

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CLAIR A. CALLAN,)	
)	4:03CV3060
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
GEORGE W. BUSH, PRESIDENT)	
OF THE UNITED STATES OF)	
AMERICA,)	
)	
Defendant.)	

This matter is before the court on the Third Amended Complaint (filing no. 11) and the Motion for Temporary Restraining Order (filing no. 13), filed by the plaintiff, Clair A. Callan. For the reasons discussed below, the pending motion, the Third Amended Complaint, and this litigation must be dismissed for lack of a justiciable controversy.

In the First Cause of Action of the Third Amended Complaint, the plaintiff alleges that the defendant, President George W. Bush, violated the reporting requirement of section 4(a) of the War Powers Resolution, 50 U.S.C. § 1543(a)(1),¹ in connection with the

¹“The War Powers Resolution [a joint resolution of both chambers of Congress, codified at 50 U.S.C. §§ 1541-1548], enacted over a presidential veto on November 7, 1973, sets forth procedures intended to guarantee Congress, in the absence of a declaration of war, an active role in all decisions concerning the deployment of United States Armed Forces into hostilities abroad. The procedures set forth in the War Powers Resolution include the requirement that the President consult with Congress ‘in every possible instance’ before introducing United States Armed Forces into hostilities and, in any event, that the President submit a written report to the Speaker of the House of Representatives and the President pro tempore of the Senate within forty-eight hours of introducing ‘United States Armed Forces ... into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances.’ ” Lowry v. Reagan, 676 F. Supp. 333, 334-35 (D. D.C. 1987).

recent military activity in Iraq authorized and undertaken by the President. In his Second Cause of Action, the plaintiff alleges that by engaging in military action in Iraq, the President is causing the United States to violate the Charter of the United Nations. In his Third Cause of Action, the plaintiff requests that a three-judge court be convened to address his claims. See generally 28 U.S.C. § 2284. In his Fourth Cause of Action, the plaintiff requests appropriate remedial measures if the President or the military action in Iraq is found to be in violation of the War Powers Resolution or the United Nations Charter.

STANDING

A plaintiff must have standing in order to bring a claim in federal court. The concept of standing derives from the "case or controversy" language in Article III, Section 2, of the United States Constitution. See generally Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992): "One of those landmarks, setting apart the 'Cases' and 'Controversies' that are of the justiciable sort referred to in Article III – 'serv[ing] to identify those disputes which are appropriately resolved through the judicial process,' ... – is the doctrine of standing. Though some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." See also Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, 529 U.S. 765, 771 (2000):

As we have frequently explained, a plaintiff must meet three requirements in order to establish Article III standing First, he must demonstrate "injury in fact" – a harm that is both "concrete" and "actual or imminent, not conjectural or hypothetical." Second, he must establish causation – a "fairly ... trace [able]" connection between the alleged injury in fact and the alleged conduct of the defendant And third, he must demonstrate redressability--a "substantial likelihood" that the requested relief will remedy the alleged injury in fact These requirements together constitute the "irreducible constitutional minimum" of standing,... which is an "essential and unchanging

part" of Article III's case-or-controversy requirement ... and a key factor in dividing the power of government between the courts and the two political branches....

An alleged injury to the nation as a whole is not a particularized injury to the plaintiff. See, e.g., Warth v. Seldin, 422 U.S. 490, 499 (1975): "[T]his Court has recognized other limits on the class of persons who may invoke the courts' decisional and remedial powers. First, the Court has held that when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." Accord Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, 529 U.S. at 771:

Respondent Stevens contends that he is suing to remedy an injury in fact suffered by the United States. It is beyond doubt that the complaint asserts an injury to the United States – both the injury to its sovereignty arising from violation of its laws (which suffices to support a criminal lawsuit by the Government) and the proprietary injury resulting from the alleged fraud. But "[t]he Art. III judicial power exists only to redress or otherwise to protect against injury **to the complaining party.**"

(Emphasis in original.)

The plaintiff brought this action as a "citizen" of the United States. However, as such, he lacks the kind of concrete, particularized injury in fact necessary for standing. See, e.g., Pietsch v. Bush, 755 F. Supp. 62 (E.D. N.Y.), aff'd, 935 F.2d 1278 (2d Cir.), cert. denied, 502 U.S. 914 (1991) (challenge to military action in the Persian Gulf war). "[T]he Plaintiff does not have standing merely because as a citizen of the United States he has an 'interest' in seeing the Government act constitutionally." Id. at 67. "Standing to sue may not be predicated upon an interest of the kind alleged here which is **held in common by all members of the public**, because of the necessarily abstract nature of the injury all

citizens share.” *Id.* (emphasis in original), *citing* Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 220 (1974). In short, the plaintiff lacks standing to assert this challenge to the military decisions and actions taken by the President.

POLITICAL QUESTION

In addition, the matters raised by the plaintiff involve the kinds of foreign policy and military decisions exclusively entrusted to the nonjudicial branches of government. Such issues constitute non-justiciable political controversies, outside the province of the judicial branch of government. Mahorner v. Bush, 224 F. Supp.2d 48, 52-53 (D. D.C. 2002), *aff'd*, 2003 WL 349713 (D.C. Cir. Feb. 12, 2003). See also Lowry v. Reagan, 676 F. Supp. 333, 334-35 (D. D.C. 1987), *citing* Baker v. Carr, 369 U.S. 186, 217 (1962) in which Justice Brennan defined “political questions” as follows:

[p]rominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Cf. Johnson v. Eisentrager, 339 U.S. 763, 789 (1950) (“Certainly it is not the function of the Judiciary to entertain private litigation – even by a citizen – which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region.”).

For the foregoing reasons, this court may not entertain the plaintiff's claims. Filing no. 13, the plaintiff's Motion for Temporary Restraining Order, is denied. The plaintiff's

Third Amended Complaint and this litigation are dismissed, and judgment will be entered accordingly.

THEREFORE, IT IS ORDERED:

1. That filing no. 13, the plaintiff's Motion for Temporary Restraining Order, is denied;
2. That the plaintiff's Third Amended Complaint and this action are dismissed with prejudice; and
3. That a separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 30th day of April, 2003.

BY THE COURT:

s/ RICHARD G. KOPF
Chief District Judge