

NO. 73731-2
SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT A. FICALORA,

Petitioner,

v.

CINDY ZEHNDER, 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.

ANSWER TO
MOTION FOR
SHOW CAUSE
ORDER

I. INTRODUCTION

Respondents Cindy Zehnder and Milt Doumit respond as follows to Petitioner's Motion for Show Cause Order. Petitioner, Robert A. Ficalora, asks this Court to enter an order requiring Respondents to show cause why an order should not be entered:

1. Allowing petitioner to amend the petition commencing this proceeding and to personally [sic] serve and join GEORGE W. BUSH, President of the United States of America, JOHN ASHCROFT, Attorney General, DONALD RUMSFELD, Secretary of Defense, RICHARD MYERS, Chairman of the Joint Chief [sic] of Staff, JEFF TRANDAHL, Clerk of the U.S. House of Representatives, and EMILY J. REYNOLDS, Secretary of the U.S. Senate, as necessary parties herein, and

2. Declaring this Court's sovereign jurisdiction on behalf of the people of the State of Washington to review and enter judgment enjoining and restraining the above joined defendants from making, giving or supporting further war-making acts, actions or orders in violation of the Constitution of the United States in the name of the State of Washington, or of the United States.

Motion for an Order to Show Cause at 1 (emphasis in original). For the reasons described more fully below, this Court should deny the motion.¹

II. ARGUMENT

A. This Court Lacks Original Jurisdiction Over Federal Officials

This Court's original jurisdiction is limited to actions "in habeas corpus, and quo warranto and mandamus as to all state officers". Const. art. IV, § 4. Mr. Ficalora seeks leave to amend his petition to add various federal officials, including the President of the United States, to this action. Quite obviously, the President is a federal official. U.S. Const. art. II, § 1. Likewise, the others Mr. Ficalora seeks to add are federal, not state, officials. *See* 28 USC § 503 (Attorney General); 10 USC § 113 (Secretary of Defense); 10 USC § 152 (Chairman of the Joint Chiefs of Staff); 2 USC § 61a-11 (Secretary of the Senate); 2 USC § 75-1 (Clerk of the House).

This Court has long acknowledged that its original jurisdiction is limited to writs directed to state officers. *State ex Rel. Hollenbeck v. Carr*, 43 Wn.2d 632, 635, 262 P.2d 966 (1953). Since the parties Mr. Ficalora seeks to add to this case are not state officers, this Court would have no

¹ Respondents note that Mr. Ficalora's cover letter states, "Please know that I will be departing Olympia for my summer residence in Montauk, New York, on or about April 20th, and will not return until late October, at the earliest." Respondents have not received any notice providing a new or different address. In the absence of such information from Mr. Ficalora, Respondents have no choice but to continue to serve Mr. Ficalora at the Olympia address he has provided.

original jurisdiction over a case in which they are named. *Id.* at 638. Accordingly, granting Mr. Ficalora leave to amend the petition to name them would be a futile act.

B. Since This Court Lacks Original Jurisdiction Over Federal Officials, The Court Need Not Consider Mr. Ficalora's Second Request

As originally pled, this case offered one relatively simple, if misguided, request to this Court. Mr. Ficalora originally brought this action to seek an order directing the chief administrative officers of each house of the state Legislature to exempt two specified joint memorials from the internal cutoff dates. Petition for Writ of Mandamus at 3. While such relief is unavailable in any court of law (see Motion to Dismiss or Transfer at 4-10), the request at least had the virtue of being relatively modest in scope.

The same cannot be said of Mr. Ficalora's request that this Court assert jurisdiction over nothing less than the federal government's war powers. That request, however, is related to Mr. Ficalora's request to add federal officials to the case. Since, as already noted, this Court lacks original jurisdiction over federal officials, no further inquiry is necessary as to the merits of the relief requested against those officials.

One passage in Mr. Ficalora's most recent pleadings might be read as suggesting that he believes that the enactment of the Joint Memorials at

issue in his original Petition would have the effect of prohibiting the federal government from engaging in war. Ficalora Affidavit Upon Motion for an Order to Show Cause at 3. The point, while outlandish, is academic, because a court cannot order the Legislature to pass any measure pending before it. Motion to Dismiss or Transfer at 5-7.² This Court's original jurisdiction in mandamus is limited to ordering a state officer to perform a mandatory duty. *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 380, 950 P.2d 446 (1998). The Legislature is not under a mandatory duty to pass any measure proposed to it (whether or not it is exempted from cutoff dates) unless specifically mandated by the state constitution. *Id.* at 386.

III. CONCLUSION

For these reasons, the Court should deny Mr. Ficalora's Motion for an Order to Show Cause.

RESPECTFULLY SUBMITTED this 21st day of April, 2003.

CHRISTINE O. GREGOIRE

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Attorney for Respondents Zehnder/Doumit

² For that reason, Mr. Ficalora's case gets no better even if it were transferred to superior court.

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MAILING

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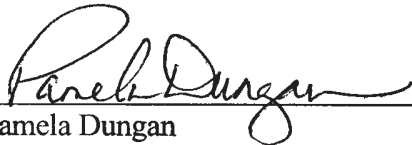
Respondents.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

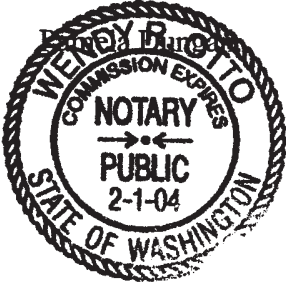
I, PAMELA DUNGAN, being first duly sworn on oath, depose and state as follows:

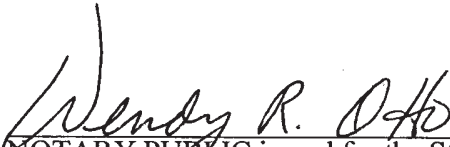
I am over the age of 18 years and am not a party to the within cause. I am a legal assistant in the Attorney General's Office, and on this date I caused to be served a true and correct copy of the state's Answer to Motion for Show Cause Order on the following via first class mail, postage prepaid:

ROBERT FICALORA
P O BOX 6316
OLYMPIA WA 98507


Pamela Dungan

SIGNED AND SWORN to before me this 21st day of April, 2003, by




NOTARY PUBLIC in and for the State of Washington
My commission expires: 2-1-04