include president of USA, president of U.S. Senate, president pro tempore, Speaker of the U.S. House, all other members of Congress, all Middle East ambassadors, all U.S. other public ministers to the United Nations and many more U.S. public ministers throughout the world.

b. The foreign ambassadors, other public ministers and consuls drastically affected by this alleged unconstitutional war powers precedent above all include all public ministers (including ambassadors & consuls) from the member countries of the United Nations Security Council and all foreign public ministers worldwide.

2. [The U.S. Court of Appeals First Circuit Case 03-1266](#), March 18, 2003, [stare decisis](#), ruling, and [28 U.S.C. § 1291](#) invokes this last resort [U.S. Const. art. III, § 2, cl. 2](#) jurisdiction to the USSC as direct review may be had by [Supreme Court Rule 11](#) as this Case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in the USSC.

In conclusion for Claim #2: USSC jurisdiction pursuant to [Article III Section 2 Clauses I & II](#) are specified by the precise language of the [Constitution](#)

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as Gouverneur Morris the chief draftsman and editor of the Constitution ensured the U.S. Constitution to be as clear and obvious as our language would permit. The intent of those discernable words of English invokes Original Jurisdiction to the USSC.

Fact, Law & Argument In Support Of Claim #3

1. The constitutional framers denied war powers to the president and further denied it to a single house of Congress. They located that power exclusively in the full Congress by **U.S. Const. art. I, § 8, cl. 11**. One constitutional framer, Alexander Hamilton (1755-1804), was a very strong advocate of Executive power and our Constitution and emphasized that the president's power as Commander in Chief would be much inferior to that of the King, by **The Federalist No. 69**, he wrote in New York on Friday, March 14, 1788, **"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, as first General and admiral of the Confederacy; while that of the British king extends to the DECLARING of war and to the RAISING and REGULATING of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature."**

2. James Madison wrote in 1793, "In no part of the constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not the executive department. Beside the objection to such a mixture to heterogeneous powers, the trust and the temptation would be too great for any one man..." And again wrote, "The **Constitution** supposes, what the History of all Government demonstrates, that 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." **Letter from James Madison to Thomas Jefferson, Apr. 2, 1798, in 6 The Writings of James Madison 312-13 (G. Hunt ed. 1906).**

3. Even Abraham Lincoln, while a Congressman, said more than half a century later that "no one man should hold the power of bringing war upon us". **The Collected Works of Abraham Lincoln 452 (R. Basler, ed. 1953) (letter to William H. Herndon) (emphasis in original).**

4. The U.S. president is not a King of an Empire but a president of a constitutional republic. Ceasing the legislature's right to make a DOW on worldwide

media is an unacceptable brash intimidating challenge to the shared war powers within the **United States Constitution** as we all know these obvious presidential words of a Declaration of War! President Bush gave Iraqi President Saddam Hussein 48 hours for him and his sons to leave Iraq before military action begins "at a time of our choosing", Executively issued on Mar. 17, 03 at 8 p.m. EST, see <http://www.cnn.com/2003/WORLD/meast/03/17/sprj.irq.main/>

In conclusion for Claim #3: **U.S. Const. art. I, § 8, cl. 11** relevant words are quoted, "The Congress shall have Power To declare War". Obviously that power is not with the president, but with the Congress, thus it is alleged, emphasis added, the president usurped the Legislative by his March 17, 2003 Declaration of War to Iraq.

Fact, Law & Argument In Support Of Claim #4

1. United States of America became a member of the United Nations October 24, 1945 by the **Article II treaty process** as the U.S. President signed, and the U.S. Senate ratified the U.N. Charter. The **December 20, 1945 United Nations' participation act** and its **October 10, 1949 Amendment** made available to the U.N. Security Council its responsibility for maintaining international peace and security. The president pursuant to this U.S./U.N. expressed treaty requires that rights of passage is made available to the U.N. Security Council on its call for the purpose of maintaining international peace and security. A congressional statute offers further validation of this U.S./U.N. treaty arrangement per **22 U.S.C. § 287**.

2. On March 17, 2003 the U. S. government withdrew a resolution it had presented to the Security Council seeking authorization for a war against Iraq followed by the Executive's 2003 Iraq DOW that is alleged to have violated **Article 33 & 37 of the United Nations Charter** by interrupting the UN process by a treaty breach. **U.N.C. Article 33** states, "1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means." **U.N.C. Article 37** states, "Should the parties to a dispute of the nature referred to in **Article 33** fail to settle it by the means indicated in that Article, they shall refer it to the Security Council." See <http://www.un.org/aboutun/charter/>

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In conclusion for Claim #4: The framers intended that all expressed treaty alliances to have credibility pursuant to these quoted words from the Constitution, “**This Constitution**, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”, see [U.S. Const. art. VI, §2](#). Thus, it is alleged the U.S. Government by the Executive's March 17, 2003 **DOW** to Iraq violated a [U.S. Const. art. II, §2, cl. 2](#) expressed treaty with the United Nations, a supreme Law of the Land.

Fact, Law & Argument In Support Of Claim #5

1. [The First Circuit Case 03-1266](#) was appealed from a February 24, 2003 ruling out of the U.S.D.C. of Massachusetts by the plaintiffs, three members of the military, six parents of U.S. troops and six members of Congress that sought an injunction to stop potential U.S. military action on the grounds that only Congress has the right to declare war that had distinguished support from a brief by **74 concerned law professors** as amici curiae, emphasis added.

2. The Appellate 1st Circuit Judge Lynch's March 13, 2003 ruling defined the [2002 October Military Authorization Resolution](#) as one with narrowed limits and further explained what it would take to ripen Case 03-1266, that ruling is quoted, “The week after his September 12 (2002) speech at the United Nations, President Bush proposed language for a congressional resolution supporting the use of force against Iraq. Detailed and lengthy negotiations between and among congressional leaders and the Administration hammered out a revised and much narrower version of the resolution to evaluate this claim now ... We would need to assume that the Security Council will not authorize war, and that the President will proceed nonetheless.”

3. Case 03-1266 came to a climax on the same day the Executive ceased the Legislative [Article I](#) right to issue a Declaration of War to Iraq, March 17, 2003, when a petition for rehearing on an emergency basis was asked for as on that date Case 03-1266 became a judicially ripened Supreme Court Original Jurisdiction justiciable case pursuant to [U.S. Const. art. III, § 2, cl. 2](#); [USSC Rule 11](#); and [28 U.S.C. § 1291](#). The March 18, 2003 short indecipherable one paragraph ruling of dismissal did not articulate any factual or legal basis and thus violated the substantive Bill of Rights of those plaintiffs per [28 U.S.C. § 2072\(a\)\(b\)](#) and jurisdictional procedures set down by the **Constitution**, statutes and the Rules of the USSC.

In conclusion for Claim #5: [First Circuit Appellate Court Case 03-1266](#) set an alleged unconstitutional

legal precedent that turned the distribution of jurisdiction, made in the **Constitution**, into a form without substance.

Fact, Law & Argument In Support Of Claim #6

1. The averments are the six claims within this pleading. [FRCvP Rule 8\(d\)](#), “Averments in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading.” Failure of the Defendant to address each claim admits the claims are true. Since these are claims of such imperative importance, the prima facie requirements are for this government to “Answer” these claims within the USSC.

2. [28 U.S.C. § 2072\(a\)\(b\)](#), “The Supreme Court shall have power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district court and court of appeals. Such rules shall not abridge, enlarge or modify any substantive right.” end quote. Substantive rights are those general rights that reserves the individual basic rights that are strongly linked to the “**Bill of Rights**” among those, [U.S. Const. amend. I](#) that states, “Congress shall make no law prohibiting the free exercise thereof; or abridging the freedom of the right of the people to petition the Government for a redress of grievances.” By prima facie, this extends to all unwritten laws, i.e. Case Law, Common Law and all residual Doctrines!

3. Pursuant to the established last resort jurisdiction the USSC has, the [Amendment 1](#) right to petition the government constitutionally requires this Court to order the USSC to docket this Case as failure to do so violates [U.S. Const. amend. I](#) and [28 U.S.C. § 2072\(a\)\(b\)](#). The jurisdictional power to make that order is explained below.

4. [28 U.S.C. § 1361](#), “The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” The USSC is an agency of the United States therefore by [28 U.S.C. § 1331](#); [28 U.S.C. § 1343 \(a\) \(4\)](#); [28 U.S.C. § 1346 \(a\) \(2\)](#) and [28 U.S.C. § 1361](#), this Court has jurisdictional power to order the USSC to docket this Case. That is ordering a higher Court to perform an action, however the USSC to jurisdictionally challenge the order would have to docket and hear the full merits behind the order as fulfillment to due process or fulfill the order or be in direct contempt of this honored Court. All jurisdictional codes except one have been entrusted to the lower courts by our constitutional framers. This

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jurisdiction is not all that limited and is honored within this honored Court.

In conclusion for Claim #6: This Court has [28 U.S.C. § 1331](#); [28 U.S.C. § 1343](#); [28 U.S.C. § 1346](#); and [28 U.S.C. § 1361](#) jurisdictional power to order the USSC to docket this Case so that all claims may be jurisdictionally addressed pursuant to the prima facie requirements of [FRCvP Rule 8\(d\)](#), by enforcing a, substantive right, [28 U.S.C. § 2072\(a\)\(b\)](#), duty pursuant to [U.S. Const. amend. I](#).

In Final Support of this Complaint: A paradox is before this Court because an easy to figure out major constitutional crime is before “We the People”. Jurisprudence will not take a major turn against America’s constitutional heritage by turning the hierarchy of laws upside down for defying the Constitution! A reporter prior to the war asked President Bush that it appeared inevitable that the nation was headed toward war with Iraq. The president responded: “That’s not for you to decide. That’s for me to decide.” A confession a King would make and are not words from a president of a democratic constitutional republic with set constitutional war power procedures! Our nation is a government of laws not a government of men, the statutes in the [Constitution](#) come first followed by [Article I](#) statutes and at extreme last comes the unwritten laws by Case Law. Men may not take case law doctrines, precedents and such to repeal statutes. Unwritten laws have no substance against the [Constitution](#) and its residual statutes for confusing a simple war power constitutional issue. There is no confusion as it is easy and straightforward to pick up a high school government book, the [Constitution](#) and good old fashion common sense and simply say, hey “We the People”, the United States Government violated [U.S. Const. art. I, § 8, cl. 11](#); [U.S. Const. art. II, §2, cl. 2](#) and are trying to escape the ramifications of these crimes by not honoring [U.S. Const. art. III, § 2, cl. 2](#). This covers all three branches of government and is a crime against [America’s Constitution](#) that “We the People” will never forget. Real Case Law states addressing a war power issue is judicially available to determine the allocation, between the executive and the legislative branches, of the powers to wage war, see: [Massachusetts v. Laird, 451 F.2d 26 \(1st Cir. 1971\)](#), [aff’g s.c. 327 F. Supp. 378 \(D. Mass. 1971\)](#); [Orlando v. Laird, 443 F.2d 1039 \(2nd Cir. 1971\)](#). Cf. [Powell v. McCormack, 395 U.S. 486 \(1969\)](#). Real Case Law states an Executive interpretations of war powers may judicially be overruled, see [Youngstown Sheet & Tube Co., et al. v. Sawyer, 343 U.S. 579 \(1952\)](#). Real Case Law states, the government may not wait for another 48-

hour war power crime as this only delays the inevitable future injury to the [Constitution](#), see [Blum v. Yaretsky, 457 U.S. 991, 73 L. Ed. 2d 534, 102 S. Ct. 2777 \(1982\)](#) and [Wilderness Soc’y v. Griles, 262 U.S. App. D.C. 277, 824 F.2d 4, 12 n.8 \(D.C. Cir. 1987\)](#). Real Case Law states, the Government may not rewrite the [First Amendment](#); [28 U.S.C. § 1291](#); [28 U.S.C. § 2072\(a\)\(b\)](#) & [Sup.Ct. Rule 11](#) to avoid the responsibility of docketing this war power issue in the USSC as a statute may not be altered in favor of the government, see [United States v. Nordic Village, Inc., 503 U.S. 30, 33-35 \(1992\)](#).

WHEREFORE, the Plaintiff prays from this honored Court **1)** to order the USSC Clerk to transmit promptly to Justice Stephen G. Breyer, all pleadings previously incorporated; **2)** to order the USSC to docket this case and address all claims of such imperative public importance and to finally answer, “Were the U.S. Government actions pursuant to the 2003 Iraq War contrary to the United States Constitution?” Whereas “We the People” will seek a YES ruling for redressing this federal question; and **3)** such other and further relief as this Court shall deem proper.

Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

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CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 20 & 21 Jun. 16, 2005

The Honorable [Sam A Crow](#), U.S. District Judge
Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro
se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney,
Topeka, KS, for Defendant.

PLAINTIFF'S MOTION TO DENY & ORDER

The Plaintiff moves this Court for an order denying Defendant's Motion to Dismiss Amended Complaint and to further order relief as specified after (WHEREFORE) of Doc. 14.

MEMORANDUM IN SUPPORT OF MOTION TO DENY & ORDER

The Plaintiff has moved this Court for an order denying Defendant's Motion To Dismiss (Plaintiff's) Amended Complaint and to further order relief as specified after (WHEREFORE) of Doc. 14. In support:

I. NATURE OF THE CASE & ARGUMENT

That nature is Subject Matter Jurisdiction, Claims, Waiver of The Government's Sovereign Immunity, and Standing that have been affirmatively established:

Subject Matter Jurisdiction-is established & was established along with all designated jurisdictional codes, see Doc. 13 at headings I & II & IV.

Claims-Six claims established, see Doc. 14.

Waiver of The Government's Sovereign Immunity-is/was established, see Doc. 13 at heading V.

Standing-is/was established in Doc. 1, see page 13 column 1.

Defendant's Doc. 15 & 16 offers nothing new and is just a repeat of Doc. 7 & 8 thoroughly dealt with by Plaintiff's Doc. 12 & 13. The Defendant even repeated an out of context case identified at page 27 column 2 of Doc. 13, [Borntrager v. Stevas, 772 F.2d 419, 420 \(8th cir. 1985\)](#).

The Defendant states this Court has no jurisdiction & competence to address the Plaintiff's six stated claims

when jurisdiction and the six claims have been affirmatively established. The Defendant chooses not to supply an "answer" to the stated claims and thus, these claims are admitted as true by the United States Government pursuant to [FRCvP 8\(d\)](#) as the Plaintiff still has not received a responsive pleading from the U.S. Government.

WHEREFORE, the Plaintiff prays from this honored Court **1)** an order denying Defendant's Motion To Dismiss Amended Complaint. **2)** to order the USSC Clerk to transmit promptly to Justice Stephen G. Breyer, all pleadings incorporated in Doc. 14. **3)** to order the USSC to docket this case and address all claims of such imperative public importance and to finally answer, "Were the U.S. Government actions pursuant to the 2003 Iraq War contrary to the United States Constitution?" Whereas the Plaintiff will seek a YES ruling for redressing this federal question; and **4)** such other & further relief as this Court shall deem proper.

Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

END OF DOCUMENT

TABLE OF CITATIONS

CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 25 Sep. 26, 2005

The Honorable [Sam A Crow](#), U.S. District Judge

Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney, Topeka, KS, for Defendant.

PLAINTIFF'S MOTION TO RECONSIDER

This Motion to Reconsider is filed in good time, see footnote, [\[FN1\]](#)

[\[FN1\]](#). The Declaration to this Court is the Plaintiff received the mailed September 2, 2005 envelope on September 16, 2005 containing Memoranda And Order [23] & Judgment In A Civil Case [24]. Thus by previous Doc. 10 arguments as accepted by this Court per Doc. 11, Plaintiff has filed his Motion To Reconsider in good time.

thus it is motioned to this honored Court to file this pleading to this case's Civil Docket, so motioned.

The USSC has repeatedly and consistently interpreted the **Constitution** as barring the violation of a fundamental substantive right. When a fundamental right is alleged, and it is, **The Attachment 1 Case Law** shifts the burden to the government to justify that impairment, which is the prevention of the Plaintiff's **U.S. Const. amend I right** to transmit his **USSC Rule 22.1** application to Justice Stephen G. Breyer. Relieving this governmental burden is answering Plaintiff's six stated claims or forwarding Plaintiff's application.

The presented authorities by the Defendant and this Court are just standalone Case Law stating criteria the Plaintiff has already met while the Plaintiff's presented authorities are well rounded by USSC Case Law enforced by statutes straight out of the Articles and **Bill of Rights** of the **Constitution** plus **Article I** laws followed by other grassroots authorities, i.e. the **Federalist Papers**. Plaintiff's fact, law and arguments have been ignored and are too many to rehash but to highlight a major one by Doc. 13 is that the Plaintiff has neutralized the government's sovereign immunity by USSC Case Law pursuant to **United States v. Nordic Village, Inc., 503 U.S. 30, 33-**

35 (1992), and by constitutional statute pursuant to **U.S. Const. amend. I** and by **Article I** statute pursuant to the **1948 Federal Tort Claims Act**, more than enough to counter a questionable July 4, 1776 disengaged authority from the King of England.

This Court's non-dispositive ruling is now a controversy under **Article III** invoking additionally to (**28 U.S.C. §§ 1331, 1343, 1346, 1361**), further jurisdictional powers to this Court by **28 U.S.C. § 1367**. This controversy is compelling the Plaintiff to exercise his 60-day right to appeal by **Fed. R. App. P. 4** with further rights to a **Fed. R. App. P. 35** en banc determination for answering Plaintiff's established Federal Questions of exceptional importance. Thus, Plaintiff states these constitutional fact, law and arguments meets the criteria of **D. Kans. Rule 7.3(b)(1)(2)(3)** and urges this Court for a Three-Judge Court session for addressing this Motion to Reconsider of such imperative public importance, so motioned! The Plaintiff files his Motion to Reconsider to honor this Court in hopes that a simple **non-discretionary non-judicial duty** is completed by sending Plaintiff's papers to Justice Stephen G. Breyer without further a due [\[FN2\]](#)

[\[FN2\]](#). Claims 2 thru 5 are USSC jurisdictional claims and may only be dismissed by six out of nine Justices! These are serious well established claims thus appreciate this opportunity to respond knowing it is headed for Denver! We the People have standing on War Power issues by the doctrine of *parens patriae* and is Standing for action in contrast to no Standing for abdicating. May one get real while swimming in the labyrinth of Case Law? Get real and feel what I am feeling and provide real answers and real relief! I was crushed by what We the People lost on March 17, 2003 and do not have issues on what was done, but do have constitutional issues on how it was done. It sure would of been neat to see the newly elected 108th Congress coming into session for constitutionally handling the Iraqi situation but unfortunately that constitutional drama was stolen from America and is gone forever and this is when **Popular Sovereignty** was lost on an issue of such imperative public importance. Go to your chambers and answer this footnote by letter to an 18-year-old American soldier fresh from a firefight from Iraq and send me a copy Without further a due!

TABLE OF CITATIONS

WHEREFORE, Plaintiff, prays from this honored Court (1) to reconsider, (2) to reconsider via a Three-Judge Court session, (3) to compel the Defendant to answer one by one Plaintiff's six stated claims, or just (4) order the USSC Clerk to forward Plaintiff's papers to Justice Stephen G. Breyer, and (5) such other and further relief as this Court shall deem proper.

Respectfully submitted.

ATTACHMENT 1 CASE LAW

Korematsu v. U.S., 323 U.S. 214, 216-20, 65 S.Ct. 193, 194-95, 89 L.Ed.2d 194 (1944); See also City of Cleburne Tex. v. Cleburne Living Center, 473 U.S. 432, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985); City of New Orleans v. Dukes, 427 U.S. 297, 96 S.Ct. 2513, 49 L.Ed.2d 511 (1976); Nordlinger v. Hahn, ___ U.S. ___, 112 S.Ct. 2326, 2331-32 (1992); Frisby v. Schultz, 487 U.S. 474, 481, 488, 108 S.Ct. 2495, 2500, 2504, 101 L.Ed.2d 420 (1988); Carey v. Population Services International, 431 U.S. 678, 686, 688, 97 S.Ct. 2010, 2016, 52 L.Ed.2d 675 (1977); Cleveland Board of Education v. LaFleur, 414 U.S. 632, 641, 94 S.Ct. 791, 796, 39 L.Ed.2d 52 (1974); Roe v. Wade, 410 U.S. 113, 155, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973); Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); Eisenstadt v. Baird, 405 U.S. 438, 453, 92 S.Ct. 1029, 1038, 31 L.Ed.2d 349 (1971); Reed v. Reed, 404 U.S. 71, 92 S.Ct. 251, 30 L.Ed.2d 225 (1971); Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971); Kramer v. Union Free School District, 395 U.S. 621, 627, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969); Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969); Stanley v. Georgia, 394 U.S. 557, 564, 89 S.Ct. 1243, 1247-48 (1969); Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5 (1968); Loving v. Commonwealth of Virginia 388 U.S. 1, 11-12, 87 S.Ct. 1817, 1823-24, 18 L.Ed.2d 1010 (1967); Harper v. Virginia Bd. of Elections, 383 U.S. 663, 672, 86 S.Ct. 1079, 1084-85, 16 L.Ed.2d 169 (1966); Baxstrom v. Herold, 383 U.S. 107, 86 S.Ct. 760, 15 L.Ed.2d 620 (1965); Griswold v. Connecticut, 381 U.S. 479, 485, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965); Cox v. State of Louisiana, 379 U.S. 536, 554, 85 S.Ct. 453, 464, 13 L.Ed.2d 471 (1965); McLaughlin v. Florida, 379 U.S. 184, 192, 85 S.Ct. 283, 288, 13 L.Ed.2d 222 (1964); Aptheker v. Secretary of State, 378 U.S. 500, 508, 84 S.Ct. 1659, 1665 (1964); Sherbert v. Verner, 374 U.S. 398, 406-410, 84 S.Ct. 1790, 1794-97 (1963); NAACP v. Button, 371 U.S. 415, 438, 83 S.Ct. 328, 341 (1963); Poe v. Ullman, 367 U.S. 497, 543, 81 S.Ct. 1752, 1777, 6 L.Ed.2d 989 (1961); Shelton v.

Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 252, 5 L.Ed.2d 231, 237 (1960); Bates v. Little Rock, 361 U.S. 516, 522-24, 80 S.Ct. 412, 416-17 (1960); NAACP v. State of Alabama, 357 U.S. 449, 460, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488 (1958); Bolling v. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954); Oyama v. State of California, 332 U.S. 633, 644-46, 68 S.Ct. 269, 274-75, 92 L.Ed. 249 (1948); Hirabayashi v. United States, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed.2d 1774 (1943); Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed.2d 1655 (1942); Cantwell v. Connecticut, 310 U.S. 296, 303-308, 60 S.Ct. 900, 903-905 (1940); Meyer v. State of Nebraska, 262 U.S. 390, 399-400, 43 S.Ct. 625, 626-27 (1923).

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

END OF DOCUMENT

TABLE OF CITATIONS

CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 27 Oct. 24, 2005

The Honorable [Sam A Crow](#), U.S. District Judge

Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro se, for the Plaintiff(s).

[D. Brad Bailey](#), Office of United States Attorney, Topeka, KS, for Defendant.

PLAINTIFF'S EXTRAORDINARY MOTION

This Motion [\[FN1\]](#)

[FN1](#). Written after receiving by mail on October 16, 2005 Doc. 26 Defendant's Objection To Plaintiff's Motion To Reconsider.

with just one Case cited [\[FN2\]](#)

[FN2](#). *Duncan v. Kahanamoku*, 327 U.S. 304, 335 (1946) (Murphy, J., concurring) (quoting *Ex parte Milligan*, 71 U.S. 2, 120-21 (1866)). As the Supreme Court noted in a different era, "'war power' cannot be invoked as a talismanic incantation . . . Even the war power does not remove constitutional limitations safeguarding essential liberties." *United States v. Robel*, 398 U.S. 258, 264 (1967). [U.S. Const. amend. I](#) is an essential protected liberty!

from this abecedarian of Constitutional Law, is for apparent fairness; that a Three Judge Panel [\[FN3\]](#)

[FN3](#). Judge preferences are
(1)The Honorable Wesley E. Brown
(2)The Honorable J. Thomas Marten
(3)The Honorable Carlos Murguia
(4)The Honorable Julie A. Robinson.

would receive one more Brief from each of the parties (the Plaintiff first) and would hear the oral arguments in Topeka in April of 2006 pursuant to ADR [\[FN4\]](#)

[FN4](#). ADR is stated within this motion to emphasize that the Defendant and this Court are offered loads of flexibility to meet the objectives of this Motion for giving the Plaintiff more time and a warranted United States District Court judicial environment for clarifying this Manifest Injustice as

intertwined within abdicated Jurisdictional Codes, 28 U.S.C. §§ 1331, 1343, 1346, 1361, 1367.

controls to be established. This would allow the Plaintiff to present a simple Manifest Injustice [\[FN5\]](#)

[FN5](#). This Court does not have authority to dismiss Plaintiff's raised USSC Original Jurisdiction Claims, however, this Court does have a jurisdictional constitutional responsibility by the [First Amendment](#) to overrule a USSC Clerk flaunting unconstitutionally nine honorable robes from all the Justices.

to this honorable Court. This apparent fairness is sought pursuant to extraordinary judicial circumstances the Plaintiff finds himself in! If the lack of interest of this Court is confirmed by denying this motion for jurisdictionally addressing Plaintiff's Doc. 14 established Claims that are exceptional Federal Questions of such imperative public importance, the Plaintiff, will feel better about filing to the Denver Appellate Court! In earnest, it would be an Honor for the Plaintiff to have his say in his hometown within the honorable walls of the USDC of Topeka.

WHEREFORE, based upon the above and foregoing, Plaintiff prays that all liberal pro se privileges be found to grant this judicial process as motioned, so motioned.

Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

END OF DOCUMENT

TABLE OF CITATIONS

CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 30 Nov. 29, 2005

The Honorable [Sam A Crow](#), U.S. District Judge
Byron L. Trackwell, QP Drilling, Dukhan, Qatar, pro
se, for the Plaintiff(s).
[D. Brad Bailey](#), Office of United States Attorney,
Topeka, KS, for Defendant.

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO FILE HIS NOTICE OF APPEAL

This Motion [\[FN1\]](#) is for apparent fairness that does
allow the Rules on timing [\[FN2\]](#)

[FN1](#). Written after receiving by mail on
November 26, 2005 Doc. 29 "Memorandum
And Order" from this Honored Court.

[FN2](#). This Court's Doc. 11 Order as an
Extension of Time was not an Extension of
Time, but was following clear instructions of
[FRCvP Rule 6\(a\)](#) on how to perform a Time
Computation. [FRCvP Rule 59](#) does not state
how the computation is to be made only the
numbers of days the Plaintiff is to have
access to this District Court for filing his
Motion To Reconsider. This Court knows
that the Plaintiff received Doc. 23 & 24 on
September 16, 2005 and used Federal
Express to complete an unusual rushed
response that completed a confirmed
docketing date of September 26, 2005 for
Doc. 25, thus filed in good time. Disputing
this apparent fairness on time does give rise
to the term, nonsensical.

to be interpreted correctly for apparent fairness. The
Plaintiff was aware that his Motion to Reconsider
may be considered untimely, thus appropriately
confirmed with the Clerk that his Motion, Doc. 25,
was on the Civil Docket. If Doc. 25 "Motion to
Reconsider" were not timely, then why was it placed
on the Civil Docket giving rise to Doc. 26, Doc. 27,
Doc. 28 and Doc. 29? Doc. 29, Memorandum And
Order, as confirmed by the Plaintiff at this time,
becomes the decision, or order from which the
Plaintiff's appeal is to be taken, [10th Cir. R.
10.3\(C\)\(5\)](#). This Court's Doc. 29 is considered
timely, that is not questioned. This Court by Doc. 29
refers to Doc. 25, 26, 27 & 28 and they too must be
considered timely filed. The Plaintiff thus states

proper time to file his 60-day "Notice of Appeal" is
60 days AFTER November 04, 2005 the docketed
date for Doc. 29, an interpretation of [FRCvP 6\(a\)](#).

WHEREFORE, based upon the above and foregoing,
it is motioned that the Plaintiff is granted 60 days
AFTER November 04, 2005 to file his Notice of
Appeal pursuant to [Fed. R. App. P. 4](#), so motioned.

Respectfully submitted.

CASE: 5:04cv4168
U.S. DISTRICT COURT OF KANSAS
Plaintiff,
TRACKWELL, et al
v.
Defendant,
U.S. Government
Docket 33 Dec. 28, 2005

PLAINTIFF'S NOTICE OF APPEAL

This Timely [\[FN1\]](#) "Notice Of Appeal" is hereby
given that the Plaintiff, et al, [\[FN2\]](#)

[FN1](#). Timely as Doc. 29, "Memorandum
And Order" is an entered November 4, 2005
order for the purposes of [Fed. R. App. P.
4\(a\)](#); See [Fed. R. App. P. 4\(a\)\(7\)](#). Therefore
Doc. 29, "Memorandum And Order" has
established 60 days AFTER November 4,
2005 as the timely period pursuant to [Fed. R.
App. P. 4\(a\)\(1\)\(B\)](#) for filing "Plaintiff's
Notice Of Appeal".

[FN2](#). et al by family military honor refers to
Randal Trackwell, a Vietnam Decorated
Veteran & Donald Trackwell, a World War
II Decorated Veteran. A FRCvP 23 motion,
Doc. 13, Endnote 1, page 23 column 1, puts
into the picture all the protestors as their
popular sovereignty was unconstitutionally
breached due to the silent and stunned 108th
Congress. Plaintiff pro se is a U.S. Army
Soldier, honorably discharged.

in the above named case hereby appeals to the United
States Court of Appeals for the Federal Tenth Circuit
from Doc. 29 [\[FN3\]](#)

[FN3](#). Axiomatically, Doc. 23, Memorandum
And Order, and, Doc. 24, Judgment In A
Civil Case, both entered into this action on
September 01, 2005, are also contested.

"Memorandum And Order" entered in this action on
November 04, 2005. Respectfully submitted.

• [5:04cv4168](#) (Docket) (Dec. 20, 2004)

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