

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

REPRESENTATIVE DENNIS KUCINICH,  
et al.,

Plaintiffs,

v.

GEORGE BUSH, President of the  
United States, et al.,

Defendants.

Civ. No. 02-1137 (JDB)

**DECLARATION OF REPRESENTATIVE DENNIS J. KUCINICH  
IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I, Dennis J. Kucinich, declare as follows:

1. I am a Member of the House of Representatives, representing the 10<sup>th</sup> District of Ohio, and the lead plaintiff in this action.

2. Prior to giving Russia a notice of withdrawal from the ABM Treaty on December 13, 2001, President Bush did not consult with the House of Representatives regarding the withdrawal, nor did he provide the House of Representatives advance notice of his decision to withdraw from the Treaty.

3. President Bush did not seek or receive the approval of both houses of Congress, or of the Senate alone, of the withdrawal, either before or after December 13, 2001

4. By letter dated August 8, 2002 from Senator Russell Feingold, a true and correct copy of which is attached hereto as Exhibit A, I am informed that President Bush did not formally

consult with the Senate Foreign Relations Committee as a whole concerning the withdrawal, nor did he undertake any other formal consultation with the Senate concerning the withdrawal.

I declare under penalty of perjury under the laws of the District of Columbia that the foregoing is true and correct. Dated this 8 of August 2002 at 12:55 p.m..

  
DENNIS J. KUCINICH

RUSSELL D. FEINGOLD  
WISCONSIN

506 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5323  
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COMMITTEE ON THE JUDICIARY  
COMMITTEE ON FOREIGN RELATIONS  
COMMITTEE ON THE BUDGET  
SPECIAL COMMITTEE ON AGING  
DEMOCRATIC POLICY COMMITTEE

## United States Senate

WASHINGTON, DC 20510-4904

August 9, 2002

The Honorable Dennis Kucinich  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Kucinich:

I write to express my regret that as a result of the Senate Ethics Committee's decision on my request to create a Legal Expense Trust Fund, I am unable to join the lawsuit that you have filed regarding the President's decision to unilaterally withdraw the United States from the 1972 Anti-Ballistic Missile Treaty without the approval of Congress.

As you know, I have been very concerned about the President's decision, and particularly his failure to consult with Congress or seek congressional approval of the withdrawal. Prior to giving Russia notice of withdrawal from the Anti-Ballistic Missile Treaty on December 13, 2001, President Bush did not undertake formal consultations with the Senate Foreign Relations Committee as a whole concerning the withdrawal, nor to my knowledge did he undertake any other formal consultation with the Senate concerning the withdrawal. President Bush also did not seek approval by the Senate or Congress of the withdrawal, either before or after December 13, 2001. I believe, as you do, that the unilateral withdrawal from the treaty without congressional approval violates the Constitution.

Despite my strong support for the position you have taken in your lawsuit, I am unable to join the suit because accepting the *pro bono* legal services offered by the attorneys for you and the other House plaintiffs would violate the Senate's gift rules. As you know, the House and the Senate have different ethics rules regarding the receipt of *pro bono* legal services to participate in lawsuits. In the House, such services are essentially exempt from gift rules, and House members may participate as parties in litigation challenging the actions of the Executive Branch. In the Senate, while Senators can receive *pro bono* legal services to file amicus briefs, if they wish to participate as parties in litigation, such services can be accepted only by a Legal Expense Trust Fund, which must be approved by the Senate Ethics Committee.

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425 STATE STREET  
ROOM 225  
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1640 MAIN STREET  
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Letter to Congressman Kucinich, Page 2

I wanted to be a plaintiff in the action you filed, and in a letter dated June 4, 2002, I requested that the Senate Select Committee on Ethics approve my acceptance of pro bono legal services for that purpose. I have attached a copy of this letter for your information.

As you know, at your June 11, 2002 press conference, I announced my intention to become a plaintiff if the Ethics Committee allowed me to do so.

While Legal Expense Trust Funds are routinely approved when Senators are defendants in suits or the subject of investigations, the Ethics Committee has discretion whether to approve them when Senators seek to become plaintiffs in lawsuits. The Ethics Committee denied my request in a letter dated June 14, 2002. I have attached a copy of that letter for your information.

I commend you for your commitment to protecting the prerogatives of Congress. I will continue to monitor the progress of the lawsuit and to assist you in any way I can in this important effort.

Sincerely,



Russell D. Feingold  
United States Senator

enclosures

RUSSELL D. FEINGOLD  
WISCONSIN

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# United States Senate

WASHINGTON, DC 20510-4904

June 4, 2002

## VIA HAND DELIVERY

Senator Harry Reid Chairman  
Senator Pat Roberts, Vice Chairman  
Senate Select Committee on Ethics  
SH-220  
Washington, DC 20510

### Re: Establishment of Legal Expense Trust Fund

Dear Chairman Reid and Vice Chairman Roberts:

I respectfully request the Select Committee's approval of the establishment of a Legal Expense Trust Fund to allow me to join as a plaintiff in a lawsuit challenging President Bush's withdrawal from the ABM Treaty without congressional approval. That withdrawal, if it is lawful, is scheduled to take effect on June 13, 2002.

I have included the required Trust Agreement and Affidavits, as set out in the Senate Ethics Manual. Prof. Jamin Raskin of the American University Washington School of Law will serve as Trustee. I understand that the Select Committee has discretion in approving a legal expense trust fund to pay for litigation in which a Senator is a plaintiff rather than a defendant. The purpose of this suit is to raise and adjudicate an important public policy issue, not to seek any personal financial gain. Money damages will not be sought in this case.

The only contributions that this Trust Fund will accept are pro bono legal services to be provided by a legal team consisting of the following individuals and groups:

Peter Weiss, Lawyers Committee on Nuclear Policy, New York, NY.  
Professor Jules Lobel, Center for Constitutional Rights, New York, NY.  
(Also a Law Professor at the University of Pittsburgh)  
Professor Bruce Ackerman, Yale Law School.  
Jeremy Manning, Kenyon & Kenyon, New York, NY.  
Ed Aguilar, Lawyers Alliance for World Security, Washington, DC.

Peter Weiss, who is leading the team, has been litigating cases in the field of national security, international law, and arms control for over 35 years. His work on this suit is part of an

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Senator Harry Reid, Chairman  
Senator Pat Roberts, Vice Chairman  
Page 2

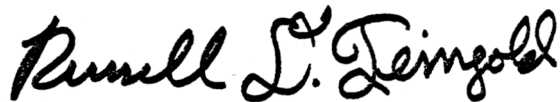
established and long-standing pro bono practice in this area. The other lawyers involved are recognized experts in this field as well, and all have established pro bono practices. None of the individuals or groups serving as counsel are registered as lobbyists under the Lobbying Disclosure Act of 1995.

A large number of members of the House of Representatives will also be plaintiffs in this suit. I understand that under the House Ethics Rules, pro bono legal services for a case of this kind can be accepted without setting up a legal expense trust fund.

In addition to seeking the Select Committee's approval of the establishment of this Legal Expense Trust Fund, I request approval for the Trust Fund to accept pro bono legal services valued at greater than \$10,000 per year. Because of the large number of plaintiffs, I do not know at this time whether my pro rata share of the pro bono legal expenses contributed will actually total more than that amount.

Thank you for your consideration. If you have any questions, please feel free to contact me or Bob Schiff of my staff (4-8059).

Sincerely,

A handwritten signature in black ink, reading "Russell D. Feingold". The signature is written in a cursive, flowing style with a large, prominent "R" and "F".

Russell D. Feingold  
United States Senator

# United States Senate

## SELECT COMMITTEE ON ETHICS

HART SENATE OFFICE BUILDING, ROOM 220  
SECOND AND CONSTITUTION AVENUE, NE.  
WASHINGTON, DC 20510-6425  
TELEPHONE (202) 224-2981

June 14, 2002

Honorable Russell D. Feingold  
United States Senate  
Washington, D.C. 20510

Dear Senator Feingold:

This responds to your June 4, 2002 letter, requesting approval to establish a legal expense trust fund to accept contributions of *pro bono* legal services, including contributions valued in excess of \$10,000 per year. The Committee understands that you wish to join as a plaintiff in a lawsuit challenging President Bush's withdrawal - without congressional approval - from the ABM Treaty.

The Committee has reviewed the Russ Feingold ABM Treaty Legal Expense Trust Fund agreement, your affidavit and the affidavit of Jamin Raskin. The Committee also understands that the only contributions that the proposed trust fund would accept are *pro bono* legal services from a legal team, no member of which is a lobbyist or lobbying firm.

In discussing contributions or payments to a Legal Expense Trust Fund pursuant to the Committee's Regulations Governing Trust Funds to Defray Legal Expenses Incurred by Members, Officers and Employees of the United States Senate established pursuant to Senate Resolution 508, adopted September 30, 1980 and amended August 10, 1988, the *Senate Ethics Manual*, at page 30, notes that:

"From time to time, Members, officers, and employees of the Senate may find it necessary to defend themselves against criminal charges or civil claims, or to provide evidence in proceedings (or in rare cases, initiate civil lawsuits) which would not have arisen but for their positions... The trust fund agreement must be approved by the Committee..."

Subject to the other requirements, the Regulations expressly authorize the use of a legal expense trust fund to defray the expenses incurred as a plaintiff only in a defamation suit.

As an alternative to establishment of a Legal Expense Trust Fund, the Committee has stated that legal expenses may be paid with funds of a Senator's principal campaign committee if such payment is approved by the Committee.

The Committee notes that, unlike the situations presented by legal challenges to legislation related to the line item veto or the more recent campaign finance reform, no Federal statute appears to expressly authorize a Member either to file an action or intervene in an action related to the subject of your proposed lawsuit.<sup>1</sup> Without addressing the merits of any particular case, including the one in which you propose to become a party, the Committee also notes that many similar lawsuits appear to have failed to overcome motions to dismiss based on standing, justiciability and other jurisdictional grounds.<sup>2</sup> Also, unlike a defendant, a plaintiff who brings a suit does so by choice. In consideration of this, the Committee, in its 1988 amendments to the Regulations allowing a Member to accept *pro bono* legal services in excess of the \$10,000 limitation, provided that the Committee would determine whether such acceptance would be appropriate.<sup>3</sup>

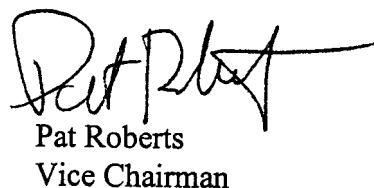
Upon careful consideration of your request, including a review of the history and purpose of S. Res. 508, the Committee's Regulations and amendments thereto, and the policy and practice respecting the use of funds of a Senator's principal campaign committee, and given the totality of the circumstances, the Committee has concluded that it would be appropriate for you to use such campaign funds to pay your share of expenses related to the litigation which you propose to join as a plaintiff. Such approval is in lieu of approval of your proposed Legal Expense Trust Fund.

Thank you for bringing this matter to the Committee's attention.

Sincerely,



Harry Reid  
Chairman



Pat Roberts  
Vice Chairman

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<sup>1</sup>See also S. Res. 321, adopted October 3, 1996, and S. Res. 227, adopted March 20, 2002, regarding acceptance of *pro bono* legal services without necessity of a Legal Expense Trust Fund.

<sup>2</sup> Campbell v. Clinton, 203 F.3d 10 (D.C. Cir.), cert. denied, 531 U.S. 815 (2000)(challenging President Clinton's decision to direct air strikes against the Federal Republic of Yugoslavia) and Chenoweth v. Clinton, 181 F.3d 112 (D.C. Cir. 1999), cert. denied, 529 U.S. 1012 (2000)(suit to enjoin President Clinton's American Heritage Rivers Initiative). See also, Raines v. Byrd, 521 U.S. 811 (1997)(challenging the Line Item Veto Act, which specifically authorized a lawsuit by any Member adversely affected by the Act) and Goldwater v. Carter, 444 U.S. 996 (1979) (challenging President Carter's withdrawal from mutual defense treaty with Republic of China).

<sup>3</sup> In addition to discretion by the Committee with respect to approving the contribution of *pro bono* services in excess of \$10,000, and its discretion in approving the use of a trust fund *ab initio*, the Committee may also terminate a trust fund for good cause and, thus, may also view a request to establish a legal expense trust fund under the good cause standard.