

Acknowledged Receipt This
14th day of April 20 03
CHRISTINE O. GREGOIRE
Attorney General

e 446
Constitution Defense Committee
P.O. Box 6316
Olympia, WA 98507-9316
(360) 866-2278

RECEIVED
APR 14 2003

By W. H. ...
Assistant Attorney General

SEC. OF SENATE

Friday, April 11th, 2003

RESUBMITTED
4/14/03

To: Washington State Supreme Court
Temple of Justice
Capitol Campus
Olympia, Washington
c/o Mr. C. J. Merritt, Clerk

Ms. Cindy Zehnder
Chief Clerk of the House of Representatives
Respondent

Mark Doumit
Secretary of the Senate
Respondent

SERVED
APRIL 14
CLERK

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SUPREME COURT
STATE OF WASHINGTON
03 APR 11 PM 4:23
BY C. J. HERRITT

BY HAND DELIVERY

In re: Oral argument and request for conference, CASE # 73731-2

Dear sirs,

I decline to request oral argument on the matters presented in the original petition herein, my being satisfied that it may be handled most effectively by submission.

I do, however, hereby request a conference in chambers to discuss the order to show cause attached hereto. The issues presented are of massive importance to this state and are best considered among the parties hereto, possibly with the invitation of other parties such as Governor Locke and members of the legislature at the discretion of the court.

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.

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CENTRAL OFFICE
03 APR 14 PM 5:51
ATTORNEY GENERAL
OF WASHINGTON

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SUPREME COURT
STATE OF WASHINGTON
03 APR 15 PM 1:23
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Robert A. Ficalora

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HOUSE OF REPRESENTATIVES
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OFFICE OF THE GOVERNOR

Supreme Court - State of Washington

ROBERT A. FICALORA

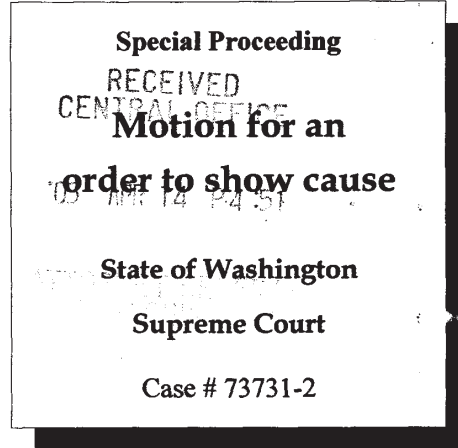
Petitioner

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



Upon the affidavit of Robert A. Ficalora, sworn to on Monday April 14, 2003 and the supporting documents attached thereto, it is moved that it be:

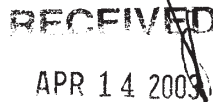
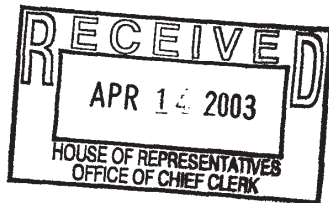
Ordered, that the defendants herein show cause before this court at the Temple of Justice at the Capitol in Olympia on April 24th. 2003 why an order should not be entered in this proceeding:

1. Allowing petitioner to amend the petition commencing this proceeding and to personally 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 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.

LET delivery of this motion and supporting papers to all defendants be deemed sufficient service thereof. Signed by me this 14th day of April, 2003, and filed in the office of the clerk of the Supreme Court in Olympia..

(Converted to motion by direction of clerk of the court. Motions by ex-parte orders to show cause unknown to the Supreme Court. Revised and refiled April 14th.)



SEC. OF SENATE



OFFICE OF THE GOVERNOR

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 STATE OF WASHINGTON
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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
RECEIVED
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Ficalora Affidavit
upon motion for an order to
show cause
Supreme Court
State of Washington
Case # 73731-2

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Thurston County

State of Washington

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HOUSE OF REPRESENTATIVES
OFFICE OF CHIEF CLERK

Robert A. Ficalora, duly sworn, deposes and says:

I am the petitioner in the above captioned matter at law.

This affidavit is in support of an order to show cause why the petition commencing this proceeding should not be amended joining **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 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.

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STATE OF WASHINGTON
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Your deponent does pray that the court will find that this proceeding was properly commenced as a matter of right pursuant to Article 4 section 4 of the Constitution of the State of Washington, that he is properly before the court at this time, and that it will grant the momentous and historic relief requested.

Necessary parties

Of all the enemies to public liberty war is, perhaps, the most to be dreaded, because it comprises and develops the germ of every other. War is the parent of armies; from these proceed debts and taxes; and armies, and debts, and taxes are the known instruments for bringing the many under the domination of the few. In war, too, the discretionary power of the Executive is extended; its influence in dealing out offices, honors, and emoluments is multiplied; and all the means of seducing the minds, are added to those of subduing the force, of the people. . . . *No nation could preserve its freedom in the midst of continual warfare.* ... [It should be well understood] that the powers proposed to be surrendered [by the Third Congress] to the Executive were those which the Constitution has most jealously appropriated to the Legislature. . . The Constitution expressly and exclusively vests in the Legislature the power of declaring a state of war . . . the power of raising armies . . . the power of creating offices. . ." - James Madison, "the Father of the Constitution", correspondence, 1793, source unknown, bracketed inserts not deponent's, emphasis added.

This special proceeding was commenced for relief in the nature of a writ of mandamus to compel officers of the state legislature to exempt certain legislation from cut-offs pursuant to Senate Concurrent Resolution (SCR) 8022 (Att. A. SCR 8022 B. House & Senate Joint Memorial (HJM) 4022 and (SJM) 8021.)

The companion Joint Memorials in the House and Senate contain an affirmative declaration that:

WE YOUR MEMORIALISTS, the Senate and House of Representatives of the State of Washington in legislative session assembled ... do respectfully petition the President to reaffirm our nation's commitments to the Constitution, to the rule of law both domestic and international, and to the supreme law embodied in our international obligations: to these ends your Memorialists do herewith resolve and declare upon our oath to uphold the Constitution that war may not be made by the government of the United States in the name of the People of the State of Washington, or of the United States, in violation of the Constitution, or of said laws and obligations, all other acts or agreements notwithstanding" (HJM 4022, SJM 8021, emphasis added)

Such a declaration made by a legislature of any one of the several United States is beyond legal contest because it is clearly within the sovereign powers of a state to do so. A judgment by this court to the same end would share such sovereign uncontestability.

It is hoped by the initiative in support of the subject Joint Memorials, and it was expected, that the passing of such legislation would have the effect of enjoining and restraining the federal government of the United States from acting without or in excess of its Constitutionally delegated powers in commencing or prosecuting ANY war without prerogative under our Constitution. It was for these purposes that this proceeding was ultimately commenced before this court.

Joining of the subject parties before this court upon the amended petition presented is necessary to the above purposes and should be granted by this court.

Jurisdiction

State jurisdiction in these matters has been an historic point of contention. In the fourth edition of his excellent work "Swords into Plowshares, the problems and progress of international organization" (Random House, 1971), Professor Inis L. Claude, Jr. wrote:

"Our national Founding Fathers wrote no provision for a supreme arbiter of all constitutional questions. The notion that the states were competent to interpret the Constitution for themselves flourished in this country from the Kentucky and Virginia Resolves of 1798 to the secession movement which precipitated the Civil War. The Supreme Court propounded its doctrine of judicial review without explicit constitutional warrant, in an atmosphere of political maneuvering, and it established its role of supreme constitutional umpire in the face of powerful opposition..." Swords, p. 167

In the recent matter of John Doe 1, et. al., v. President George W. Bush, et. al. (First Circuit Court of Appeals no. 03-1266) the federal court has dismissed a challenge to the unconstitutional nature of the current wars without reaching the merits on the basis that the actions being taken are "political".

In entering said dismissal, the federal bench disregarded the following plea from plaintiffs in their final, supplemental brief:

"The Plaintiffs seek to have this Court uphold a fundamental principle of constitutional law: that only Congress can declare war, and that the President has neither inherent power nor delegable authority from Congress to commence a preemptive war against another country. The defendants assert the radical proposition that this court is powerless to intervene to prevent the President from violating the United States Constitution by launching a massive invasion of Iraq without Congress ever having made a determination that this Nation should go to war.

At this extraordinary moment in United States history, the Court has a duty to act. "It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 144 (1803). The U. S. Congress has abdicated completely its constitutional responsibility under Art. 1, § 8 of the Constitution. The Congress unlawfully has attempted a transfer to the President its power to decide whether to send this nation into war." Supplemental Brief, *John Doe 1, et. al. v. George W. Bush, et. al.*, (citation unknown).

Relying upon the plaintiffs' briefs in my possession, the court in *John Doe 1* did rely upon *Massachusetts v. Laird*, 451 F2d. 2 (1st Cir. 1971) in holding that the plaintiffs must make a showing of "resolute conflict" between the executive branch and Congress before it may determine the constitutionality of concerted action by those branches.

In other words, the federal bench held that it may not take jurisdiction and reach the merits of an action against the President when both of the other branches of the

federal government determine to discard their constitutionally delegated powers and effectively operate a rogue, outlaw government.

This circumstance forces a re-examination of the 1798 resolve by the legislature of the Commonwealth of Virginia:

"... that in the case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact [Constitution of the United States], the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil..."

The U. S. Supreme Court relies upon its decision and the opinion of Mr. Chief Justice John Marshall in the matter of *Marbury v. Madison*, 5 U.S. (1 Cranch) (1803) for its claim of the power of judicial review of constitutional questions and, to the extent that such reliance is deemed exclusive, is critically flawed.

The decision in *Marbury* reviews the judicial authorities of the supreme court, and constructs a basis for a claim of jurisdiction from the general language of the Constitution for reviewing the constitutionality, or lack thereof, of federal laws.

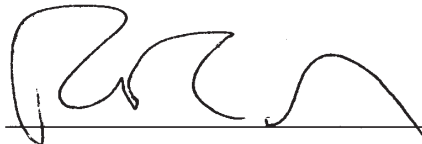
"The authority given the supreme court by the act [of Congress] establishing the judicial system of the United States, to issue writs of mandamus to public officers, appears not to be warranted by the constitution." *Marbury*, p.

You deponent's further review of *Marbury* finds that the Constitution granted no original jurisdiction to the supreme court in the matters *sub judice*, and that, therefore it cannot claim such jurisdiction in its inferior courts.

In any event, regardless of the constitutional merits of the doctrine of judicial review by the supreme court established or arising from *Marbury*, it was not in any way claimed or established that such a doctrine reserved exclusive jurisdiction in

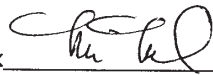
constitutional matters to the supreme court adverse to any claim by a state. It is well settled that powers not expressly delegated to the federal government are reserved to the states or the people by the 10th Amendment, and your deponent concurs with the legislature of Virginia that in such matters it is the duty of the states to interpose and stop and arrest "the progress of the evil".

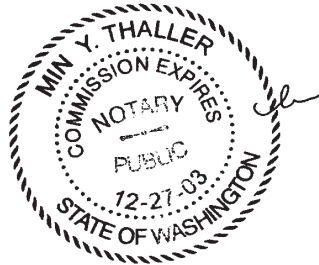
The federal judiciary has declined to take jurisdiction in the matters raised *sub judice* (Att. C.) and your deponent has no other remedy at law. The instant Order to Show Cause should be entered and the petition commencing this proceeding amended to join the mentioned necessary parties. Jurisdiction should be taken by this court to review the constitutionality of acts or claims pertaining to the war-making powers of the general, or federal, government of the Union of the States by the constitution they established, and why writs of mandamus or prohibition should not be issued upon the defendants to compel or prohibit certain war-making actions or acts repugnant to the Constitution of the United States.



Robert A. Ficalora

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

x 
Notary in and for the state of Washington
My commission expires on 12/27/2003
State of Washington
County of Thurston



SENATE CONCURRENT RESOLUTION 8400

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senators West and Brown

Read first time 01/13/2003. UNDER SUSPENSION OF THE RULES, READ SECOND AND THIRD TIMES AND ADOPTED.

WHEREAS, It is of paramount importance to establish cutoff dates for the consideration of legislation during the 2003 Regular Session of the Fifty-Eighth Legislature;

NOW, THEREFORE, BE IT RESOLVED, By the Senate of the State of Washington, the House of Representatives concurring, That the following cutoff dates apply to all bills, memorials, and joint resolutions with the exception of budgets, matters necessary to implement budgets, initiatives to the legislature, and alternatives to initiatives to the legislature:

(1) Wednesday, March 5, 2003, the fifty-second day, will be the final day to read in committee reports in the house of origin, with the exception of reports from the Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committees;

(2) Monday, March 10, 2003, the fifty-seventh day, will be the final day to read in Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committee reports in the house of origin;

(3) Wednesday, March 19, 2003, the sixty-sixth day, at 5:00 p.m., will be the final time to consider bills in their house of origin;

(4) Friday, April 4, 2003, the eighty-second day, will be the final day to read in committee reports on bills from the opposite house with the exception of reports from the Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committees;

(5) Monday, April 7, 2003, the eighty-fifth day, will be the final day to read in Senate Ways and Means, Senate Highways and Transportation, and House of Representatives fiscal committee reports on bills from the opposite house; and

BE IT FURTHER RESOLVED, That after 5:00 p.m. on Friday, April 18, 2003, the ninety-sixth day, neither house may consider any bills, memorials, or joint resolutions except initiatives to the legislature and alternatives to such initiatives, messages pertaining to amendments, matters of differences between the two houses, and matters incident to the interim and to the closing of the business of the 2003 Regular Session of the Legislature.

--- END ---

Joint Memorial - Petitioning the President to reaffirm our nation's commitments to the Constitution.

Senate bill no. SJM 8021 - House bill no. HJM 4022

WE YOUR MEMORIALISTS, the Senate and House of Representatives of the State of Washington in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, the State of Washington does unequivocally and most solemnly declare a warm attachment to the United States; and that for this end it is our duty, on behalf of our people, to watch over and oppose every infraction of those principles embodied in the Constitution that forms the only basis of that Union, because the faithful observance of this duty can alone secure its existence and the public happiness; and

WHEREAS, each state retains its sovereign rights as a party to the Constitution that established the general, or federal, government of the United States, and is its duty to its people to oppose all acts of said government that are without or in excess of the powers delegated to it by the Constitution that created it; and

WHEREAS, Congress is without the power to reconstitute government or to give, grant, release or otherwise surrender its delegated powers to another branch of government, yet in October of 2002 it passed legislation purporting to give war-making powers to the President without a declaration of war; and

WHEREAS, Article I Section 8 of the Constitution delegates the power to declare war to Congress; Article II Section 2 delegates to the Presidency powers that do not include the power to declare war, or to make war without a declaration of war, yet the President is currently claiming just such powers; and

WHEREAS, Article VI of the Constitution of the United States holds that "*... all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land*", and on June 26th, 1945, the representatives of the United States did join in the establishing of the United Nations and agreed to its Charter that holds, at Article II.4, that "*All members shall refrain... from the threat of the use of force against the territorial integrity or political independence of any state...*", yet the use of force is currently being threatened by the federal government of the United States against a sovereign state and original member of the United Nations; and

WHEREAS, this forthright affirmative declaration of the rights of this and other states to restrain unconstitutional actions by the federal government of the United States will reaffirm the 1798 legislative precedents most beneficial to our republic;

NOW, THEREFORE, your Memorialists do respectfully petition the President to reaffirm our nation's commitments to the Constitution, to the rule of law both domestic and international, and to the supreme law embodied in our international obligations: to these ends your Memorialists do herewith resolve and declare upon our oath to uphold the Constitution that war may not be made by the government of the United States in the name of the People of the State of Washington, or of the United States, in violation of the Constitution, or of said laws and obligations, all other acts or agreements notwithstanding;

BE IT FURTHER RESOLVED, that copies of this Memorial be immediately transmitted to the Honorable George W. Bush, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.

First Circuit Court of Appeals Declines to Prevent President from Taking the Country to War

[Click here](#) for copies of the legal filings including the Amendment to Add Plaintiffs and the Plaintiff's Reply Brief, the Notice of Appeal and the Motion for an Expedited Hearing, as well as press releases about the suit.

The First Circuit Court of Appeals handed down their decision in Doe v. Bush, the lawsuit in which several of our Military Families were plaintiffs, suing President Bush and Secretary of Defense Donald Rumsfeld to prevent them from invading Iraq absent a Congressional declaration of war. The Court found that "the case continues not to be fit for judicial review," stating that "Congress has taken no action which presents a fully developed dispute between the two elected branches."

In their earlier decision on March 13, this same Court stated, "To evaluate this claim. [w]e would need to assume that the Security Council will not authorize war, and that the President will proceed nonetheless." On March 17 our attorney John Bonifaz filed a petition for a rehearing based on just these facts.

Unfortunately, we ended up with a Court that lacked the courage of its own convictions, and now allows the President to launch a pre-emptive invasion of another country absent Congressional authority required by the United States Constitution.

This is the end of the line for this case. But it is not the end of the line for our efforts to stop this war, to bring our troops back safe and sound and to protect the lives of innocent Iraqi civilians.