

**Kay. IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DENNIS KUCINICH)
Member, U.S. House of Representatives)
2445 Rayburn House Office Building)
Washington, D.C. 20515,)

CASE NUMBER:
JUDGE:
DECK TYPE: General Civil

WALTER B. JONES)
Member, U.S. House of Representatives)
2333 Rayburn House Office Building)
Washington, D.C. 20515,)

JOHN CONYERS, JR.)
Member, U.S. House of Representatives)
2426 Rayburn House Office Building)
Washington, D.C. 20515,)

ROSCOE BARTLETT)
Member, U.S. House of Representatives)
2412 Rayburn House Office Building)
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MICHAEL E. CAPUANO)
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JOHN J. DUNCAN, JR.)
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2207 Rayburn House Office Building)
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TIMOTHY V. JOHNSON)
Member, U.S. House of Representatives)
1207 Longworth House Office Building)

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| Washington, D.C. 20515, |) |
| |) |
| RON PAUL |) |
| Member, U.S. House of Representatives |) |
| 203 Cannon House Office Building |) |
| Washington, DC 20515, |) |
| |) |
| Plaintiffs, |) |
| |) |
| v. |) |
| |) |
| BARACK OBAMA |) |
| President of the United States |) |
| 1600 Pennsylvania Avenue, N.W. |) |
| Washington, D.C. 20500, |) |
| |) |
| ROBERT GATES |) |
| Secretary of Defense |) |
| 1400 Defense Pentagon |) |
| Washington, D.C. 20301, |) |
| |) |
| Defendants. |) |
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**COMPLAINT
FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs Dennis Kucinich, Walter B. Jones, John Conyers, Jr., Roscoe Bartlett, Michael E. Capuano, Dan Burton, Howard Coble, John J. Duncan, Jr., Timothy V. Johnson, and Ron Paul (hereinafter “the Plaintiffs”), all members of Congress, bring this Complaint in their official capacities and as taxpayers and allege as follows:

NATURE OF THE ACTION

1. This is an action for injunctive and declaratory relief to protect the Plaintiffs and the country from a stated policy of Defendant Barack Obama, President of the United States, whereby a president may unilaterally go to war in Libya and other countries without the

declaration of war from Congress required by Article I, Section 8, Clause 11 of the U.S. Constitution.

2. This action further seeks injunctive and declaratory relief to protect the Plaintiffs and the country from the violation of the War Powers Resolution resulting from the Obama Administration's established policy that the President does not require congressional authorization to use military force in wars like the one in Libya.
3. This action further seeks injunctive and declaratory relief to protect the Plaintiffs and the country from a policy that a president may commit the United States to a war under the authority of the United Nations without authorization from Congress.
4. This action further seeks injunctive and declaratory relief to protect the Plaintiffs and the country from a policy that a president may commit the United States to a war under the authority of the North Atlantic Treaty Organization (NATO) in violation of the express conditions of the North Atlantic Treaty ratified by Congress.
5. This action further seeks injunctive and declaratory relief to protect the Plaintiffs and the country from a policy that a president may use funds, previously appropriated by Congress, for unconstitutional and unauthorized wars in Libya or other countries.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2006), 50 U.S.C. §§ 1541-1548 (2006), 28 U.S.C. §§ 1361 and 1651, and Article I, Section 8, Clause 11 of the U.S. Constitution.
7. Venue is proper pursuant to 28 U.S.C. § 1391(b), (e).
8. This Court has the authority to render injunctive and declaratory relief pursuant to 28 U.S.C. §§ 2201-2202.

THE PARTIES

The Plaintiffs

9. Roscoe Bartlett represents the Sixth District of Maryland and has served in the United States House of Representatives since 1992. He is the Chairman of the Tactical Air and Land Forces Subcommittee of the House Armed Services Committee; a senior member of the Science, Space and Technology Committee as well as a member of the Small Business Committee. Throughout his ten terms in office, Representative Bartlett has remained one of the leading congressional members on matters relating to defense and scientific issues. He is a member of the Republican Party.
10. Dan Burton represents the Fifth District of Indiana and has served in the United States House of Representatives since 1983. He served as the Chairman of the House Committee on Oversight and Government Reform and currently serves as the Chairman of the House Foreign Affairs Subcommittee on Europe and Eurasia. He is also a Senior Member on the Oversight and Government Reform Committee. Throughout his fifteen terms in office, Rep. Burton has been a leading figure in the investigation of executive power and its abuse. Rep. Burton is a proud veteran of the U.S. armed forces, having served in the U.S. Army and U.S. Army Reserves. He is a member of the Republican Party.
11. Michael E. Capuano represents the Eighth District of Massachusetts and has served in the United States House of Representatives since 1984. He is a member of the House Committee on Transportation and Infrastructure and the House Committee on Financial Services. He also serves on the House Democratic Leadership team as a member of the Democratic Steering and Policy Committee. Throughout his seven terms in office, Rep.

Capuano has been a leading voice for international human rights, including aid to the Darfur region of Sudan. Rep. Capuano received his law degree from Boston College Law School in 1977 and is a member of the Massachusetts bar. He is a member of the Democratic Party.

12. Howard Coble represents the Sixth District of North Carolina and has served in the United States House of Representatives since 1984. He is a member of the House Committee on the Judiciary and is the Chairman of the Subcommittee on Courts, Commercial and Administrative Law. He also serves on the House Committee on Transportation and Infrastructure, as well as the Subcommittee on Aviation, the Subcommittee on Coast Guard and Maritime Transportation, and the Subcommittee on Highways and Transit. In over a decade of service in Congress, Rep. Coble has been a leading voice on constitutional issues and legal reform. He received his law degree from the University of North Carolina and his Doctor of Laws from Elon University. Rep. Coble has proudly served five-and-a-half years in the U.S. Coast Guard and twenty-two years in the U.S. Coast Guard Reserve. He is a member of the Republican Party.
13. John Conyers, Jr. represents the Fourteenth District of Michigan and has served in the United States House of Representatives since 1965. He has served as Chairman of both the House Committee on Government Operations (now renamed Committee on Oversight and Government Reform) and the House Committee on the Judiciary. He is currently the ranking member of the House Judiciary Committee and serves on the Subcommittee on the Constitution, Civil Rights, and Civil Liberties. He is the second longest-serving incumbent member of the House. Throughout his twenty-three terms in Congress, Rep. Conyers has been a leading voice in the protection of civil liberties, civil

rights, and human rights in addition to a host of other international and domestic issues. He received his law degree from Wayne State University. Rep. Conyers is a proud veteran of the U.S. armed forces, having served in the National Guard and the U.S. Army Corps of Engineers during the Korean War. He is a member of the Democratic Party.

14. John J. Duncan, Jr. represents the Second District of Tennessee and has served in the United States House of Representatives since 1988. He is a member of the House Transportation and Infrastructure Committee and serves as Chairman of the Highways and Transit Subcommittee. He is also a member of the House Committee on Natural Resources. He received his law degree from The George Washington University and previously served as a judge. Rep. Duncan's distinguished legal career led Lincoln Memorial University to name its new law school after him. He has been a leading voice against foreign wars and for compliance with the doctrine of separation of powers under the U.S. Constitution. Rep. Duncan is a proud veteran of the U.S. armed forces, having served in the U.S. Army National Guard and the U.S. Army Reserve. He is a member of the Republican Party.
15. Timothy V. Johnson represents the Fifteenth District of Illinois and has served in the United States House of Representatives since 2000. He is a member of the House Committee on Agriculture and serves as Chairman of the Subcommittee on Rural Development, Research, Biotechnology, and Foreign Agriculture. He also serves on the House Committee on Transportation and Infrastructure. In addition to his leadership on agricultural issues, Rep. Johnson has been a leading voice on constitutional issues, including opposing excesses in national security laws. He received his law degree from the University of Illinois College of Law. He is a member of the Republican Party.

16. Walter Jones represents the Third District of North Carolina and has served as a member of the House of Representatives since 1995. He is a member of the House Committee on Armed Services and the House Committee on Financial Services. Throughout his sixteen years in Congress, Rep. Jones has been a leading voice for military personnel and a leader on military issues. He introduced the War Crimes Act of 1996, which allows prisoners of war to bring their persecutors to justice in U.S. courts. He was also the author of language in the 2010 National Defense Authorization Act that guarantees treatment for returning troops suffering from post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI) from the ongoing wars. He is a member of the Republican Party.
17. Dennis Kucinich represents the Tenth District of Ohio and has served as a member of the United States House of Representatives since 1996. He is the Ranking Member of the Regulatory Affairs, Stimulus Oversight and Government Spending Subcommittee of the Oversight and Government Reform Committee. He is also a member of the Education and Workforce Committee. He has served as an official United States delegate to the U.N. Convention on Climate Change (1998 and 2004). Throughout his eight terms in Congress, Rep. Kucinich has been a leading voice on worker rights, civil rights and human rights. He is a member of the Democratic Party.
18. Ron Paul represents the Fourteenth District of Texas and has served as a member of the United States House of Representatives since the 1970s, with one break from 1984 to 1997, when he relinquished his seat to return to his medical practice. He is a member of the Committee on Foreign Affairs and the Subcommittee on Oversight and Investigations. He is also a member of the Committee on Financial Services, the

Chairman of the Subcommittee on Domestic Monetary Policy and Technology, and a member of the Subcommittee on International Monetary Policy and Trade. Dr. Paul has been a leading voice for limited government and constitutional rights. Dr. Paul has proudly served as a flight surgeon in the U.S. Air Force. He is a member of the Republican Party.

The Defendants

19. Barack Obama is the forty-fourth President of the United States. He is being sued in his official capacity as Commander and Chief and Chief Executive of the Executive Branch, including but not limited to the Departments of Defense and State as well as the Central Intelligence Agency.
20. Robert Gates is the Secretary of Defense and is being sued in his official capacity. Defendant Gates is responsible for the entire Department of Defense, including its sub-agencies. In that capacity, he is tasked with maintaining the forces and operations in the Libyan War.

Definitions

21. African Union. The African Union is an organization of fifty-three African states (including Libya) established on July 9, 2002. It is the successor to the Organization of African Unity (OAU). The African Union opposed the no-fly zone enforced by the United States as the prelude to the current combat operations.
22. Libya. The nation of Libya is an independent sovereign nation located in the Maghreb region of North Africa. It is the fourth-largest nation in terms of land in Africa and has 6.4 million citizens. It has the highest literacy rate of any nation in North Africa and the fourth-highest GDP per capita in Africa. It borders Egypt, Sudan, Chad, Algeria, Tunisia, and Niger. It also holds the world's tenth-largest supply of proven oil reserves. Long

dominated by Western powers, Libya became an independent country in 1951. Libya is a member nation of the United Nations and the African Union and is represented by diplomats appointed by the Libyan government.

23. The Libyan Civil War. Following violent responses by Libyan police to peaceful protests against Muammar Gaddafi's government on February 15, 2011, an armed conflict broke out between forces loyal to Gaddafi and rebels seeking to depose Gaddafi and hold democratic elections. On February 27, 2011, anti-Gaddafi rebels formed the National Transitional Council, which declares itself to be the "sole representative of all Libya." On March 23, 2011, the Council established a transitional government headed by Interim Prime Minister Mahmoud Jibril. The Council refers to the Libyan state as the Libyan Republic, while the Gaddafi government refers to it as the Great Socialist People's Libyan Arab Jamahiriya.
24. Libyan Government. The center of the Libyan government is its capital, Tripoli, which held 1.7 million of its citizens before the civil war. The country has been ruled by Muammar Gaddafi since 1969. Since 1977, Libya has been called the Great Socialist People's Libyan Arab Jamahiriya. In 1979, Gaddafi relinquished the title of Prime Minister. The government has an executive ruling structure headed by a twelve-member Revolutionary Command Council. The national government is divided into twenty-two Sha'biyat districts. Those districts are further divided into Basic People's Congresses. Citizens elect representatives to the Basic People's Congresses and regional Sha'biyat People's Congresses as well as the National General People's Congress. The Libyan government still controls the capital and various areas outside of the capital while rebels currently control some of the cities outside of Tripoli. The Libyan government has a

history of repression and abuse, including the use of excess force in suppressing peaceful protests in 2011.

25. The Libyan War. For the purposes of this complaint, the term “Libyan War” means U.S. involvement in combat operations in Libya. Although the Administration has insisted that these operations do not amount to a war, the Plaintiffs assert that the U.S. is engaged in war under domestic and international definitions of war.
26. The North Atlantic Treaty Organization (NATO). NATO is a multinational alliance formed by the North Atlantic Treaty signed on April 4, 1949. Headquartered in Brussels, Belgium, NATO is committed to the mutual defense of NATO member nations in response to an attack by another country. The organization includes twenty-eight NATO members and twenty-two “partner countries.” Under Article IV of the Treaty, “[t]he Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all.”
27. Rebel Alliance. Rebel factions in Libya have agreed to form a National Transitional Council. While the Council has neither forces in nor control of Tripoli, it claims Tripoli as its capital. The rebel forces have been actively assisted by the United States and NATO with both ground personnel and close combat support missions.
28. U.N. Security Council Resolution 1973. On March 17, 2011, the United Nations Security Council passed Resolution 1973 to endorse the creation of a no-fly zone and the use of “all means necessary” to protect civilians within Libya.

CONSTITUTIONAL PROVISION

29. Article I, Section 8, Clause 11 of the United States Constitution provides in pertinent part that “[t]he Congress shall have power . . . [t]o declare war.”

30. Article I, Section 9, Clause 7 of the Constitution states that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”

FACTUAL BACKGROUND

The Libyan War

31. On March 19, 2011, at approximately 3:00 p.m. EDT, President Obama ordered U.S. forces to attack the armed government forces of Libya.
32. Before attacking the government of Libya, President Obama did not seek or receive a declaration of war from Congress.
33. Before attacking the government of Libya, President Obama did not seek or receive approval of Congress in any form.
34. Subsequent to the start of military operations in Libya, the Obama Administration stated that, as a policy, the President did not consider himself bound to consult with Congress or receive its approval for military operations like those ordered in Libya.
35. U.S operations in Libya now include all of the classic elements of a war, including but not limited to close combat support, bombing of Libya’s capital and key Libyan military assets, and commitment of U.S. personnel to ground operations to assist the rebel forces in the Libyan civil war.
36. The cost to the United States of the Libyan War now exceeds \$750 million and has resulted in the loss of U.S. aircraft in combat operations.
37. The Supreme Court has found that even intermittent naval engagements can constitute “war.” *Bas v. Tingy*, 4 U.S. (4 Dall.) 37, 39 (1800) (Moore, J.) (describing conflict between U.S. and French ships as “war”); *id.* at 40 (Washington, J.) (“It may, I believe, be safely laid down, that every contention by force between two nations, in external

matters, under the authority of their respective governments, is not only war, but public war.”).

38. The Libyan operations include efforts to kill Libyan leader Gaddafi and force a victory on the side of the rebels aligned with the United States and NATO.
39. Recently, the Libyan rebels have been accused of war crimes by U.N. investigators, including but not limited to torture. *Libya: UN Accuses Both Sides Of War Crimes*, BBC News (June 1, 2011), <http://www.bbc.co.uk/news/world-africa-13622965>.

The Involvement of NATO in the Libyan War

40. On March 31, 2011, NATO officially took over command of the military operations in Libya, including command of U.S. forces.
41. Article 5 of the North Atlantic Treaty provides as follows:

The Parties agree that *an armed attack against one or more of them* in Europe or North America shall be considered an attack against them all and consequently they agree that, *if such an armed attack occurs*, each of them, in exercise of the right of individual or collective self-defence recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.

North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243 (emphasis added).

42. For the purpose of Article 5, the North Atlantic Treaty defines “armed attack on one or more of the Parties” as an armed attack either (1) “on the territory of any of the Parties in Europe or North America” or (2) “on the forces, vessels, or aircraft of any of the Parties. *Id.* art. 6(1).
43. Libya is not a signatory or participating member of NATO.

44. Libya did not attack the United States or any NATO member.
45. Libya has not been cited as a threat to the United States or any NATO member.
46. Article 11 of the North Atlantic Treaty requires that it “shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes.”
Id. art. 11.
47. During hearings before the Senate Foreign Relations Committee in 1949 on the proposed North Atlantic Treaty, Secretary of State Dean Acheson testified that the Treaty would “not mean that the United States would automatically be at war if one of the other signatory nations were the victim of an armed attack . . . because [u]nder our Constitution, the Congress alone has the power to declare war.” *North Atlantic Treaty: Hearings Before the Senate Committee on Foreign Relations*, 81st Cong. 11 (1949).
48. The Administration never received the approval of Congress for committing U.S. military forces to the NATO operation in Libya.
49. The President of the United States and Secretary of Defense still hold ultimate command authority over U.S. troops operating under NATO command.
50. U.S. units in the Libyan operations remain under immediate U.S. command in the field.
51. The President has the authority to withdraw all U.S. troops from the theater of war and to cease support of the operations.
52. Indeed, Norway (a NATO member) is withdrawing its support for air operations in Libya. Bjoern H. Amland, *Norway to Quit Libya Operation by August*, Associated Press, (June 9, 2011) available at <http://www.foxnews.com/world/2011/06/10/norway-to-quit-libya-operation-by-august/>.

53. Germany (a NATO member) declined to support the Libyan mission and has indicated support only in a post-war Libya. Laura Meckler & Carol E. Lee, *U.S., German Leaders Discuss Aid for Libya*, Wall St. J. (June 8, 2011), <http://online.wsj.com/article/SB10001424052702304906004576371410462089584.html>.
54. According to public reports, U.S. personnel with Army Special Forces units and the Central Intelligence Agency (CIA) are on the ground in Libya to assist the rebel forces. Interview by Bill O'Reilly with Ret. Col. David Hunt, U.S. Army, and Lt. Col. Tony Shaffer, Former U.S. Army Intelligence Officer, on *The O'Reilly Factor* (Mar. 24, 2011).
55. In discussions with rebel leaders, Obama Administration officials have stated a willingness to commit even greater levels of U.S. support and involvement. Jay Carney, White House Press Secretary, Press Briefing (May 11, 2011).
56. As noted below, NATO has now expanded its operations to helicopter attacks to support rebel forces and other close combat operations.

Evolving U.S. Rationales for Libyan War

57. President Obama has confirmed that the Libyan War is not a response to a direct threat to the United States or even an effort to combat terrorism.
58. Indeed, on March 28, 2011, President Obama described the Libyan civil war as one of the “times . . . when our safety is not directly threatened, but our interests and our values are.” President Barack Obama, Address to the Nation on Libya (Mar. 28, 2011).
59. The U.S. actions against Libya began in February 2011 when the Administration imposed economic sanctions on the Libyan government.
60. On February 18, 2011, President Obama squarely denounced the Libyan government by “condemn[ing] the use of violence against peaceful protesters” and affirmed that Libyans

“have certain universal rights including the right to peaceful assembly.” President Barack Obama, Statement on Violence in Bahrain, Libya and Yemen (Feb. 18, 2011).

61. On February 23, 2011, President Obama delivered a speech that again stated the interest of the United States in supporting the “universal rights of the Libyan people.” President Barack Obama, Remarks on Libya (Feb. 23, 2011).
62. In the February 23, 2011 speech, President Obama publicly stated his consideration of all possible forms of intervention in the Libyan civil war, announcing that he had asked his subordinates “to prepare the full range of options that we have to respond to this crisis.”
Id.
63. On February 25, 2011, the Obama Administration imposed economic sanctions against Libya, including seizing the property and property interests of Gaddafi and other senior officials of the Libyan government. *See* Letter from President Barack Obama to the Speaker of the House of Representatives and the President of the Senate (Feb. 25, 2011).
64. In his February 25, 2011 letter to Congress, Obama explained that he was acting pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 (2006), which grants the president a range of powers to deal with threats he declares “national emergencies.” *Id.*
65. While first enforcing a no-fly zone, the U.S. soon began bombing Libyan assets such as airfields, armored forces, and strategic sites.
66. The Administration and its allies later began close combat support and open assistance of the rebels in their ground operations.
67. Most recently, Western operations (with U.S. support) have included efforts to kill Gaddafi and have succeeded in killing members of his family.

68. The Administration also reportedly committed U.S. personnel on the ground, including Special Operations troops, as early as March 2011 to work with Libyan rebel forces in combat operations. *See e.g.*, Mark Mazzetti and Eric Schmitt, *C.I.A. Agents in Libya Aid Airstrikes and Meet Rebels*, N.Y. Times: Africa (Mar. 30, 2011), <http://www.nytimes.com/2011/03/31/world/africa/31intel.html>.
69. On February 26, 2011, the U.N. Security Council—pursuant to its enforcement authority under Chapter VII of the U.N. Charter—adopted Resolution 1970, which instituted an arms embargo against Libya, froze the personal assets of Libya’s leaders, and imposed a travel ban on certain senior Libyan officials. S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011).
70. On March 17, 2011, the Security Council adopted Resolution 1973, which authorized U.N. member states and regional organizations “to take all necessary measures . . . to protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya, including Benghazi.” S.C. Res. 1973, ¶ 4, U.N. Doc. S/RES/1973 (Mar. 17, 2011).
71. Additionally, Resolution 1973 called for the establishment of a “no-fly zone” over Libyan airspace designed to protect civilians, and authorized U.N. member states and regional organizations “to take all necessary measures to enforce compliance with the ban on flights.” *Id.* ¶¶ 6, 8.
72. The Resolution, however, mandated that such measures should not include “a foreign occupation force of any form on any part of Libyan territory.” *Id.* ¶ 4 (emphasis added).
73. As of March 31, 2011, NATO air forces had conducted 4,886 combat sorties.

74. A U.N. resolution does not abrogate or change the obligation of President Obama to obtain a declaration of war under Article I, Section 8, Clause 11 of the Constitution.
75. The Obama Administration has denied that the Libyan operations are a war and, on March 24, 2011, White House Spokesman Jay Carney stated that the Administration had defined these combat operations as “a time-limited, scope-limited military action.”
76. “Time-limited, scope-limited” military actions are not referenced in the U.S. Constitution or the constitutional convention debates.
77. In the month preceding this filing, U.S. and NATO forces carried out some of the heaviest bombardments of Tripoli of the entire war. *See NATO Aircraft Pound Tripoli; U.S. Envoy Courts Rebels*, CNN.com (May 24, 2011, 6:44 PM), <http://www.cnn.com/2011/WORLD/africa/05/24/libya.war/index.html>.
78. In the week preceding this filing, the intensity of NATO operations in the Libyan War increased.
79. This month, Western forces launched extensive helicopter attacks on Libyan forces and engaged in direct combat operations against Libyan ground forces. *See Jonathan Beale, Libya: UK Apache Helicopters Used in Nato Attacks*, BBC News (June 4, 2011), <http://www.bbc.co.uk/news/uk-13651736>.
80. On June 4th, 2011, NATO began deploying attack helicopters. *E.g.* Ken Sengupta, *Nato Strike Force in Libya Enjoys Quick Success with Apache Gunships*, Guardian (Jun. 5, 2011, 21:22 BST), <http://www.guardian.co.uk/world/2011/jun/05/nato-libya-apache-gunships-success>.
81. Other countries have objected to the use of NATO forces in support of the rebels and what is viewed as a move toward the introduction of NATO ground troops. *Russia:*

NATO 'One Step' from Land War in Libya, Associated Press, (Jun. 5, 2011), available at http://www.forbes.com/feeds/ap/2011/06/05/general-libya-russia_8500637.html.

82. NATO itself has announced that it anticipates combat operations to continue and potentially extend into September 2011. *London Backs NATO Role in Libya*, UPI.com (Jun. 2, 2011, 1:35 PM), http://www.upi.com/Top_News/Special/2011/06/02/London-backs-NATO-role-in-Libya/UPI-68071307036138.
83. While the Libyan war expands, the Administration has also launched strikes in Yemen against rebel forces opposing the Yemeni government. *U.S. Planes Hit Yemeni Militants*, Associated Press, (June 9, 2011), available at <http://www.guardian.co.uk/world/feedarticle/9690122>.

Funding and Conferral for the Libyan War

84. At the time of the filing of this Complaint, the Obama Administration had yet to ask Congress for specific funding for the Libyan War.
85. At the time of the filing of this Complaint, the Obama Administration had not yet sought a declaration of war from Congress or even congressional approval for the Libyan War.
86. The Administration appears to have funded the war in large part through use of general funds appropriated by Congress.
87. According to the Department of Defense, the Administration spent roughly \$550 million in the first ten days of the war.
88. That figure includes about \$340 million for munitions—mostly a large number of Tactical Land Attack Cruise Missiles for use against Libyan forces.
89. In addition to the \$550 million spent before March 28, 2011, U.S. costs included an F-15E aircraft at a cost of \$79.24 million—raising total expenditures to \$630 million.

90. These funds have been made available through “cash flowing,” by which the Department of Defense reallocates funds originally dedicated for other purposes.
91. While these funds may allow for broad discretionary spending, the Administration has asserted the right to use these funds for an unauthorized war.
92. Congress has set aside funds for Overseas Contingency Operations (OCO).
93. OCO funds can only be used only for “contingency operations directly related to the global war on terrorism.”
94. The Administration has never claimed that the Libyan War was commenced as an anti-terrorism operation.
95. To the contrary, President Obama has repeatedly stated that U.S. military operations in Libya are part of an effort to protect the “universal rights” of Libyans.
96. The Administration appears to have expended over \$750 million for the Libyan War from discretionary funds without any authorization to use these funds to prosecute a war in Libya.
97. The appropriations legislation in effect when the Libyan War began required that OCO funds be used “for contingency operations *directly related to the global war on terrorism.*” See Further Continuing Appropriations Amendments, 2011, Pub. L. No. 112-4, § 167, 125 Stat. 6 (emphasis added).
98. That restriction remained in place in the Department of Defense Appropriations Act, 2011, Pub. L. No. 112-10, div. A., 125 Stat. 38, which became law on April 15, 2011 and funds the Department of Defense through the end of the fiscal year.
99. In addition to any discretionary funds, the Administration has sought to use \$25 million under the Foreign Assistance Act to protect Libyan civilians “as a result of an unforeseen

emergency.” Memorandum from the President on Request for Funds for Libya Under the Foreign Assistance Act of 1961 (Apr. 26, 2011).

100. The over \$750 million used to fund the Libyan War has circumvented the need to seek authorization of funding from Congress until the war has been prosecuted for months.
101. Moreover, the Anti-Deficiency Act states in part that:

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—
 (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; [or]
 (B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law.

31 U.S.C. § 1341 (2003) (formerly codified at 31 U.S.C. § 665(a) (1950)).

102. While an exception for emergencies is allowed under 31 U.S.C. § 1342, it has been narrowly construed.
103. As noted below, congressional leadership has stated that it has not approved the Libyan War expenditures and is not certain of the source of the \$750 million used to support the undeclared war.

War Powers Policies

104. The operations in Libya are supported by a clear policy of the Obama Administration that committing U.S. military personnel to indefinite combat operations in a foreign civil war is not a “war” for constitutional purposes.
105. The Administration has further advanced a policy that it does not have to secure authority to commence or prosecute such a war in Libya and can rely on the inherent powers of the President under Article II of the Constitution.

106. The Administration has further advanced a policy that it can use federal funds for an undeclared war without the direct approval of Congress.
107. These policies are evident not only in the public announcements and statements of the Administration but also in the President's statements.
108. In a March 21, 2011 report to Congress, President Obama claimed authority for U.S. military action in Libya pursuant to his "constitutional authority to conduct U.S. foreign relations and as Commander in Chief and Chief Executive." Letter from President Barack Obama to Speaker of House of Representatives and President Pro Tempore of Senate (Mar. 21, 2011), *available at* <http://www.whitehouse.gov/the-press-office/2011/03/21/letter-president-regarding-commencement-operations-libya>.
109. This policy is also evident in the April 1, 2011 opinion of the Justice Department's Office of Legal Counsel (OLC), entitled "*Authority to Use Military Force in Libya*."
110. The OLC opinion clearly states that no congressional approval is required under the President's "broad constitutional power" to commit to combat operations in countries like Libya.
111. The OLC opinion further states that a U.N. Security Council resolution expands the power of the President because the President has a distinct obligation to enforce such U.N. resolutions.
112. Finally, the OLC opinion states that the War Powers Resolution allows the President to use force for up to sixty days without congressional approval and does not require a declaration of war.
113. The conditions cited by President Obama for intervention in the Libyan civil war are present in various other countries.

114. In Syria, for example, the government has (during the same period as the Libyan operations) used tanks and aircraft to kill hundreds of protesters.
115. This carnage in Syria continues unabated at the time of this filing. *See, e.g., Syrian Forces Kills At Least 34 Protesters at Anti-Government Protest*, Associated Press, June 3, 2011, *available at* <http://www.guardian.co.uk/world/2011/jun/03/syrian-forces-kill-34-protesters>.
116. As in Libya, where the use of military forces against towns was cited as the basis for U.S. intervention, Syria has launched attacks with tanks and military forces against towns, killing many citizens. *Syrian Tanks Attack Towns That Held Protests*, Associated Press, May 29, 2011, *available at* <http://www.washingtontimes.com/news/2011/may/29/syrian-tanks-attack-towns-held-protests>.
117. Syria has a history of the massacre of civilians with such forces, including the destruction of Hama which resulted in the killing of between 10,000 and 25,000 people. *Syrian Forces Kills At Least 34 Protesters at Anti-Government Protest*, Associated Press, (June 3, 2011), *available at* <http://www.guardian.co.uk/world/2011/jun/03/syrian-forces-kill-34-protesters>.
118. In the latest attacks, Syria has bombarded cities—just as Libya threatened to do before the U.S. intervention. Liam Stack, *Syrian Security Forces Bombarded the Restive Northern Town of Jisr al-Shoughour*, N.Y. Times, June 11, 2011.
119. President Obama’s policy that he may unilaterally order combat operations in any country to protect the “universal rights” of foreign citizens is capable of repetition in countries other than Libya.

120. Indeed, given the denial of universal rights in various countries like Syria and Yemen, such intervention would appear likely in the future.
121. The decision to intervene in a civil war and expend what is now approaching \$1 billion at a time of great economic stress is one that raises a host of concerns for our political system.
122. This is a question upon which the Framers required Congress to be heard, and ultimately required Congress's consent to any such "foreign entanglement."

War Powers Resolution

123. The War Powers Resolution, 50 U.S.C. §§ 1541-1548, requires the President to inform and ultimately receive the consent of Congress to commit U.S. personnel to armed conflicts.
124. Section 2 of the statute expresses Congress's view that the President is only constitutionally authorized to use U.S. military forces under three circumstances: (1) Congress has declared war; (2) Congress has otherwise provided statutory authority for the President to use forces; or (3) an attack on the United States has created a national emergency. *Id.* § 1541.
125. None of the three circumstances referenced in Section 2 of the statute were created by the crisis in Libya.
126. Section 3 requires that, when possible, the President must consult with Congress when he intends to introduce military forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances." *Id.* § 1542.
127. The statute provides that the President must notify Congress within forty-eight hours of committing armed forces to military action. *Id.* § 1543(a).

128. President Obama sent a letter to congressional leadership on March 21, 2011 informing them of the commencement of combat operations. Letter to Congressional Leaders Reporting on the Commencement of Military Operations Against Libya, 2011 Daily Comp. Pres. Doc. 193 (March 21, 2011).
129. In the March 21, 2011 letter, President Obama reported that U.S. military forces had commenced operations in Libya at 3:00 p.m. EDT on March 19, 2011. *Id.* at 1.
130. Section 5 of the statute requires that, even if the president has reported to Congress as required, he must terminate military action if after sixty days Congress has not declared war or authorized the use of military forces. 50 U.S.C. § 1544.
131. In cases of extreme necessity, this period can be extended by up to thirty days. *Id.*
132. The extended period is to allow for the continuation of operations when “unavoidable military necessity” requires the continuing use of armed forces “in the course of bringing about a prompt removal of such forces.” *Id.*
133. There has been no claim of extreme or unavoidable necessity in the Libyan war.
134. On May 20, 2011, President Obama failed to satisfy the conditions of the War Powers Resolution.
135. Even if one accepts President Obama’s communication of March 21, 2011 as official notification of the use of armed forces, U.S. forces had to be withdrawn by May 20, 2011 (the sixty-day mark) because congressional approval or declaration had not been (and still has not been) obtained.
136. Thus, U.S. forces have now been kept in the Libyan operations beyond the period allowed by federal law.

137. Instead of complying with the War Powers Resolution, the White House supports a bill introduced in the Senate that is not an authorization but simply a statement of support and request for some level of conferral by the White House. *See* S. Res. 194, 112th Cong. (2011), *available at* <http://mccain.senate.gov> (select “Press Releases,” then “5/23/2011”).
138. In public comments, White House Press Secretary Jay Carney has stated that it is sufficient for the President to have “consult[ed]” with a few members and that, while not asking for authorization, the President would “welcome an expression of support from Congress” in the form of the aforementioned resolution introduced in the Senate. Jay Carney, White House Press Secretary, Press Briefing (May 20, 2011).
139. On May 20, 2011, President Obama sent a letter to congressional leadership informing it that his Administration concluded that the War Powers Resolution does not apply to the U.S. involvement in Libya because of the limited nature of that involvement. *See* Jake Tapper, *White House on War Powers Deadline: Limited Role Means No Need to Get Congressional Authorization*, ABCNEWS.com (May 20, 2011, 7:14 PM), <http://blogs.abcnews.com/politicalpunch/2011/05/white-house-on-war-powers-deadline-limited-us-role-in-libya-means-no-need-to-get-congressional-autho.html>.
140. Specifically, President Obama stated that the War Powers Resolution does not apply because:

U.S. participation has consisted of: (1) non-kinetic support to the NATO-led operation, including intelligence, logistical support, and search and rescue assistance; (2) aircraft that have assisted in the suppression and destruction of air defenses in support of the no-fly zone; and (3) since April 23, precision strikes by unmanned aerial vehicles against a limited set of clearly defined targets in support of the NATO-led coalition's efforts.

Id. (quoting the President’s May 20, 2011 letter).

141. The level of involvement described by the President’s letter falls well within the scope of the War Powers Resolution, which applies whenever U.S. armed forces are either “introduced . . . into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances,” 50 U.S.C. § 1543(a)(1), or are introduced “into the territory, airspace or waters of a foreign nation, while equipped for combat, except for deployments which relate solely to supply, replacement, repair, or training of such forces,” *id.* § 1543(a)(2).
142. On June 14, 2011, Speaker John Boehner sent a letter to President Obama informing him that the ninety-day period under the War Powers Resolution would pass on June 17th and that the President has failed to comply with the statute. *Boehner Warns Obama on Libya*, Wall St. J., June 14, 2011.

Congressional Opposition

143. On June 3rd, 2011, the House of Representatives passed H.R. Res. 292, declaring that the President shall not deploy, establish, or maintain the presence of units and members of the United States Armed Forces on the ground in Libya.
144. The debate over H.R. Res. 292 included statements by members that they had no idea from where the Administration was obtaining the hundreds of millions of dollars used for the war.
145. The person directly responsible for such appropriations in the congressional leadership, Chairman Rep. C.W. Bill Young, spoke directly to this issue:

As chairman of the Defense Appropriations Subcommittee, as my colleague has said, my responsibility is to provide for the funding for any military operation that is approved by the Commander in Chief and approved by the Congress.

On the matter of Libya, on April 1, I sent a letter to the President,

trying to exercise my responsibilities as chairman—a conciliatory letter, actually— expressing support for our troops but asking certain questions: How long do you think this will last? How much do you think it will cost? How much of a future commitment have we made? What will be the source of the funding for this operation? Here, more than 2 months later, this official request from the Appropriations Committee still remains unanswered by the administration. That’s just not right.

The Constitution is pretty clear. Article I, section 9 of the Constitution, in part, reads, “No money shall be drawn from the Treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.”

So far, on the Libya issue, this article I, section 9 has been totally ignored. It’s just not right. That’s a violation, in my opinion, and contravenes the Constitution, itself. When I asked for that information, the only thing I got on the cost of this Libyan operation was in bits and pieces. We have added it, and we have come to about \$750 million already spent on the Libyan mission. They’ve not confirmed that, but we have put together, with our own addition, bits and pieces on that. Again, we have received no reply whatsoever.

What I’m wondering is: Where is the money to pay for the Libyan operation coming from? What account is it coming from? Is it coming out of personnel costs—soldiers’ pay? Is it coming out of medical care? Is it coming out of the training for our troops? What accounts are being used? We have a right and an obligation under the Constitution to know the answer to that.

157 Cong. Rec. H4003 (Daily ed. June 3, 2011) (statement of Rep. C.W. Bill

Young).

146. H.R. Res. 292, sponsored by the Speaker of the United States House of Representatives,

John Boehner, passed with 268 yeas, 145 nays, 1 present, and 18 members not

voting. H.R. Res. 292, 112th Cong. (2011), *available at*

[http://rules.house.gov/Media/file/PDF_112_1/Floor_Text/BOEHNE_002_xml%281%29.](http://rules.house.gov/Media/file/PDF_112_1/Floor_Text/BOEHNE_002_xml%281%29.pdf)

pdf; see also Jennifer Steinhauer, House Rebukes Obama for Continuing Libyan Mission

Without Its Consent, N.Y. Times (June 3, 2011),

<http://www.nytimes.com/2011/06/04/world/africa/04policy.html>.

147. In his aforementioned June 14, 2011 letter to President Obama, Speaker Boehner reiterated the deadline given under H.R. Res. 292 of Friday, June 17, 2011, and noted the failure of the Administration to comply with either H.R. Res. 292 or the War Powers Resolution.
148. Speaker Boehner objected to the President that, since the outset of military action, “the White House has systematically avoided requesting a formal authorization for its action.”

FIRST CLAIM FOR RELIEF

(War Powers Clause)

149. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 148 as if set forth fully herein.
150. The text of Article I, Section 8, Clause 11 of the Constitution expressly requires the President to secure a declaration of war from Congress prior to committing U.S. military forces.
151. The express language of Article I, Section 8, Clause 11 is reinforced by the clear intent of the Framers, who spoke often of the need to avoid unilateral commencement of wars by the Chief Executive.
152. On one occasion, Pierce Butler of South Carolina proposed giving the President the power to make war, arguing that he “will have all the requisite qualities, and *will not make war but when the Nation will support it.*” The Records of the Federal Convention of 1787, at 318 (Max Farrand ed., 1937) (emphasis added).
153. Elbridge Gerry stated that he “never expected to hear in a republic a motion to empower the Executive alone to declare war.” *Id.*

154. Among the other voices that prevailed in denying the president this power, George Mason stated that he was “[against] giving the power of war to the Executive, because [he was] not [safely] to be trusted with it.” *Id.* at 319. Ultimately, Mason “was for clogging rather than facilitating war.” *Id.*
155. The views of the Framers have been affirmed throughout the years by American leaders, including President Obama.
156. In 2007, then-Senator Barack Obama stated that “[t]he president does not have power under the Constitution to unilaterally authorize a military attack in a situation that does not involve stopping an actual or imminent threat to the nation.”
157. Likewise, then-Senator Joseph Biden stated that “[t]he Constitution is clear: Except in response to an attack or the imminent threat of attack, only Congress may authorize war and the use of force.”
158. Likewise, then-Senator Hillary Clinton insisted that she did “not believe that the President can take military action—including any kind of strategic bombing—against Iran without congressional authorization.”
159. The Libyan operations ordered by President Obama constitute “war” for the purpose of Article I, Section 8, Clause 11 of the Constitution.
160. President Obama prosecuted the war without a declaration of Congress with the use of funds never approved for such a war.
161. These actions have avoided a public vote on a war that is, according to recent poll, only supported by twenty-three percent of Americans. *Just 26% Favor Continued Military Action in Libya*, Rasmussen Reports (June 13, 2011),

http://www.rasmussenreports.com/public_content/politics/general_politics/june_2011/just_26_favor_continued_military_action_in_libya.

162. Obama's war in Libya is precisely what the Framers opposed—and thought they had barred—in requiring an open, public declaration for wars.
163. The Obama Administration has read the mandatory consent of Congress out of the Constitution and replaced it with a purely discretionary power of the President to commence war with or without congressional approval.
164. As members of Congress, the Plaintiffs assert the right to challenge a per se violation of Article I of the Constitution as well as the violation of statutory laws governing the commencement and funding of any undeclared war.
165. The Plaintiffs acknowledge that standing of members has been curtailed in prior judicial opinions, but they believe that these decisions allow for an exception for these claims and that members of Congress must have the ability to seek judicial review in this context. *See Raines v. Byrd*, 521 U.S. 811 (1997); *Campbell v. Clinton*, 203 F.3d 19, 21 (D.C. Cir. 2000), *cert. denied*, 531 U.S. 815 (2000).
166. The Plaintiffs also believe that they have standing as taxpayers given the use of hundreds of millions of dollars in federal funds without authorization of Congress to support a war in violation of a specific constitutional limitation in Article I. *See generally Flast v. Cohen*, 392 U.S. 83, 85 (1968). While acknowledging past decisions limiting such standing to Establishment Clause challenges under the First Amendment, and rejecting some challenges to Executive Branch actions, the Plaintiffs believe that the violations asserted herein fall within a narrow exception allowing judicial review. The Taxing and

Spending Clause is closely related to the powers under Article I, Section 8, clause 1 to “provide for the common [d]efence.”

167. To the extent that prior cases are viewed as barring judicial review, the Plaintiffs believe those cases were wrongly decided and wish to seek reconsideration of the question in this context.
168. As an undeclared war, the Libyan War is a per se violation of Article I, Section 8, Clause 11 of the Constitution.
169. The Obama Administration has prosecuted this undeclared war as part of its policy that the Executive Branch is not required to seek congressional approval for such military operations.
170. The Obama Administration has further advanced a policy that military actions involving combat operations over an indefinite period of time are not a “war” for the purposes of Article I.
171. These actions and policies violate Article I of the Constitution and exceed the authority of the President under Article II of the Constitution.

SECOND CLAIM FOR RELIEF

(War Powers Resolution)

172. The Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 171 as if set forth fully herein.
173. President Obama unilaterally attacked Libya and provided military assistance to Libyan rebels without congressional authorization or consultation.
174. The War Powers Resolution, 50 U.S.C. §§ 1541-1548, requires the President to notify Congress within forty-eight hours of ordering the U.S. armed forces into hostilities and

requires the withdrawal of American forces if congressional authorization is not given within sixty days of the President's notification. 50 U.S.C. §§ 1543(a), 1544(b).

175. This notification requirement is triggered whenever U.S. forces are introduced "into the territory, airspace or waters of a foreign nation, while equipped for combat." *Id.* § 1543(a).
176. President Obama declined to seek authorization to use military force in Libya within the sixty-day period under the War Powers Resolution.
177. The Obama Administration maintains a policy that the President has the inherent authority to commence military operations like those in Libya and is not bound by the terms of the War Powers Resolution.
178. The Libyan War, as well as its underlying policies, has been maintained in violation of the War Powers Resolution, a federal law.

THIRD CLAIM FOR RELIEF

(U.N. Security Council Resolution)

179. The Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 178 as if set forth fully herein.
180. The Obama Administration has relied on a policy that a U.N. Security Council resolution expands the power of the President because the President has a distinct obligation to enforce such U.N. resolutions.
181. A U.N. resolution does not negate any provision of the United States Constitution since it is not within the power of the President to sign a treaty (or the Senate to approve a treaty) that abrogates a constitutional provision.
182. A U.N. resolution like Security Council Resolution 1973 is a non-self-executing document.

183. As stated in *Medellin v. United States*, 552 U.S. 491, 527 (2008), “[a] non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force.”
184. Despite U.S. membership in the United Nations and its Security Council, neither U.N. resolutions nor treaties can relieve the President of constitutional obligations under Article I on congressional authorizations of war.
185. The policy that a U.N. resolution relieves the President of his obligation to seek congressional approval of combat operations in countries like Libya violates Article I and exceeds the President’s authority under Article II.

FOURTH CLAIM FOR RELIEF

(North Atlantic Treaty)

186. The Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 185 as if set forth fully herein.
187. Congress approved the North Atlantic Treaty under express limitations on the scope, basis, and precursor process for military action.
188. The North Atlantic Treaty allows only for military actions in defense of a member state or states.
189. Libya did not attack or threaten a member state in the NATO alliance.
190. Congress approved the North Atlantic Treaty under the express condition that any military action would only occur “in accordance with [the] respective constitutional processes” of the United States.
191. The “respective constitutional process” of the United States requires consultation and a declaration of war from Congress.

192. President Obama has used a treaty that expressly bars unilateral action to achieve his purpose of committing U.S. forces and funds to war without congressional authorization.
193. The Obama Administration has articulated a policy that the North Atlantic Treaty may be used without an attack on or threat to a NATO member.
194. The Administration further maintains the policy that the President does not have to follow the requirement of satisfying the constitutional process of the United States by receiving a declaration of war or approval of combat operations by Congress.
195. The use of the North Atlantic Treaty in this undeclared war violates the express ratified language of the Treaty and thus exceeds the President's authority under Article II of the Constitution.
196. The use of the North Atlantic Treaty for purposes or operations not approved by Congress further violates Article I of the Constitution.

FIFTH CLAIM FOR RELIEF

(Use of Federal Monies)

197. The Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 196 as if set forth fully herein.
198. Article I of the Constitution states that “[n]o money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.” U.S. Const. art. I, § 9, cl. 7.
199. President Obama has supported the undeclared war in Libya by tapping into previously appropriated funds for an unconstitutional and unauthorized war in Libya.
200. While Congress has allowed the Department of Defense discretion in the use of some funds to handle emergencies, these funds cannot be used for a facially unconstitutional purpose or to circumvent express legislative powers.

201. In addition to general discretionary funds, the Administration is barred from using the Overseas Contingency Operations (OCO) funds, which are expressly limited for use in operations directly related to the global war on terror.
202. Over \$750 million has been expended without either congressional approval or a congressional declaration.
203. It is the policy of the Obama Administration that it may use previously appropriated funds for an undeclared war in contravention of both the Constitution and federal law.
204. Such use of funds is a misuse of federal funds in violation of Article I and exceeds the authority of the President under Article II.

RELIEF REQUESTED

WHEREFORE, the Plaintiffs pray that this Court:

- a. Enter an order declaring that the operations in Libya constitute a war for purposes of Article I and, as such, are unconstitutional absent a declaration of war from Congress pursuant to Article I, Section 8, Clause 11 of the United States Constitution;
- b. Enter an order declaring unconstitutional the policy that the President may unilaterally extend the North Atlantic Treaty to cover combat operations against a country that had not attacked a NATO country;
- c. Enter an order declaring unconstitutional the policy that the President may unilaterally extend the North Atlantic Treaty to cover combat operations against a country without satisfying the constitutional process of the United States, including the necessity of seeking authority from Congress;

- d. Enter an order declaring unconstitutional the policy of the Administration that a U.N. resolution can negate the obligation of the President to seek approval of a war or military operations in countries like Libya;
- e. Enter an order declaring unconstitutional the policy of the Administration that the President may use previously appropriated monies to support an undeclared war in circumvention of Article I;
- f. Order all injunctive relief to end the violations alleged above, including but not limited to an order to suspend military operations in Libya absent a declaration of war from Congress;
- g. Award the Plaintiffs reasonable attorneys' fees and costs incurred in maintaining this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 (2006);
- h. Award the Plaintiffs damages and reasonable attorneys' fees and costs incurred in maintaining this action pursuant to 42 U.S.C. § 1988; and
- i. Award such other relief as it may deem just and proper.

JURY DEMAND

The Plaintiffs do not request a jury on the issues herein.

Respectfully submitted,

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