Both Travel Ban 2.0 and 1st Travel Freeze Constitutonal: “Political Question” Lawsuits Can’t Be Reviewed by Judges

"Political Question Doctrine" Prevents Judicial Review of Trump Travel Freezes Explains Prof. Victor Williams, chair of America First Lawyers Association.

America First Lawyers Associaton: Lawyers and Law Professors Advancing the Trump "America First" Movement

WASHINGTON, D.C. , USA, February 21, 2017 /EINPresswire.com/ -- President Donald Trump’s streamlined Travel Ban 2.0 is imminent. But the court challenges against the first executive order continue to expand in New York, Virginia, and Washington.

Longtime Washington, D.C. attorney and law professor Victor Williams predicts that fresh challenges against Trump Travel Ban 2.0 are likely:

“Unfortunately, those ideological elites with Trump derangement syndrome will continue to make manifest their disorder with lawsuits.”

An early supporter of candidate Donald Trump, Professor Williams is an outspoken advocate of the terrorist travel restrictions, and he commends the month-old Trump administration for its strategic defense against the multi-front legal assault.

> America is at war with terrorists. The judiciary has no role in overseeing the president’s war decisions that aliens coming from listed terrorist nations will not be allowed entry onto American soil.”
>
> *Prof. Victor Williams, Chair of America First Lawyers Association*

Now Williams, chair of the America First Lawyers Association, is joining the litigation fray by arguing in amicus curiae (“friend of the court”) briefs that all challenges to Trump travel freezing present “non-reviewable political questions.” Williams asserts that the federal judiciary does not have subject-matter jurisdiction (“authority) to even review the challenges. Professor Williams argues:

"America is a nation at war with radical Islamic terrorists. The judiciary has no constitutional role in overseeing the president’s war decisions. President Trump has unfettered discretion to decide whether aliens coming from foreign soils will be allowed entry onto American soil."

Donald John Trump acts as Commander-in-Chief, implementing war strategy via Article II, Section 2 powers, and he acts as Chief Executive implementing security-related foreign policy via Article II, Section 1 authorities."

Williams began his amicus campaign with a brief filed late last week in the Ninth Circuit case. Professor Williams' amicus curiae briefs endorse and incorporate Trump lawyers' strong arguments as to statutory interpretation and supporting court precedents.

However, Williams' amicus briefs advance a constitutional theory alternative to the statutory arguments presented (thus far) by government lawyers:

"The political question doctrine prevents judges from even reviewing validity of the travel bans."

[Lawyers are allowed -- indeed are expected -- to argue alternative theories of any case.]

The Supreme Court has repeatedly ruled that if a case presents a political question, the judiciary lacks subject matter jurisdiction ("authority") to review the matter. Williams explains:

"Throughout our Republic's history, the Supreme Court has recognized that some issues are committed by the Constitution's text to the exclusive discretion of the elected political branches. When these political questions arise, the judiciary must keep out."

The political-question abstention doctrine is fundamental to separation of powers and American self-governance. Answers to political questions must only come from elected political leaders.

The Constitution textually grants the president the exclusive responsibility to implement war strategy and security-related foreign policy. Only the president, certainly not the judiciary, has the institutional competence and information needed to know what actions are required in order to defeat America's enemies -- on foreign soil.

Congressman John Marshall, in 1800, warned his then U.S. House of Representative colleagues that the political branches would be "swallowed-up by the judiciary" without such judicial restraint. Chief Justice John Marshall then provided early guidance as to the "rule of law to guide the court in the exercise of its jurisdiction."

In Marbury v. Madison, Marshall offered this political question description: "By the constitution of the United States, the president is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience." 5 U.S. 137 (1803).

Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit artfully explains that the abstention doctrine acknowledges the Constitution's "assignment of exclusive decision making responsibility to the nonjudicial branches of the federal government." Miami Nation v. Interior, 255 F.3d 342 (7th Cir. 2001).

Judge Posner reasons:

"The doctrine identifies a class of questions that either are not amenable to judicial resolution because the relevant considerations are beyond the courts' capacity to gather and weigh, or have been committed by the Constitution to the exclusive, unreviewable discretion of the executive and/or legislative — the so-called 'political' — branches of the federal government."

Even more instructive is Judge Posner's strong statement regarding the "nature of the question that the court would have to answer — which asks whether the answers would be ones a federal court could give without ceasing to be a court."

It follows from Judge Posner's analysis that President Donald Trump's much criticized Twitter reaction to judicial interference with his constitutional authority was actually spot-on accurate: "The opinion of this so-called judge…is ridiculous and will be overturned!" Donald J. Trump (@RealDonaldTrump), Twitter (Feb. 4, 2017, 8:12AM).

Just as Judge Posner explains, when a court answers a patent political question, it ceases to be a court.

Professor Williams asserts that it is fair to consider that judges' answers to patent political questions do indeed come from "so-called judges" because the jurists, while perhaps acting in good faith, are not acting in their juridical capacity. The Chair of the First America Lawyers Association adds:

"While such resulting orders are still to be obeyed (and the American rule of law dictates that they be fully enforced even at the point of the U.S. Marshall's bayonet), such rulings are extra-judicial in nature – the rulings do not result from an act of judging. At best, they result from "so-called" judging."

At worst, the judicial interference in the president's war decisions is a dangerous usurpation of political authority.

Separately, Williams explains why a political question determination is critically important to provide "finality" to such frivolous lawsuits as those being filed in challenge the travel freezing:

"Again, Trump derangement syndrome is virulently contagious among the elites – particularly among lawyers who need only the federal court filing fee to make manifest their disorder. Political question finality in this area is needed to help retard future frivolous litigation against Donald Trump's governance."

Professor Williams asks in each amicus brief that the underlying challenges against President Trump's extreme vetting actions be immediately dismissed.

Victor Williams is chair of America First Lawyers Association which is an advocacy platform of lawyers and law professors who support the Trump/Pence "America first" movement.

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