

No. 66, ORIGINAL

Supreme Court, U. S.

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MICHAEL EDDAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1974

ROBERT L. MONTGOMERY, PLAINTIFF

v.

THE CONGRESS OF THE UNITED STATES, ET AL.

**MEMORANDUM FOR THE FEDERAL DEFENDANTS IN
OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT**

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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v.

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Plaintiff, on behalf of himself, the State of Indiana, and its citizens, seeks original relief from this Court in the form of a writ of mandamus compelling Congress to cease financing public expenditures through deficit budgets, and to back all legal tender with gold and silver. Plaintiff cites Article I, Sec. 9, cl. 7 of the Constitution, which prohibits Congress from spending money except "in consequence of appropriations made by law," in support of his contention that deficit spending is prohibited by the Constitution. He cites Article I, Sec. 8, cl. 5, empowering Congress to coin money and regulate its value, and Article I, Sec. 10, cl. 1, prohibiting states from making anything but gold and silver coin "a tender in payment of debts," to support his contention that the federal currency must be backed exclusively by silver and gold. Plaintiff alleges that the above unconstitutional acts have debased the currency and thereby denied him life, liberty and the pursuit of happiness. He has named as defendants the United States Senate, Senator Mike

Mansfield, the United States House of Representatives, Representative Carl Albert, and the 49 states other than Indiana.

Article III, Sec. 2, cl. 2 grants this Court original jurisdiction over cases in which a State is a party. It is elementary, however, that the authority of a State can be asserted only by its authorized public officials. A private citizen cannot invoke the original jurisdiction of this Court merely by purporting to sue in the name of his State. Cf. *New Hampshire v. Louisiana*, 108 U.S. 76, 89-91. Moreover, plaintiff's presence as a party would be contrary to the Eleventh Amendment (*id.* at 88-89), and would also deprive the Court of whatever jurisdiction it might otherwise have. E.g., *Louisiana v. Cummins*, 314 U.S. 577.

Plaintiff, who lacks standing to sue on his own behalf (cf., e.g. *Schlesinger v. Reservists Comm. to Stop the War*, No. 72-1188, decided June 25, 1974), has in any event failed to allege a case or controversy, there being no allegation that Indiana has either a monetary or quasi-sovereign interest in this controversy (cf. *Oklahoma ex rel. Johnson v. Cook*, 304 U.S. 387, 392-396) and plaintiff's allegations are frivolous in light of this Court's decision in the *Legal Tender Case*, 110 U.S. 421, 444-450.

Finally, the relief sought, a vague and sweeping dictate concerning the form of public and private expenditures, would require the Court to intrude impermissibly into the domains of the other branches of the federal government and of the states. Cf. *Texas v. Interstate Commerce Commission*, 258 U.S. 158, 162.

It is therefore respectfully submitted that the motion for leave to file a complaint and petition for mandamus should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.

