

APR 30 1973

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 61 Original

QUIMET J. PETERSEN,
A Citizen of the United States,
Plaintiff,

versus

TIMOLEON S. SPILIOTOPOULOS,
Individually and as Chancellor of the Consulate
Royal of Greece at New Orleans, Louisiana,
Defendant.

On Complaint Under The Original Jurisdiction Of
The Supreme Court Of The United States

MOTION IN OPPOSITION TO MOTION TO FILE
COMPLAINT & BRIEF IN SUPPORT OF MOTION

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OPPOSITION TO MOTION FOR
LEAVE TO FILE COMPLAINT

COMES now Timoleon S. Spiliotopoulos, sought to be made defendant in the above entitled matter, and in response to the motion for leave to file a complaint by Quimet J. Petersen, expressly reserving the right to file a response to the bill of complaint as provided in Rule 9 of the Rules of the Supreme Court, respectfully shows:

I.

The Supreme Court has jurisdiction in suits filed against consuls by virtue of Article 3 § II of the Constitution of the United States but this grant of jurisdiction is not exclusive and its exercise is discretionary.

II.

At least two other forums are available to hear this action. The United States District Court for the Eastern District of Louisiana has jurisdiction under Title 28, United States Code §1351 and the Civil District Court for the Parish of Orleans has jurisdiction under Article 7 §81 of the Constitution of the State of Louisiana.

III.

Petitioner's allegations, if viewed in the most favorable light present only a claim for money damages between individuals. The available courts in the locality where all the litigants reside are more suitable forums for hearing this action than the United States Supreme Court.

Respondent prays that petitioner's motion for leave to file his complaint be denied.

**MEMORANDUM FOR OPPOSITION TO
MOTION FOR LEAVE TO FILE COMPLAINT**

MAY IT PLEASE THE COURT:

Petitioner, a resident of the City of New Orleans, has instituted this action for money damages against the respondent, a member of the staff of the Consulate Royal of Greece, and a resident of the same city. Petitioner has sought to invoke the original jurisdiction of the United States Supreme Court to provide a forum for his complaint.

Jurisdiction may exist for the United States Supreme Court by virtue of Article 3 §2, of the Constitution of the United States because this suit involves an individual who is a member of the staff of the Consulate Royal of Greece in New Orleans, Louisiana. The jurisdiction of the Supreme Court, however, is not exclusive because Title 28 of the United States Code, §1351 also confers original jurisdiction on the District Courts of the United States in all actions and proceedings against consuls and vice consuls of foreign states. This proposition was affirmed in *U.S. v. Ravara*, 2 Dall. (U.S.) 297, 1 L. Ed. 388.

Exercise by the Supreme Court of the original jurisdiction granted in the Constitution is discretionary. *Ill. v. City of Milwaukee*, 1972, S. Ct. 1385, 406 U.S. 91, 31 L. Ed. 2d. 712. In that case Mr. Justice Douglas discussed which cases were appropriate for consideration: "And the question of what is appropriate concerns of course the seriousness and dignity of the claim; yet beyond that it necessarily involves the availability of another forum where there is jurisdiction over the named parties, where the issues tendered may be litigated, and where appropriate relief may be had." Hearing petitioner's action in the Supreme Court is not appropriate under any of these requirements and sound exercise of the court's discretion would require this case be heard by the local United States District Court.

In addition to the United States District Court jurisdiction provided by Title 28, United States Code §1351, there is also jurisdiction in the Civil District Court for the Parish of Orleans under Article 7, §81 of the Louisi-

ana Constitution. This court is a civil court of general jurisdiction available to hear claims for money damages between individuals. *Byrnes v. Byrnes*, 1905, 115 La. 275, 38 So. 991. The constitutional provision that the Federal judicial powers will extend to all cases affecting ambassadors and other public ministers and consuls and the judicial code giving Federal Courts exclusive jurisdiction of all suits and proceedings against consuls and vice consuls does not operate to exclude the courts of a state from exercising jurisdiction over a suit against a consular representative where the court is otherwise competent to hear litigation. *The State of Ohio ex. rel. Popovici v. Agler*, Ohio 1930, 50 S.Ct. 154, 280 U.S. 379, 74 L. Ed. 489.

Nothing in petitioner's complaint suggests that the action that he seeks to bring involves the Government of Greece or the consulate or even the respondent in his official capacity as a member of the consulate staff. In order to enjoy the privilege of exclusive federal jurisdiction afforded consular officials there must be an appearance and the immunity from suit or privilege must be claimed. *Bliss v. Micoloff*, 1948, 79 N.Y., S. 63, 191 Misc. 798.

In *Washington v. General Motors Corporation*, 92 S.Ct. 1396 (1972), the court declined to hear an original jurisdiction suit by eighteen states against the General Motors Corporation holding at p. 1398; "the availability of the Federal District Court as an alternate forum and the nature of the relief requested suggest we remit the parties to the resolution of their controversies in the customary forum." It is respectfully

submitted that the same rationale applies in the instant actions and that petitioner's motion for leave to file his complaint should be denied.

Respectfully submitted,

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CERTIFICATE

The undersigned, counsel of record for respondent Timoleon S. Spiliotopoulos, certifies that all parties interested in this litigation have been served with a copy of this motion and memorandum by depositing a copy in the United States Mail, postage paid, in accordance with Rule 33(1) of the Rules of the Supreme Court.

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