

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

ntc to: Christine O. Gregoire, Attorney General

Special Proceeding

Reply and Notice

State of Washington

Supreme Court

Case # 73731-2

MAY IT PLEASE THE COURT, Petitioner Robert A. Ficalora, appearing *in propria persona*, does herewith reply to defendants' answer to his motion for an order to show cause dated the 21st of April and provide notice to the court and parties as follows:

The Court's original jurisdiction in the state Constitution is limited to actions "*in habeas corpus, and quo warranto as to state officers*" (Const. art. IV § 4) but is silent regarding petitioner's assertion that it also has original jurisdiction over federal officers. The question raised by the holding of *Marbury v. Madison*, 5 U.S. (1 Cranch) (1803) that the Constitution of the United States did not grant mandamus powers to the United States Supreme Court is controlling. This court should, therefore, ask "*What judicial body has the power to issue a mandamus against bodies of the federal government?*"

Our state constitution holds that "*The Constitution of the United States is the supreme law of the land*" (Const. art. I § 2) and it is the judicial oath of office to uphold the both our state constitution and the constitution of the United States. This court does not require an expressed constitutional provision giving it original jurisdiction to issue a mandamus (or prohibition) upon federal officers, it has it by a default incidental to its sovereignty.

The common law writs of certiorari, mandamus and prohibition were sovereign prerogatives and powers used by the kings and queens of England to maintain lawful order among subordinate lords. The fact that this prerogative was not delegated by the states to the U. S. supreme court is significant because the Founders were intent on not creating a separate sovereignty. Their clear intent was to create a general government for the United States replacing the Articles of Confederation of thirteen sovereign states. By not granting the federal judiciary powers of mandamus against federal officers, the Founders reserved perhaps the most powerful prerogative of sovereignty to the states.

Petitioner attaches a letter published by him this March 27th past in the *East Hampton Star* in the town of East Hampton, Long Island, New York and includes it as if fully set forth herein and a Washington Post article dated April 21st entitled "Local Officials Rise Up to Defy the Patriot Act" for its information.

The motion for an order to show cause should be entered for briefing and argument. If this state takes jurisdiction in a matter joining the President of the United States and other federal officers it will be a landmark moment in the upholding of the United States Constitution and the protection of our cherished liberties at law.

NOTICE

PLEASE TAKE NOTICE that petitioner will be at the below given address until November, that provisions will be made for appearance by counsel should the motions herein be granted.

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Liberties in Law

Olympia, Wash.
March 24, 2003

Dear David,

The issue raised by the global undertakings of the government of George W. Bush is the future of our country and the duty of us, its citizens, to oppose a rogue government operating outside of the powers delegated to it by the states under our federal Constitution.

My inquiry into the origins and nature of the government of the United States began with my litigations attempting to uphold the 1686 colonial charter (Dongan Patent) for the township of Easthampton (one word). I came to understand that the 1686 charter — and the charters granted to the colonies — established rights, liberties, and privileges of sovereignty that we fought the American Revolution to protect. Our forbearing Englishmen established all of our liberties in law with the clearest understanding that without law we have no liberty.

As a people, as a citizenry, we fail to acknowledge this understanding at great peril. We are being governed by a body claiming to be our government who are operating outside of the Constitution and the law and a direct assault is being made on all of our cherished liberties at law. We are threatened with tyranny.

I am taking every possible lawful and nonviolent action to stop them. When the U.S. Congress purported to grant war-making powers to the Executive Branch without a declaration of war I knew right away that they couldn't do it, that it was unconstitutional. I began an initiative here in the State of Washington and formed a "Constitution Defense Committee" to devise and procure legislation from the State Legislature.

We were successful in introducing legislation in both the House and Senate that can be reviewed at montauk.com/snow.cfm. When further action upon the bills was stopped in the current legislative session by a cut-off, I sued in the highest court for a writ of mandamus to compel (a right under article four section four of the State Constitution). The action is still pending with oral argument to be scheduled.

Most important to you, the readers of this letter, is the following knowledge: The federal, or general, government of the United States is not sovereign and has no inalienable powers. All of its powers or claims of sovereignty were delegated to it by the states, which are sovereign, and can be withdrawn by the states. The states can convene a constitutional convention and completely reorganize the federal government, and this was the remedy advocated by James Madison. I strongly believe that this option must be revisited.

More immediately available to the citizens of East Hampton and Long Island, however, is the recovery of the sovereign rights under the Dongan Charters. The rights under the charters are every bit as powerful as those of the states. Our board of acting trustees of Montauk has noticed the court of our intent to proceed to convene a town meeting in May, and I am hoping that they are hard at work preparing for it. It is a duty that we can no longer put off or ignore, our country and everything we cherish as a nation are at stake.

For good, for law, for Montauk: In God we trust.

BOB FICALORA
Acting Supervisor
Township of Montauk



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Help

Local Officials Rise Up to Defy The Patriot Act

By Evelyn Nieves
Washington Post Staff Writer
Monday, April 21, 2003; Page A01

ARCATA, Calif. -- This North Coast city may look sweet -- old, low-to-the-ground buildings, town square with a bronze statue of William McKinley, ambling pickup trucks -- but it acts like a radical.

Arcata was one of the first cities to pass resolutions against global warming and a unilateral war in Iraq. Last month, it joined the rising chorus of municipalities to pass a resolution urging local law enforcement officials and others contacted by federal officials to refuse requests under the Patriot Act that they believe violate an individual's civil rights under the Constitution. Then, the city went a step further.

This little city (pop.: 16,000) has become the first in the nation to pass an ordinance that outlaws voluntary compliance with the Patriot Act.

"I call this a nonviolent, preemptive attack," said David Meserve, the freshman City Council member who drafted the ordinance with the help of the Arcata city attorney, city manager



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Arcata, Calif., City Council member David Meserve drafted an ordinance requiring town officials not to comply with the federal Patriot Act. (Kim Komenich -- San Francisco Chronicle)

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and police chief.

The Arcata ordinance may be the first, but it may not be the last. Across the country, citizens have been forming Bill of Rights defense committees to fight what they consider the most egregious curbs on liberties contained in the Patriot Act. The 342-page act, passed by Congress one month after the Sept. 11, 2001, terrorist attacks, with little input from a public still in shock, has been most publicly criticized by librarians and bookstore owners for the provisions that force them to secretly hand over information about a patron's reading and Internet habits. But citizens groups are becoming increasingly organized and forceful in rebuking the Patriot Act and the Homeland Security Act for giving the federal government too much power, especially since a draft of the Justice Department's proposed sequel to the Patriot Act (dubbed Patriot II) was publicly leaked in January.

Both the Patriot Act and the Homeland Security Act, which created the Cabinet-level department, follow the Constitution, says Justice Department spokesman Mark Corallo. Federal law trumps local law in any case, which would mean Arcata would be in for a fight -- a fight it wants -- if the feds did make a Patriot Act request. LaRae Quy, a spokeswoman for the San Francisco FBI office, whose jurisdiction includes Arcata, said that the agency has no plans to use the Patriot Act in Arcata any time soon, but added that people misunderstood it. Although some people feel their privacy rights are being infringed upon, she said, the agency still has to show "probable cause for any actions we take."

But to date, 89 cities have passed resolutions condemning the Patriot Act, with at least a dozen more in the works and a statewide resolution against the act close to being passed in Hawaii.

"We want the local police to do what they were meant to do -- protect their citizens," said Nancy Talanian, co-director of the Bill of Rights Defense Committee in Florence, Mass., which gives advice to citizens groups on how to draft their own resolution.

Although cities across the country passed antiwar resolutions before the attack on Iraq with little notice from the administration, Talanian said that the anti-Patriot Act resolutions are "not quite as symbolic" as those that passed against the war.

"Normally, the president and Congress don't pay that much attention when it comes to waging war," she said. "But in the case of the Patriot Act, the federal government can't really tell municipalities that you have to do the work that the INS or the FBI wants you to do. The city can say, 'No, I'm sorry. We hire our police to protect our citizens and we don't want our citizens pulled aside and thrown in jail without probable cause.'"

In Hawaii, home to many Japanese Americans who vividly recall the Japanese internments during World War II, Democratic state Rep. Roy Takumi introduced a resolution on the Patriot Act as a way to raise debate, he said. Although the resolution may be seen as symbolic, he said, "states have every right to consider the concerns of the federal government and voice our opinions. If a number of states begin to pass similar resolutions, then it raises the bar for Congress, making them realize our concerns. I hope to see what we've done here plays a role in mobilizing people to take action."

Lawmakers and lobbyists on both ends of the political spectrum are beginning to sound more alarms about the antiterrorism act, which gave the government unprecedented powers to spy on citizens. Rep. Bernard Sanders (I-Vt.) has introduced a bill, the "Freedom to Read Protection Act" (H.R. 1157), that would restore the privacy protections for library book borrowers and bookstore purchases. The bill has 73 co-sponsors.

Earlier this month, Rep. F. James Sensenbrenner Jr. (R-Wis.), the chairman of the House Judiciary Committee, and Rep. John Conyers Jr. (Mich.), the ranking Democrat, asked the Justice Department for more information on the government's use of the Patriot Act to track terrorists, questioning what "tangible things" the government can subpoena in investigations of U.S. citizens.

Sensenbrenner and Conyers sent an 18-page letter to Attorney General John D. Ashcroft, challenging the department's increased use of "national security letters" requiring businesses to hand over electronic records on finances, telephone calls, e-mails and other personal data.

They questioned the guidelines under which investigators can subpoena private books, records, papers, documents and other items; asked whether the investigations targeted only people identified as agents of a foreign power; and asked the attorney general to "identify the specific authority relied on for issuing these letters."

The Justice Department said it is working on the request.

But citizens groups, worried about a timid Congress, are not waiting for their elected officials to act before launching a campaign against the proposed sequel to the Patriot Act, the "Domestic Security Enhancement Act." The Idaho Green Party has begun the Paul Revere Project to stop Patriot Act II before it can be passed.

The proposed addendum to the Patriot Act, which the Justice Department has insisted is only a draft of ideas, would enlarge many of the controversial provisions in the first Patriot Act. It would give the government authority to wiretap an individual and collect a person's DNA without court orders, detain people in secret and revoke citizenship, among other powers.

The proposed sequel to the act has galvanized communities in a bottom-up, grass-roots way, Talanian said. "Before a community votes on resolutions, they engage in forums and petitioning to show the town council they want this. After, communities band together and do things like visit the offices of their entire congressional delegations and say our communities have these concerns and now we are asking you to help."

In Arcata, where forums drew little debate, the new law is an unqualified hit. It passed by a vote of 4 to 1, but has what looks like near-unanimous approval from residents.

Meserve, a weather-worn builder and contractor in his fifties who wears a ponytail and flannel shirts, hasn't felt so popular since he won his council seat running on the platform, "The Federal Government Has Gone Stark, Raving Mad."

"The ordinance went through so easily that we were surprised," he said. "We started going up to people asking what they thought. They thought, 'great.' It's our citywide form of nonviolent disobedience."

The fine for breaking the new law, which goes into effect May 2, is \$57. It applies only to the top nine managers of the city, telling them they have to refer any Patriot Act request to the City Council.

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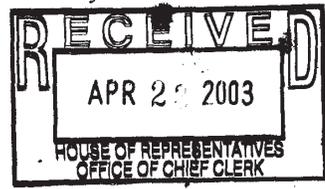
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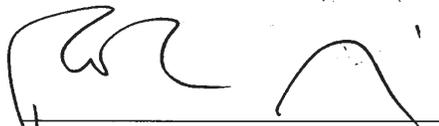
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