

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BILL WALKER,

Plaintiff,

vs.

MEMBERS OF CONGRES OF THE UNITED STATES, et al.

Defendants

CASE NO. C04-1977RSM

MOTION D:

MOTION TO REFER TO ATTORNEY GENERAL FOR PROSECUTION FOR VIOLATION OF 18 U.S.C. 242 BY DEFENDANTS

NOTE ON MOTION CALENDAR: NOVEMBER 5, 2004

ORAL ARGUMENTS REQUESTED

Motion is respectfully made to this court by Plaintiff to refer to the Attorney General of the United States for prosecution of violations of 18 U.S.C. 242,¹ Deprivation of rights under color of law².

¹ “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States... shall be fined under this title or imprisoned not more than one year, or both;”

² “Color of law. The appearance or semblance, with the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under ‘color of law’ Atkins v. Lanning, D.C.Okla., 415 F.Supp. 186, 188.

When used in the context of federal civil rights statutes or criminal law, the term is synonymous with the concept of ‘state action’ under the Fourteenth Amendment, Timson v. Weiner, D.C.Ohio, 395 F.Supp. 1344, 1347; and means pretense of law and includes actions of officers who undertake to perform their official duties, Thompson v. Baker, D.C.Ark., 133 F.Supp. 247; 42 U.S.C.A. § 1983.

Action taken by private individuals may be ‘under color state law’ for purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when significant state involvement attaches to action. (citation omitted).

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1 The term “state” “may refer either to body politic of a nation (e.g. United States) or to an
2 individual governmental unit of such nation (e.g. California)”.³ Therefore, the definition of color
3 of law applies to both federal as well as state officials. Hence, defendants, as federal officers, are
4 subject to this statute and possess no immunity as violation of the statute is a felony.

5 The law requires evidence of “deprivation of any rights, privileges, or immunities secured
6 or protected by the Constitution or laws of the United States” “under any law, statute, ordinance,
7 regulation, or custom”. The term “color of law” demands that the act can only be committed by a
8 person who is an official and “exercising his official powers outside the bounds of lawful author-
9 ity.”

10 Defendants have refused to call a convention as required by Article V of the United
11 States Constitution. As such this refusal by defendants to call constitutes a veto of a clause of the
12 Constitution. The Founders made it clear such a call was “peremptory” with “no discretion” on
13 the part of Congress.⁴ There is no clause in the Constitution or in any statute which grants de-
14 fendants a duty of office to veto clauses in the Constitution. Indeed, defendants are required un-
15 der statute to swear an oath of office as well as swear an affidavit “to support the Constitu-
16 tion...without mental reservation” and “to faithfully execute the duties of the office...”⁵ As there
17 is no constitutional clause or statute and as the convention call is peremptory and therefore min-
18 isterial in nature, it is clear act of veto exists outside the bounds of lawful authority of the of-
19 fice(s) of the defendants. In short, there is no legal grounds whatsoever for the defendants in their
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22 Acts ‘under color of any law’ of a State include not only acts done by State officials within the bounds or
23 limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided
24 that, in order for unlawful acts of an official to be done ‘under color of any law’, the unlawful acts must be done
25 while such official is purporting or pretending to act in the performance of his official duties; that is to say, the
unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an
official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances,
that they would not have occurred but for the fact that the person committing them was an official then and there
exercising his official powers outside the bounds of lawful authority. 42 U.S.C.A. § 1983.” *Black’s*.

³ *Black’s*.

⁴ See Brief, p. 14.

⁵ 5 U.S.C. 3331, 5 U.S.C. 3333.

1 official capacity to refuse to obey the Constitution. Hence, any veto or refusal to call once the
2 standard of applying states is achieved, is outside the bounds of lawful authority.

3 It is clear such abuse of power can only be done by the defendants as officials in their of-
4 ficial capacity because the official act of the preemptory convention call rests with the defen-
5 dants as a ministerial duty of office in which they have no discretion whatsoever. The defendants
6 in their obsession for absolute political power have purported to act in the performance of their
7 official duties by assuming they have discretion in whether to issue the call where the application
8 of states have satisfied the numeric count required under Article V. They thus claim a right to
9 veto such a call when the Constitution demands such a call shall be issued. No such right exists
10 in the Constitution and the language of the Founders makes it clear no such right was ever in-
11 tended.

12 This abuse of power violates several laws which are fully described in Plaintiff's mo-
13 tions, brief and complaint. Among these violations are 5. U.S.C. 7311, Loyalty and Striking and
14 18 U.S.C. 1621, Perjury and civil rights violations. The abuse violates 42 U.S.C. 1973i(a), Fail-
15 ure or Refusal to permit Casting or Tabulation of Vote in that defendants' action of veto prevents
16 a vote for delegates to a convention by Plaintiff. The right to vote is clearly recognized as a
17 "right...secured or protected by the Constitution [and] the law of the United States."⁶ As such,
18 defendants' actions liable them for the penalties described in 18 U.S.C. 242.

19 The final point of 18 U.S.C. 242 requires that private individuals may only initiate action
20 "under color of law...when significant state involvement attaches to [that] action." Under 42
21 U.S.C. 1983. In the case of a convention call "significant state involvement" is absolute as the
22 call relates directly to the fundamental sovereign state document of the United States, the Consti-
23 tution of the United States and therefore veto of that document by officials constitutes "signifi-
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⁶ 18 U.S.C. 242.
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1 cant state involvement". All requirements for violation of 18 U.S.C. 242 have been satisfied as to
2 defendants' culpability.

3 Further, Plaintiff asserts his right to redress under 42 U.S.C. 1983 in that defendants have
4 subjected or caused him to be subjected under their custom and usage of refusal to obey the Con-
5 stitution to deprive him of rights, privileges and immunities secured by the Constitution and laws
6 of the United States. Among these are the right to vote, the right to seek elected office and other
7 civil rights specified by Plaintiff's in motions before this court.

8 For these reasons, motion is made to refer violations of 18 U.S.C. 242 by defendants to
9 the Attorney General of the United States for prosecution. Proposed order attached.

10
11 Dated this 4th day of November, 2004

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13

S/Bill Walker, pro se
14 PO Box 698
Auburn, WA 98071-0698

1 PROPOSED ORDER TO REFER VIOLATIONS OF 18 U.S.C. 242
2 BY DEFENDANTS TO ATTORNEY GENERAL OF THE UNITED STATES

3 Having reviewed all evidence in this matter, this court determines there is sufficient evi-
4 dence to suggest the defendants in this matter may have violated 18 U.S.C. 242 by depriving the
5 rights, privileges or immunities of Plaintiff secured by the Constitution or laws of the United
6 States under color of law.

7 This court further determines as criminal violations are associated with such actions de-
8 fendants lack immunity from such criminal penalties as prescribed by law.

9 This court therefore refers this matter to the Attorney General of the United States for
10 prosecution of criminal violations of 18 U.S.C. 242 by defendants. It is so ordered.

11 Presented by:

12 Bill Walker, pro se
13 PO Box 698
14 Auburn, WA 98071-0698

15 Dated this day of , 2004

16 _____
17 UNITED STATES DISTRICT JUDGE