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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 55, ORIGINAL

In the Supreme Court of the United States

OCTOBER TERM, 1971

RICHARD EUGENE WEBB, A CITIZEN OF OHIO,
PLAINTIFF

v.

WILLIAM J. PORTER, AS AMBASSADOR AND CHIEF OF
THE UNITED STATES DELEGATION TO THE PARIS PEACE
TALKS

MEMORANDUM IN OPPOSITION TO MOTION FOR LEAVE TO FILE
COMPLAINT

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Plaintiff seeks to bring an original action in this Court against William J. Porter, who has been appointed by the President to serve as the chief negotiator for the United States at the Paris Peace Talks, asserting that this Court has original jurisdiction under Article III, Section 2, Clause 2 of the Constitution. The complaint requests that Mr. Porter be ordered “to cease performing his role at the Paris Peace Talks, until such time as he may be appointed by and with the advice and consent of the Senate” (p. 3).

This case is not within the original jurisdiction of the Court. The “Ambassadors, [and] other public

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Ministers and Consuls" referred to in Article III, Section 2, Clause 2 are only representatives of foreign powers and not "those representing this country abroad." *Ex Parte Gruber*, 269 U.S. 302, 303; see also 28 U.S.C. 1251(a)(2). Further, the gist of the complaint is that the President is constitutionally required to carry on the Paris negotiations only through officials appointed with the advice and consent of the Senate. This contention is frivolous. The President "makes treaties with the advice and consent of the Senate; but he alone negotiates." *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319 (emphasis in original). See also *United States v. Belmont*, 301 U.S. 324, 330-331; *United States v. Pink*, 315 U.S. 203; *Johnson v. Eisentrager*, 339 U.S. 763, 789.

For the foregoing reasons, the motion for leave to file the complaint should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1972.

