

**THE SUPREME COURT**  
STATE OF WASHINGTON



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April 29, 2003

Mr. Robert Ficalora  
P.O. Box 6316  
Olympia, WA 98507

Honorable Christine Gregoire  
Attorney General  
Mr. Jeffrey Even, Asst.  
P.O. Box 40100  
Olympia, WA 98504

Re: Supreme Court No. 73731-2 – Robert Ficalora v. Cindy Zender, et al.

Counsel and Mr. Ficalora:

Enclosed please find RULING DEISSMISSING ACTION, signed by the Supreme Court Commissioner on April 29, 2003, in the above entitled cause.

Sincerely,

RONALD R. CARPENTER  
Deputy Clerk

BJH:jaa  
Encl.



THE SUPREME COURT OF WASHINGTON

03 APR 29 AM 10:11  
BY C. J. HERRITT  
[Signature]

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.

NO. 73731-2

RULING DISMISSING ACTION

By a petition filed as an original action in this court under CONST. art IV, § 4 and RAP 16.2, Robert Ficalora seeks a writ of mandamus directed to Cindy Zender, in her capacity as Chief Clerk of the House of Representatives, and Milt Doumit, in his capacity as Secretary of the Senate. And by a motion for an order to show cause, Mr. Ficalora seeks to add as "necessary parties" to his action President George W. Bush and various other federal officials. The matter comes before me under RAP 16.2(d) to determine whether the petition should be decided by this court, transferred, or dismissed. Respondents Zender and Doumit urge that the petition should be dismissed, or alternatively should be transferred to superior court.

The impetus for Mr. Ficalora's petition is his belief that the federal government's actions leading up to the war against Iraq have involved violations of

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the United States Constitution. Mr. Ficalora circulated petitions setting forth this position, on which he obtained the signatures of a number of persons. Joint Memorials expressing essentially the same view were then introduced in the 2003 Regular Session of the Legislature. HJM 4022, SJM 8021. Neither of those memorials was acted on by the Legislature prior to the "cutoff dates" established by Senate Concurrent Resolution (SCR) 8400 for the consideration of legislation during the 2003 Regular Session. Mr. Ficalora thus demanded of respondents Zender and Doumit that they rule in some fashion that the memorials were not subject to the SCR 8400 cutoff dates. Respondents declined to do so, observing that it was within the discretion of the duly-elected members of the Legislature whether to exempt the memorials from cutoff dates, and that by their terms the memorials did not otherwise fall within any exception set forth in SCR 8400 itself. Mr. Ficalora then filed this action, requesting that this court issue a writ of mandamus "finding [respondents'] denial of [his] demand to be arbitrary and made without or in excess of their authority . . . , and compelling them to except . . . HJM 4022 and SJM 8021 from cutoffs . . . ." As noted, Mr. Ficalora has since also sought to expand his suit to include the President and other federal officers, urging this court to enjoin and restrain the federal government from prosecuting the war in Iraq.

Turning first to this latter request, citing into this court President Bush, Attorney General Ashcroft, Secretary of Defense Rumsfeld, and the Chairman of the Joint Chiefs of Staff would simply be an exercise in futility. Mr. Ficalora cites no authority, and I certainly know of none, to suggest that this court has jurisdiction to afford the relief he requests against federal officers.

Nor can this court even afford the relief he requests as against respondents Zender and Doumit. To begin, the matter is now moot, since the Regular Session of the Legislature has recently adjourned. And even if the matter

had not become moot, I agree with the respondents that they have neither the duty nor the authority, as administrative officers of the legislative branch, to except or exempt legislative measures from cutoff dates such as those imposed by SCR 8400. Nor are the petitions submitted by Mr. Ficalora an "alternative to an initiative," as that term is used in SCR 8400 itself. Whether the Legislature will consider or take action upon such measures as HJM 4022 or SJM 8021 is solely within the Legislature's discretion, and is not subject to a writ of mandamus issued by this court.

The petition for writ of mandamus will not lie. Accordingly, this original action is dismissed.

  
COMMISSIONER

April 29, 2003