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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER,

Plaintiff,

vs.

MEMBERS OF CONGRESS OF THE
UNITED STATES, et al.

Defendants

CASE NO. C04-1977RSM

MOTION A:

MOTION FOR WRIT OF MANDAMUS
COMPELLING DEFENDANTS TO CALL A
CONVENTION TO PROPOSE AMEND-
MENTS UNDER ARTICLE V OF THE CON-
STITUTION, A MINISTERIAL DUTY OF
OFFICE

NOTE ON MOTION CALENDAR: NOVEM-
BER 5, 2004

ORAL ARGUMENTS REQUESTED

Article V of the United States Constitution states “Congress... on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments,”¹ The Founders declared the convention call to be “peremptory” and that Congress shall have “no discretion” in the call.² Where the Constitution places a “peremptory” action on a branch of the government, it is clear such action becomes a duty of the office. The defendants

¹ See Brief, p. 13.
² See Brief, p. 14.
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1 have taken an oath to “faithfully execute” the duties of their office.³ Defendants have refused to
2 call a convention to propose amendments despite an overwhelming number of applications more
3 than satisfying the requirements of Article V which is a numeric count of applying states.⁴ The
4 convention call is not legislative in nature; hence there is no legislative immunity attached.⁵

5 “The power of a district court to compel official action by mandatory order
6 is limited to the enforcement of nondiscretionary, plainly defined, and purely
7 ministerial duties.” See *Decatur v. Paulding*, 39 U.S. (1 Pet.) 496, 514-17 (1840);
8 *Work v. Rives*, 267 U.S. 175, 177 (1925); *Wilbur v. United States*, 281 U.S. 206,
9 218 (1930). “An official action is not ministerial unless “the duty in a particular
10 situation is so plainly prescribed as to be free from doubt and equivalent to a positive
11 command.” *Wilbur v. United States*, *supra*; (other citations omitted). Department of Justice Civil Resource Manual, 215.

12 The Supreme Court has also addressed the question of mandamus regarding legislative
13 immunity saying:

14 “It is well established that federal, state and regional legislators are entitled
15 to absolute immunity from civil liability for their legislative activities.” However
16 the Court continued, “In the few cases in which liability did attach, the courts emphasized
17 that the defendant officials lacked discretion, and the duties were thus ministerial. See, e.g.,
18 *Morris v. The People*, 3 Denio 381, 395 (N.Y. 1846) (noting that the duty was “of a ministerial
19 character only”); *Caswell v. Allen*, 7 John. 63, 68 (N.Y. 1810) (holding supervisors liable because
20 the act was “mandatory” and “[n]o discretion appear[ed] to [have been] given to the supervisors.”)...
21 “The rule is well settled that where the law requires absolutely a ministerial act to be done
22 by a public officer, and he neglects or refuses to do such act, he may be compelled to respond
23 in damages to the extent of the injury arising from his conduct.”)” *Bogan et al., v. Scott-Harris*, 96-1569 (1998).

24 The courts are explicit: a Writ of Mandamus can only be issued by a court where there is
25 no discretion on the part of the officer and that the matter is ministerial in nature. The Founders,
in the matter of the convention call, made it *absolutely* clear a convention call was “peremptory”
and stated that Congress shall have no discretion in the matter. This is the very definition of a
ministerial duty. Therefore a Writ of Mandamus to compel defendants to perform this duty,

³ See Brief, p. fn. 39, ¶ 6

⁴ Evidence Appendix, pp.6-8.

⁵ Response to Order To Show Cause, p.9.

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1 given that defendants refuse to “faithfully execute a duty of their office”, is entirely proper for
2 the court.

3 As to defendants’ duty owed to Plaintiff, beyond the reasonable expectation of the Plain-
4 tiff that defendants must obey the law, which includes all provisions of the Constitution, as is
5 required of all citizens, the writ is required to ensure the government will not continue to extort⁶
6 income tax money from the Plaintiff by refusal to take an official act to call a convention allow-
7 ing for the repeal of the amendment authorizing such tax thus terminating the tax and associated
8 extortion, threats and intimidation by the government.⁷ The duty is also owed to restore Plain-
9 tiff’s right to vote in an election for delegates and the right to seek such public office.⁸

10 Motion for Writ of Mandamus compelling defendants to call a convention to propose
11 amendments as required by Article V of the United States Constitution is hereby respectfully
12 submitted to the court. Proposed Writ of Mandamus order attached.

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14 Dated this 4th day of November, 2004

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⁶ Beyond the definition provided in Plaintiff’s brief, fn.20, p.11, *Black’s* also states: “Term [extortion] in compre-
25 hensive or general sense signifies any oppression under color of right, and in strict or technical sense signifies
unlawful taking by any officer, under color of office, of any money or thing of value not due him, more than is due,
or before it is due.

⁷ See Motions E, F.

⁸ See Motions C,D,J,K.

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1 PROPOSED ORDER OF WRIT OF MANDAMUS

2 This court, having determined that a call for a convention to propose amendments as au-
3 thorized under Article V of the United States Constitution is a peremptory and ministerial duty
4 office of the defendants and having determined the said defendants have refused to issue such a
5 call when it is clear the state have applied for such a convention in such numbers as to satisfy the
6 two-thirds numeric count requirement of Article V, hereby issues a Writ of Mandamus compel-
7 ling and ordering the defendants to immediately and forthwith issue a call a convention to pro-
8 pose amendments.

9 Defendants are hereby notified such convention call shall specify a time and location for
10 a convention, the terms of which shall be reviewed by this court to ensure such time and location
11 shall not violate the spirit nor intent of this Writ of Mandamus nor any other orders related to the
12 convention which this court may issue.

13 The court further orders to preserve the intent and spirit of the Writ of Mandamus that de-
14 fendants are hereby forbidden in any manner, description or fashion whatsoever from attempting
15 to regulate, control, dictate or otherwise influence any aspect, portion, part or function of a con-
16 vention to propose amendments by any legislative or other act which specifically refers to, but is
17 not limited to, determining what subject or subjects of amendment the convention to propose
18 amendments may discuss or propose amendment on. The defendants are forbidden from attempt-
19 ing to regulate the convention by control of its financial means placing any stipulations for the
20 use of the money or conditions which must be satisfied in order for such funds to be used. This
21 order is not to be implied to assume the defendants are required in any fashion to allocate public
22 monies for a convention to propose amendments however. Defendants are forbidden from refus-
23 ing to determine by which method any proposed amendment issued from such a convention may
24 be ratified under the terms of Article V of the Constitution and must, within a period of no later
25 than two weeks from the submission of such proposed amendment to them for determination of

1 ratification method, issue such determination for ratification. Defendants are further forbidden
2 from employing any method whatsoever, including the use of military force to overthrow and
3 replace state legislatures or conventions in the several state so as to determine a particular ratifi-
4 cation result regarding any proposed amendment from a convention to propose amendments. De-
5 fendants are forbidden in any manner to prevent the enrollment in the Constitution of any pro-
6 posed amendment by the convention to propose amendments which shall be ratified by the states
7 as specified in Article V of the United States Constitution. It is so ordered.

8 Presented by:

9 Bill Walker, pro se
10 PO Box 698
11 Auburn, WA 98071-0698

12 Dated this day of ,2004

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14 UNITED STATES DISTRICT JUDGE
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