

NYTimes AUG 9 1973
**COURT OF APPEALS
REVERSES ORDER
TO STOP BOMBING**

NYTimes
**Rep. Holtzman Will Seek to
Overturn the Decision by
Federal Tribunal Here**

PANEL'S VOTE IS 2 TO 1

**Cambodian Raids Are to Go
On Until Aug. 15, Barring
Supreme Court Overturn**

By **ARNOLD H. LUBASCH**

A court order to stop the American bombing of Cambodia was overturned here yesterday by a 2-to-1 decision of the United States Court of Appeals.

Thus the bombing is scheduled to continue until Aug. 15, which is the cutoff date imposed by Congress, unless the Supreme Court convenes before then and reverses yesterday's decision, by the Court of Appeals for the Second Circuit.

Representative Elizabeth Holtzman, Democrat of Brooklyn, who originated the court action against the bombing last April, said that she would ask the Supreme Court to act at once and would press the case even after Aug. 15 to determine the President's authority to wage war.

Judge Judd Overturned

The Court of Appeals, noting the pressure of time and the "tremendous constitutional importance" of the issue, announced its decision a few hours after hearing arguments in the case and said that its written opinion would follow later this week.

In a 2-to-1 decision by Judge William Hughes Mulligan and Judge William H. Timbers, with Judge James L. Oakes dissenting, the appeals court reversed the July 25 decision of Federal District Judge Orrin G. Judd, sitting in Brooklyn.

Judge Judd had ruled that military activities in Cambodia by American armed forces were unauthorized and unlawful on the ground that they lack the required approval of

Congress after the withdrawal of United States troops from Vietnam last spring.

Route of Appeals

His decision provided an injunction to bar the Defense Department and the Air Force from continuing the bombing of Cambodia, but he stayed the injunction until 4 P.M. on July 27 to permit the Government to appeal.

On July 27, the Government obtained a stay from the Court of Appeals to block the injunction until the appeal could be

Continued on Page 6, Column 1

Continued From Page 1, Col. 1

decided by a three-judge panel of the court.

Burt Neuborne of the New York Civil Liberties Union, who argued the case for the plaintiffs applied to the United States Supreme Court to vacate the stay that blocked the injunction, which was the first one to bar the Government from conducting combat operations overseas.

Justice Thurgood Marshall reluctantly refused to vacate the stay last Wednesday because the issue was too important for a single justice to overrule the Court of Appeals, although he added that he "might well conclude on the merits that continued American military operations in Cambodia are unconstitutional."

Then on Saturday Justice William O. Douglas decided to lift the stay and ordered the bombing to halt immediately to preserve lives until the constitutionally important case could be decided, but he was overruled hours later when the other justices reinstated the stay.

The lawsuit that resulted in Judge Judd's original decision had been filed in Brooklyn by Representative Holtzman, who was later joined by the four Air Force officers opposed to the bombing of Cambodia.

They were three captains, Michael Flugger of New York, James H. Strain of Chickasha, Okla., Donald E. Dawson of Danbury, Conn., all co-pilots of B-52 bombers, and First Lieut. Arthur Watson of Rome, N.Y., an electronic-warfare specialist.

Captain Dawson faces court-martial at Clark Air Force Base, the Philippines, on charges of refusing to fly a B-52 on June 20.

Issue of Authorization

Today in more than two hours of argument in the Court of Appeals, the key issue focused on whether Congress had authorized the bombing by the

appropriation of funds.

James D. Porter Jr. of the United States Attorney's office in Brooklyn argued for the Government that Congress had ratified military actions in Southeast Asia for many years by appropriating funds for them and that legislation on July 1 served to approve the continued bombing of Cambodia until Aug. 15.

He stressed that the Government's view that the basic question of war and peace was a political issue that could not be decided by the courts.

In a rebuttal for the opponents of the bombing, Mr. Neuborne argued that President Nixon was conducting a sustained military operation in Cambodia without Congressional authorization.

He observed that Congress had voted last June to end the bombing of Cambodia immediately but that President Nixon vetoed this action and that legislation was subsequently adopted July 1 with a provision to cutoff funds for the bombing on Aug. 15.

According to Mr. Porter, the July legislation was a compromise approved by the President and Congress that provided authorization for the bombing to continue until the Aug. 15 deadline.

But Mr. Neuborne contended that the provision provided a cutoff deadline, not authorization, and that President Nixon's veto of the earlier action had reversed the intent of the Constitution by enabling the President to wage war as long as the Congress lacked a two-thirds vote to override him.