

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 J:

MOTION TO REFER TO ATTORNEY GEN-
ERAL FOR PROSECUTION FOR VIOLA-
TION OF 26 U.S.C. 1973i(a) UNDER 42
U.S.C. 1973j(c)

NOTE ON MOTION CALENDAR: NOVEM-
BER 5, 2004

ORAL ARGUMENTS REQUESTED

42 U.S.C. 1973i(a) states:

“(a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of subchapters I-A to I-C of this chapter *or is otherwise qualified to vote*, or willfully fail or refuse to tabulate, count, and report such person’s vote.” (emphasis added).

The text of 42 U.S.C. 1973j(c) states:

“(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, or 1973i(a) of this title shall be fined not more than \$5,000, or imprisoned not more than five years, or both.”

As violation of this statute is a felony, there can be no constitutional claim of immunity for defendants. They are therefore subject to this statute and its associated criminal penalties.

Clearly, 42 U.S.C. 1973 et al. is based on the 13th and 14th Amendments of the Constitu-
tion. Under the 13th Amendment voting cannot be denied on account of race. But the 14th

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1 Amendment provides equal protection for all citizens regarding all privileges, rights and immu-
2 nities secured under the Constitution. The right to vote clearly falls in this category and creates a
3 class of citizens, i.e. citizens who have the right to vote. As the 14th Amendment demands equal
4 protection for all in particular class of citizens, one part of that class cannot be favored above an-
5 other part. Hence, any law cannot exclude one part of a class over another part of the same class
6 of citizens. In 42 U.S.C. 1973i(a) the statutory language refers to the sections of the statute relat-
7 ing to race but also creates protection for citizens who can vote but who are denied that vote by
8 the “or otherwise qualified to vote” clause. The clause obviously refers to every other voter who
9 is deprived of vote by the methods described in the law but not for reasons of race. Plaintiff is
10 otherwise qualified to vote.¹ He therefore falls into this second protected class. Without the
11 clause “otherwise qualified to vote” the statute would violate the 14th amendment of equal pro-
12 tection as it would provide immunities and privileges for just part of a class, in this case minority
13 voters, yet deny such protection for the rest of the class who are not members of a minority as
14 they would be unable to obtain protection under this law. The effect, save for this clause, would
15 be that it is acceptable for a person to deny a citizen the right to vote or tabulate his vote so long
16 as it was not done on the basis of race. The clause resolves this issue by creating a second, if lit-
17 tle used, protected class of voters who are otherwise qualified to vote under the law. Thus irre-
18 spective of race, 42 U.S.C. 1973 et al., is intended to protect voting rights including those of the
19 Plaintiff.

20 The Court has recognized two axioms relating to the amendatory procedure of Article V.

21 The Court stated:

22 *“The language of the article [5] is plain, and admits no doubt in its interpre-*
23 *tation. It is not the function of courts or legislative bodies, national or state, to al-*
24 *ter the method which the Constitution has fixed.”* Hawke v. Smith, 253 U.S. 221
(1920) (hereafter Hawke). (Emphasis added).

25

¹ See Evidence Appendix, p.11.
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1 Hence, the Court unequivocally ruled that neither legislatures nor the courts, state or fed-
2 eral, possess the right to alter the amendatory process from what the Constitution unambiguously
3 sets out. Therefore, as Article V demands Congress call a convention “on the application of the
4 Legislatures of two-thirds of the several states”, Congress does not possess the authority to alter,
5 veto or ignore what “the Constitution has fixed.” Clearly the two modes of proposal, convention
6 and congressional, are part of the “plain...language of article [5]...which the Constitution has
7 fixed” and therefore, like ratification, cannot be ignored by legislative or judicial whim.

8 The second axiom concerns convention elections. The Court stated:

9 “Both methods of ratification, by Legislatures or conventions, *call for delib-*
10 *erative assemblages representative of the people*, which it was assumed would
11 voice the will of the people.” (Hawke) (Emphasis added).

12 As the Court defined the word “conventions” as used in the Constitution to mean “delib-
13 erative assemblages representative of the people” this ruling demands the election of convention
14 delegates by the people to be mandatory. The Court did not exclude, exempt nor separate the
15 *amendatory* proposal convention from this election standard. As the Constitution demands a
16 convention must occur, and election of delegates to such a convention must occur, it follows
17 Congress’ refusal to call such a convention not only violates the Constitution but federal election
18 laws as well.

19 Plaintiff is a registered voter in the state of Washington.² He is eligible to vote in any
20 election within the state of Washington, including an election to choose delegates to a conven-
21 tion. By their illegal actions, under color of law,³ in refusing to obey the Constitution and call a
22 convention when mandated to do so, the defendants have prevented such an election from occur-
23 ring thus violating the voting rights of the Plaintiff which includes failure to tabulate, count or
24 report such a vote. This has been by the defendants by the most expedient means possible-- re-
25 fusing to permit an election to be held at all.

² Evidence Appendix, p.11.

³ See Motions A-I, K-M and Brief, generally.
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1 Under 42 U.S.C. 1973i(a), and 42 U.S.C. 1973j(c), Plaintiff has the right to recover full
2 use of his voting rights and vote in all elections permitted under the Constitution including vot-
3 ing for delegates to a convention. As Plaintiff has been denied his right to vote in an election re-
4 quired by the Constitution in which he is eligible to vote, Plaintiff's rights has been injured by
5 this illegal denial of voting rights by the defendants. Such denial also offends the right of alter or
6 abolish which is guaranteed not only by Ninth Amendment but by treaty.⁴ Voting is a form of the
7 right to alter or abolish just as a convention to propose amendments is also part of the right of the
8 people to alter or abolish. Both forms have placed upon them stringent safeguards, immunities
9 and privileges so as regulate any abuse of them. But those safeguards do not include the defen-
10 dants violating the Constitution so as to prevent either from occurring because the defendants
11 find them politically inconvenient in their obsession to retain absolute political power.

12 The Founders were emphatic: the convention call is "peremptory" and that "no consent of
13 the national legislature" is required for a call.⁵ Hence, there is no vote for a convention call by
14 Congress as there is nothing to vote on. It is a ministerial duty of office. The Speech and Debate
15 Clause does not apply as there is neither speech nor debate nor any other legislative action in the
16 matter which Congress has any discretion to vote on. Beyond this, the Court has made it clear the
17 amendatory process is not part of the legislative process as proposing amendments cannot in-
18 volve the actions of the President thus eliminating the legislative procedure specified in the Con-
19 stitution.⁶ Hence, the amendatory process is not legislative in nature. In *Hawke v. Smith* 253
20 U.S. 221 (1920), the Court, quoting *Hollingsworth et al. v. Virginia*, 3 Dall. 378 (1798) said:

21 "The Attorney General answered that the case of amendments is a substantive
22 act, unconnected with the ordinary business of legislation, and not with the policy
23 or terms of the Constitution investing the president with a qualified negative on
24 the acts and resolutions of Congress. In a footnote to this argument of the Attor-
25 ney General, Justice Chase said: "There can, surely, be no necessity to answer

⁴ See Brief, pp.4-6.

⁵ See Brief pp.14, 33; fn. 49.

⁶(See Article I, § 7, clause 2, United States Constitution.
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1 that argument. The negative of the President applies only to the ordinary cases of
2 legislation. He has nothing to do with the proposition, or adoption, of amend-
3 ments to the Constitution.”

In the same case, the Court also said:

4 “Such legislative action is entirely different from the requirement of the Con-
5 stitution as the expression of assent or dissent to a proposed amendment to the
6 Constitution. In such expression no legislative action is authorized or required.”
7 Finally, in the same case, the Court said:

8 “The language of the article [5] is plain, and admits no doubt in its interpreta-
9 tion. It is not the function of courts or legislative bodes, national or state, to alter
10 the method which the Constitution has fixed.”

11 Thus, if the Constitution has fixed that upon two-thirds application of the state legisla-
12 tures, a numeric count, Congress must call a convention to propose amendments, it is neither a
13 court power nor a legislative function to do otherwise. Such a call inevitably leads to the elec-
14 tions of delegates. Defendants have no basis whatsoever to deny Plaintiff the right to vote, and
15 have his vote tabulated, counted and reported. Such denial is a violation of 42 U.S.C. 1973i(a)
16 and is punishable under 42 1973j(a) and (c).

17 For these reasons, motion is made to refer violations of 26 U.S.C. 7214 (1) by defendants
18 to the Attorney General of the United States for prosecution and for the court to execute such
19 other penalties as are prescribed by the statute. Plaintiff further moves that the court order such
20 protections as are necessary for the protection of such a vote for delegates. Proposed order at-
21 tached.

22 Dated this 4th day of November, 2004

23 _____
24 S/Bill Walker, pro se
25 PO Box 698
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1 PROPOSED ORDER TO REFER VIOLATIONS OF 42 U.S.C. 1973i(a) BY DEFENDANTS
2 TO ATTORNEY GENERAL OF THE UNITED STATES

3 Having reviewed all evidence in this matter, this court determines there is sufficient evi-
4 dence in this matter to suggest defendants may have violated 42 U.S.C. 1973i(a), Failure or re-
5 fusal to permit casting or tabulation of vote.

6 This court determines as criminal violations are associated with such actions under 42
7 U.S.C.1973j(a) and (c), defendants lack immunity from such criminal penalties as prescribed by
8 law. This court finds defendants, by refusing to obey a clause of the Constitution to call a con-
9 vention as required have obstructed the legal, proper and constitutional amendatory process by
10 unconstitutional means. This illegal act prevents the election of delegates by the people to a con-
11 vention to propose amendments and thus violates the civil voting rights of the people as well as
12 the Plaintiff.

13 In order to restore such voting rights, this court orders that defendants are barred in any
14 way from preventing, blocking or otherwise obstructing a vote by the people to elect delegates to
15 a convention to propose amendments. Such election shall occur no more than six months from
16 the calling of the convention by the defendants who are ordered to issue such call immediately
17 and forthwith as prescribed by this court's Writ of Mandamus. The manner and procedures of
18 such elections shall fall under state laws now in effect as if the delegates were seeking the office
19 of a member of Congress. Further, any action by any defendants or future Congress which shall,
20 in any fashion attempt to pass legislation regulating such election of delegates shall suffer imme-
21 diate review by this court before such legislation shall take effect to ensure no attempt to pervert
22 the election process for delegates is occurring. Such legislation, if found to contain such at-
23 tempts, shall be declared unconstitutional by this court.

1 As this court is of the opinion criminal violations have occurred in the denial of voting
2 rights, this court therefore refers this matter to the Attorney General of the United States for
3 prosecution of criminal violations of 42 U.S.C. 1973i(a) by defendants. It is so ordered.

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5 Presented by:

6 Bill Walker, pro se
7 PO Box 698
8 Auburn, WA 98071-0698

9 Dated this day of , 2004

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12 UNITED STATES DISTRICT JUDGE
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