

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

October 29, 1979

TO: Federal Open Market Committee

FROM: Murray Altmann W. W.

Attached is a memorandum to the Board of Governors from Mr. Petersen transmitting the order of the United States District Court for the District of Columbia in the case of Riegle v. Federal Open Market Committee, et al.

Attachment

October 26, 1979

To: Board of Governors

Subject: Riegle v. Federal Open
Market Committee, et al.

From: Neal L. Petersen

The Court today after oral argument this Tuesday, October 23, granted the defendants' motion to dismiss the above action, challenging the Constitutionality of the selection and appointment of Reserve Bank members of the FOMC, on the ground that the plaintiff, Senator Riegle, lacked standing to bring the action. The Court did not, therefore, address the merits of the controversy.

The plaintiff has 60 days to file a notice of appeal to the Court of Appeals and we presume he will do so.

A copy of the order is attached.

Attachment

cc: Messrs. Axilrod, Ettin, Altmann, Mannion, Siciliano

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DONALD W. RIEGLE, JR.,)
Plaintiff,	{
v.	Civil Action No. 79-1703
FEDERAL OPEN MARKET	;
COMMITTLE, ET AL.,)
)
Defendants.)

ORDER

Flaintiff, a United States Senator from Michigan, seeks declaratory and injunctive relief from a statute authorizing allegedly unconstitutional appointments to the Federal Open Market Committee ("FOMC"), a component of the Federal Reserve System. The matter is before the Court on plaintiff's motion for summary judgment and defendants' motion to dismiss. The Court, having considered the supporting documentation and oral arguments presented by the parties, concludes that plaintiff lacks standing to maintain this action and the action therefore must be dismissed.

It is claimed that the five voting members of the FOMC serving pursuant to authority of 12 U.S.C. § 263(a), but without the advice and consent of the Senate, are acting unconstitutionally because they have not qualified in accordance with the requirements of the Appointments Clause, Article II, Section 2, of the Constitution of the United States. Plaintiff recognizes that he cannot establish his standing to sue as a citizen by asserting a generalized abstract injury of constitutional dimension. Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1974). Nor does the Senator allege that he has suffered a personalized injury as an individual legislator, unaccompanied by harm to the institution of the Senate. See Powell v. McCocmack, 395 U.S. 436 (1969). Ruther, he claims that the Senate by its approval of 12 U.S.C. § 263(a) has imposed an injury on its

members, particularly plaintiff, whose committee assignments involve him directly in matters which concern the operation of the Federal Reserve System. Plaintiff's status as a litigant in this action rests, therefore, on his ability to establish his standing as a Congressman who has suffered an individual injury derivative of an injury to the interest of the Senate as a whole. See Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977); Kennedy v. Sampson, 511 F.2d 410 (D.C. Cir. 1974).

Plaintiff has failed to satisfy this standard. Unlike the injured party in Konnedy v. Sampson, Senator Riegle's alleged injury does not stem from Executive action that frustrates an otherwise effective congressional enactment, nor does it impair his powers as a legislator in any manner that is not reire, sable by Congress. The legislative process continues to operate in unimpeded fashion; Congress' power to require additional FOMC membership criteria remains clearly undiminished. See Rouss v. Balles, 584 F.2d 461, 467-68 (D.C. Cir.), cert. denied, 439 U.S. 997 (1978); harrington v. Bush, supra, 553 F.2d at 199-200 n. 41. Congress enacted the relevant statutory provision over 40 years ago, it has had numerous opportunities to amend the statute since that time, and it retains the option to modify the starute today. Under these circumstances, it appears that Senator Ruegle's injury is of a political nature, deriving solely from the acts or omissions of his colleagues and not in any way from the actions of the named defendants. leus: v. balles, supra 584 F.2d at 468. See Simon v. Castern Ky. Welfare Right; Org., 426 U.S. 26, 41-42 (1976).

Plaintiff's attempt to distinguish Rouss v. Ballos by relying on the senate's powers under the appointments Clause is unavailing. The distinction plaintiff would have the Court draw wrongly focuses attention on the

question of which chamber is the possessor of a given constitutional authority. What the Court must decide is whether or not a Congressman from either chamber has standing to challenge the constitutionality of a statutory provision on which he has failed to persuade his colleagues in the past and remains free to attempt persuasion in the future. The Court concludes that to confer standing upon such a Congressman without more would improperly interfere with the legislative process.

Accordingly, plaintiff's motion for summary judgment is defined: defendants' motion to dismiss is granted, and the action is hereby dismissed.

SO OFFLERED.

UNITED STATES DISTRICT JUDGE

October 26 , 1979.