Supreme Court - State of Washington

ROBERT A. FICALORA

Petitioner

v.

CINDY ZENDER, Chief Clerk of the House of Representatives and MILT DOUMIT, Secretary of the Senate, both of the State of Washington and in their official capacities.

Respondents

Special Proceeding

Ficalora affidavit in support of petition for writ of mandamus

Supreme Court
State of Washington

Case #

Thurston County }
} ss:
State of Washington }

Robert Ficalora, duly sworn, deposes and says:

I am an adult male resident of Olympia, State of Washington.

I am not an attorney and appear before the court *in propria persona* on my on behalf as a matter of right.

This affidavit includes each and every part of my affidavit delivered to defendants delivered on March 10th, 2003, as if fully set forth herein.

These papers are unfortunately rushed and incompletely researched upon the law, and I beg forgiveness for this unfortunate fact as time is of the essence.

I am fully familiar with the common law writs of our ancient system of English law and have litigated upon same in the State of New York.

It is a simple aspect of such writs that they are used to confine officers of corporations and government to their legally specified powers and to review, compel or prohibit any acts taken that are without or in excess of said powers.

In the matter *sub judice* a denial of a legally presented notice and demand has been made by officers of our state government upon ambiguous law, and their authority to interpret and act upon such law is challenged.

Perhaps most important to this matter is my assertion that a legally distinguishable and constitutionally protected initiative was undertaken according to the clear intent of Article II §1 of our state Constitution.

Said section states that "*the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature*". In the matter *sub judice*, however, petitioner commenced an alternative initiative for a Joint Memorial requiring no referendum or vote at the polls.

Upon information and belief, "Joint Memorials" are set forth neither in statute nor in the state Constitution. In the online Glossary of Terms maintained by the state, however, a Joint Memorial is defined as:

> **JOINT MEMORIAL. A message or petition addressed to the President and/or Congress of the United States, or the head of any other agency of the federal or state government, asking for consideration of some matter of concern to the state or region. Proposed amendments to the U.S. Constitution are also in the form of joint memorials.**

A legislative Joint Memorial, therefore - and as evidenced in the matter *sub judice*, is an important piece of legislation to the people of the State of Washington but is not a

law. An initiative for a Joint Memorial would, therefore, have different requirements than those specified in Article II §1(a), but would none-the-less be a right reserved to the people under our state Constitution.

In the instant case an *ad hoc* emergency initiative was undertaken to successfully approach the legislature for a Joint Memorial. It has all of the characteristics of an initiative, including signatures. In this case, however, the signatures were taken for expedited delivery to the legislature because of the urgent issue of impending war.

The Joint Memorials sub judice are of immense importance to this state and our nation. Oral argument was heard on March 4th, and judgment is overdue in the matter of John Doe I, et. al., v. President George W. Bush, et al. (First District Court of Appeals, Civil Action No. 03 CV 10284 JLT). Much of the record may be reviewed by the court in my affidavit of March 10th.

If an injunction is granted in *John Doe I*, the court will claim jurisdiction by relying upon Marbury v. Madison. Should the Supreme Court choose to reverse such an injunction it would almost certainly have to reverse Marbury to do so in favor of states' rights. As wild as this may seem, the 1798 resolve will become prescient:

> "That this Assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact, to which the states are parties; as limited by the plain sense and intention of the instrument constituting the compact; as no further valid that they are authorized by the grants enumerated in that compact; and that in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties

appertaining to them." - 1798 Virginia Resolves (James Madison, author)

It has been shown on the Constitution and the law that this court has jurisdiction and discretion in the matters herein presented. The facts and the law militate that the relief petitioned for should be granted. The cutoff upon memorials HJM 4022 and SJM 8021 should be disallowed as a matter of law and as a denial of right, and the memorials thereby released for hearings in committee.

Robert A. Ficalora

Sworn to before me this 14th day of March, 2003

CHANDRA M. ARMSTRONG NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 1-10-06

Notary in and for the state of Washington
My commission expires on 1-10-2006
State of Washington
County of Thurston

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