Judge: Ricardo S. Martinez

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 N: MOTION TO RECONSIDER NOTE ON MOTION CALENDAR: NOVEMBER 19, 2004

Motion is hereby respectfully made by Plaintiff for this court to reconsider its dismissal based on "lack of jurisdiction" of Plaintiff's suit based on the following reasons.

While it is understood by Plaintiff that motions of reconsideration are generally disfavored, Plaintiff feels the court should most carefully weigh its judgment and therefore presents the opportunity to the court before Plaintiff undertakes an appeal of the judgment. With all due respect, Plaintiff asserts it is clear based on the court's own written actions, that it has not given sufficient attention to Plaintiff' suit. For example in the court's Order Of Dismissal, November 12, 2004, the court orders "thirteen motions... asking the Court to refer various matters to the United States Attorney General for prosecution ... all stricken." Simply put, not all plaintiff's motions were for referral to the Attorney General. Several motions requested action by the court. Such a sweeping statement of factual error can only indicate the court did not read all of the mo-

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tions of the Plaintiff before rendering its judgment. Otherwise it would have termed the matter differently. This is not the only example of inattentiveness. In the court's Order To Show Cause, Plaintiff's complaint was either misquoted or misstated by the court. For example, the court cited 26 U.S.C. 7214 as a basis for jurisdiction when in fact Plaintiff cited 26 U.S.C. 7422 et al. for jurisdiction. The court also cited a statute not used by the Plaintiff in the complaint and one which Plaintiff cannot even confirm exists. The court then proceeded to discuss in great detail the legal aspects of this statute which the Plaintiff did not even refer to. Finally, court's citation of Walker v United States C00-2125C and the statement that Walker v Members of Congress is the identical case confirms this point. The suits are not identical. No violation of any statute, civil or criminal, was raised in Walker v. United States. This was not an accident. The law in this instance requires a public act by the defendants for violation to occur. The defendants had taken no public action on a convention call and there had never been a court case concerning a convention call. Only after when defendants had, as noted in Plaintiff's brief, instructed their counsel, the United States Attorney, to assert they would not obey the Constitution and he publicly so declared in public court, did violations of federal law occur for certain even though the actual public act of refusing to call most likely was, in itself, a criminal act. Thus, this current suit follows as a consequence of the actions of the defendants in Walker v. United States in that the defendants in taking this public action exposed themselves to the hazards of criminal prosecution that up until that point may not have existed. This suit deals with those violations. Walker v United States did not and hence is not "identical."

As to the court's comments regarding different defendants; it is well settled law that a group cannot be charged with a crime, only individuals can be so charged. Thus, Plaintiff was forced to name the defendants individually in this suit as federal crime is involved. In Walker v United States, Plaintiff had no evidence of a crime as these violations were yet to be committed. The court, by the way, in its haste to dismiss this suit does not deny criminal activity has oc-

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curred which requires no standing of any nature to report and is not effected by lack of standing. The court merely refuses to report such crimes. As the court has not denied criminal activity has occurred nor bothered to explain why the actions of the defendants are not criminal in nature and as standing and political question have nothing to do with criminal activity thus providing no relief for such acts, the court runs the risk of exposure to appropriate criminal charges regarding obstruction of the legal process to redress such crimes. This fact was discussed in Plaintiff's brief.

Further, in the matter of defendants Snow and Everson, Plaintiff did not intend nor desire to involve either of these persons in this suit. However, when, in the course of obeying the federal laws regarding recovery of federal income tax, which is one of the basis of standing in this suit, Plaintiff was threatened in writing with incarceration for simply writing a letter in compliance with the law, it clear that a separate violation of federal law occurred having nothing to do with the calling of a convention. Simply put, it is against federal law for federal officials to threaten to throw citizens in jail when all they have done is simply obey the law and have committed no action deserving such incarceration. The court in its haste to conclude this suit has sanctioned that federal officials now have the right to threaten jail against citizens who do no more than obey the federal law. Even if the court has dismissed the rest of Plaintiff's suit, the fact is federal officials in writing threatened the Plaintiff and this action is a crime *independent of the rest of his suit*. The subject matter of whatever complaint or basis of recovery Plaintiff employed regarding return of income tax has nothing to do with threats made against him by federal officials and therefore can give no relief for their actions. Such acts are illegal irrespective of standing and political question. Again, the court did not deny that a criminal action against the Plaintiff by defendants Snow, Everson or person or persons under their direction has taken place, it merely refused to report it. Again by this action it exposes itself to legal sanction.

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However the most grievous error by the court is to suggest lack of jurisdiction for itself then quote the exact sentence from Walker v. United States used by the Plaintiff in his brief showing that such a statement creates a situation whereby jurisdiction is not required. and ignore The court cannot get around Plaintiff's argument by use of an ellipse or by citing Lujan v Defenders of Wildlife and "other cases." The other cases includes Coleman v Miller and Plaintiff showed clearly in his brief that (1) a ruling was made by the court in Walker v United States regarding political question by this sentence; (2) that such a ruling required standing on the part of the Plaintiff for the ruling to be made; (3) that such a ruling altered the clear, unambiguous intent and language of the Constitution and (4) that the language of Coleman permits *advisory* opinions of the court concerning the amendatory process. Thus there can be no issue of standing or subject matter because advisory opinions do not require them. If Plaintiff has no standing then this court cannot express political question doctrine especially when such doctrine alters the Constitution. A lack of standing means that whatever existed before in the Constitution still exists and the situation before Walker v. United States was that it was peremptory Congress must call a convention. Now do they do have to. The Constitution has been altered which requires a ruling to do so. Plaintiff also showed in his brief the consequences of such a ruling. Further and most significant, because a ruling was made and such a ruling requires standing, Plaintiff specifically claimed the standing which permitted the first ruling in Walker v. United States. The court by its use of the citation on which this claim was based therefore acknowledged and in fact confirmed Plaintiff's assertion of standing. Thus by the court's own citation, Plaintiff has standing. The court cannot rule without standing but again it rules the veto of the Constitution is a political question the consequences of which are discussed at length in Plaintiff's brief. Then it asserts there is no standing on the part of the Plaintiff which precludes it from ruling on the political question doctrine it has just had made. The court states Plaintiff does not have standing but does not answer the fact that Plaintiff has shown he does not have to. The logic of the court is thus

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muddled. On the one hand it apparently holds the Constitution must be obeyed by holding Plaintiff to strict standards of standing and so forth. Yet on the other hand it quotes the very sentence which suggests the Constitution does not have to be obeyed by the Government thus affirming its right to veto the Constitution and fails to provide any explanation or repudiation of Plaintiff's arguments presented in his brief leading inevitably to the conclusion the Plaintiff's arguments are correct.

Instead by its ruling the court has raised this power of veto now to that of a duty of office in that it has held that it not a violation of federal criminal or civil law for an officer of the federal government to ignore or refuse to obey the specific, unambiguous language of the Constitution. In short, if a government official wishes to violate Constitution, there is nothing to stop him including court rulings all of which, by the court's own admission, are based on the Constitution which the court now says can be vetoed. Unlike the first Walker, there is no question of this issue being before the court and the court ruling in favor of such powers.

It is one thing for a court to make a such a ruling inadvertently as Judge Coughenour may have done in Walker v. United States. It is quite another for a different court to make subsequent ruling having been informed of the federal criminal laws involved, the fact that such a decision may expose the court itself to the hazards of criminal prosecution, and that such action clearly violate the Constitution. Such subsequent action must be viewed as deliberate rather than inadvertent on the part of this court. It must be presumed the court willfully intends to establish the defendants have the right to veto the actual language of the Constitution. The matter does not stop there and Plaintiff will state this in as blunt language as possible to avoid any misunderstanding on the part of the court. The court in its Show Cause Order stated it is a court of "limited jurisdiction" yet its actions clearly show it claims the right to amend the actual language of the Constitution by judicial fiat in this case altering the convention clause from the word "shall" meaning without discretion, to that of "may". By quoting the identical sentence of Walker v

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United States, the court clearly affirms the right of Congress to veto the Constitution and consequently the right of the court to amend the Constitution by judicial decree. If the court has some sort of reservations regarding a convention to propose amendments fearing that it will become a "constitutional convention" it should realize that by this act the court itself has become what it most fears: a constitutional convention of one. The court took the same oath of office as the defendants and such judicial fiat is altering the Constitution by unconstitutional means. This act flies directly in the face of two Supreme Court decisions expressed in Plaintiff's brief and motions where the Court made it unambiguously clear that no such unconstitutional act has any constitutional protection and that specifically federal courts are forbidden from altering the process of amendment set by the Constitution.

As anticipated, the court also has ignored Plaintiff's Motion for Stay asking any ruling be delayed for, among other reasons, the satisfaction of a federal statute. The statute requires certification by the Attorney General as to duties of office and whether, in this case, it is a duty of office that the defendants can veto the Constitution in order to collect income tax. By the court's action of dismissal the only conclusion possible is that it affirms such veto is a duty of the office of the defendants.

As to Lujan specifically. The case establishes the basis of standing which are (1) an injury in fact which concrete and particularized and actual or imminent (2) has a casual connection between the injury and conduct complained and (3) is likely the injury will be "redressed" by a favorable decision.

It is well settled law that standing does not depend on whether or not the Plaintiff will prevail in his suit, only that his suit satisfies the issues of standing. Therefore in so far as standing is concerned as expressed in his brief, Plaintiff again points out that he is attempting to collect *his* income tax and recover *his* right to vote (particularized as to only Plaintiff and as a specific amount is sought, concrete as to legally protected rights of excessive taxation and right to

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vote) not to mention he has been threatened with incarceration which establishes the issue of immanency, that the actions of the defendants in refusing to obey the Constitution have caused said income tax to be collected where had they obeyed the Constitution, such tax would not be collected (causal connection between the relief sought and the actions of the defendants not related to any third party) and that a favorable verdict, the return of Plaintiff's tax money and causing defendants to obey the Constitution thus triggering removal of the tax certainly would redress the injury entirely. Plaintiff has satisfied all aspects of standing under Lujan. As to subject matter, Plaintiff demonstrated in his response that every single portion of his complaint, had at its center, a federal statute granting jurisdiction to the court. Plaintiff also raised other issues of standing most specifically Flast which the court avoids entirely but nevertheless provide standing.

Finally, Plaintiff respectfully points out that by the court dismissing this action at this juncture before defendants have even answered by any means or even submitted required service that the ability of the Plaintiff to exercise his right to appeal is hampered by the fact the appeal process requires Plaintiff notify the counsel of the parties with motions and other papers. This is why he submitted his motion for stay. As the defendants have yet to respond, there is no counsel(s) of record to send these required materials to. FRCP 4 does not allow for defendants not to respond to service under any circumstance and therefore motion is made court to order defendants to file their waivers of service and other summons already served so counsel(s) may be properly identified for the purpose of appeal.

Proposed order attached.

Dated this 14th day of November, 2004

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