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**Judge Allows Bush's Withdrawal from ABM Treaty to Stand;
Leaves Open Possibility of Future Congressional Role
in Treaty Termination**

WASHINGTON, DC -- In a December 30, 2002 decision, Judge John Bates of the U.S. District Court ruled that lead plaintiff Representative Dennis Kucinich and 31 other Members of the House of Representatives have no standing to challenge President Bush's withdrawal from the Anti-Ballistic Missile (ABM) Treaty without congressional approval. He also ruled that the case presents a "political question" not suitable for resolution by the courts.

In a 31-page written opinion, Judge Bates left open the possibility that in the future, Congress as a whole may be able to invoke the aid of the judiciary in a constitutional dispute with the President, noting that in this case, "there is no claim that Congress, as an institution, has asserted its role in the treaty termination process."

Judge Bates did not rule on the merits of whether the Constitution requires a president to obtain congressional approval of termination of a treaty, holding that this is a matter to be resolved by the executive and legislative branches through the political process with courts only a possible "last resort."

According to plaintiffs' lead counsel, **Peter Weiss** of the Lawyers' Committee on Nuclear Policy in New York City, "Judge Bates' decision in the ABM Treaty termination case was foreshadowed by his recent decision in *Walker v. Cheney* holding that a congressional agency, the General Accounting Office, has no standing to obtain a court order compelling disclosure of information concerning meetings of the energy task force chaired by the Vice-President." Weiss continued, "The ABM Treaty case indicates that, contrary to the opinion of many members of Congress, the President does not necessarily have an absolute right to terminate treaties on his own. However, both decisions place a heavy burden on Congress to provoke full-blown political crises in order to obtain from the courts rulings interpreting the Constitution, which is, after all, the business of the courts. Such 'institutional' challenges are unlikely to occur at any time; they are virtually impossible when, as now, the President's party controls Congress." Weiss concluded, "Thus both decisions represent a considerable advance toward the imperial presidency and a commensurate retreat from constitutional government."

John Burroughs, executive director of the Lawyers' Committee on Nuclear Policy and one of plaintiffs' attorneys, added: "While Judge Bates refused to decide the constitutional question before him, he did recognize that the Supreme Court's 1979 decision in *Goldwater v. Carter* concerning President Carter's unilateral withdrawal from the Taiwan Mutual Defense Treaty does not foreclose Congress from asserting its constitutional role in the treaty termination process."

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Burroughs concluded: “Congress should now make clear that henceforth the President must seek its consent to termination of any treaty consistent with historical practice in the vast majority of treaty terminations. Future decisions regarding matters as momentous as withdrawal from the ABM Treaty must involve Congress if the United States is to remain a democracy. The framers of the Constitution rejected the monarchical system of government and did not intend that a president could rule by fiat.”

According to plaintiffs’ co-counsel **Michael Veiluva** of the Western States Legal Foundation in Oakland, California: “The Bush administration withdrew from the ABM Treaty, refuses to seek Senate approval of the Comprehensive Nuclear Test Ban Treaty, negotiated an arms reduction ‘treaty’ with Russia that does not require the destruction of a single nuclear warhead or delivery system and contains no verification provisions, blocked adoption of a verification protocol to the Biological Weapons Convention, and is working to undermine the International Criminal Court. Judge Bates has passed up an important opportunity to put the United States back on the track of upholding the rule of law, at home and abroad.”

In a December 30 statement responding to Judge Bates’ decision, Representative Kucinich said, “The Administration is undermining both national and international security by taking a wrecking-ball to the Constitution and international agreements.”

Kucinich v. Bush, filed on June 11, 2002, names as defendants President George W. Bush, Secretary of State Colin Powell, and Secretary of Defense Donald Rumsfeld. It sought a decision on whether or not the Constitution permits the President to terminate the ABM Treaty without obtaining the consent of Congress. The House Members bringing the lawsuit are: **Dennis Kucinich**, D-10-Ohio; **James Oberstar**, D-8-MN; **Patsy Mink**, D-2-HI; **Tammy Baldwin**, D-2-WI; **Peter DeFazio**, D-4-OR; **John Olver**, D-1-MA; **Sam Farr**, D-17-CA; **Barbara Lee**, D-9-CA; **Maurice Hinchey**, D-26-NY; **John Conyers**, D-14-MI; **Hilda Solis**, D-31-CA; **Janice Schakowsky**, D-9-IL; **Alcee Hastings**, D-23-FL; **Fortney (Pete) Stark**, D-13-CA; **Bernard Sanders**, I-1-VT; **Earl Hilliard**, D-7-AL; **Carolyn Kilpatrick**, D-15-MI; **Lane Evans**, D-17-IL; **Jim McDermott**, D-7-WA; **Bob Filner**, D-50-CA; **Cynthia McKinney**, D-4-GA; **George Miller**, D-7-CA; **Lynn Woolsey**, D-6-CA; **William Lacy Clay**, D-1-MO; **Edolphus Towns**, D-10-NY; **Maxine Waters**, D-35-CA; **Jesse Jackson, Jr.**, D-2-IL; **Gregory Meeks**, D-6-NY; **Marcy Kaptur**, D-9-OH; **Jerrold Nadler**, D-8-NY; **Stephanie Tubbs Jones**, D-11-OH; and **Sheila Jackson-Lee**, D-18-TX.

They are represented by **James Klimaski**, Klimaski & Grill, P.C. Washington, DC; **Peter Weiss** and **John Burroughs**, Lawyers’ Committee on Nuclear Policy, New York, NY; **Bruce Ackerman**, Sterling Professor of Law and Political Science, Yale Law School, New Haven CT ; **Jeremy Manning**, Esq., New York, NY; **Jules Lobel** and **Michael Ratner**, Center for Constitutional Rights, New York, NY; **Edward Aguilar**, Philadelphia Lawyers Alliance for World Security, Philadelphia, PA; and **Michael Veiluva**, Western States Legal Foundation, Oakland, CA.

Judge Bates’ decision and the main papers filed in the case are available on-line, in pdf format, at <http://www.lcnp.org/disarmament/ABMlawsuit/indexoflinks.htm>