



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

March 28, 1985

TO: Federal Open Market Committee

FROM: Normand Bernard *N.B.*

FOR INFORMATION ONLY

The attached memorandum from the Committee's General Counsel and members of his staff summarizes and updates developments in the case against the System by the "Committee for Monetary Control". Please restrict distribution on a "need-to-know" basis.

Attachment

-2-

The Board's and the FOMC's motion to dismiss was granted by Judge Pratt of the United States District Court on October 26, 1983. The ground for dismissal was plaintiffs' lack of standing to sue. Standing is a jurisdictional concept. Specifically, Judge Pratt held that plaintiffs could not show that their alleged injuries (general economic injuries resulting from System monetary policy decisions) were caused by the System's actions, or that the relief requested would redress plaintiffs' alleged injuries; and the Court also held that plaintiffs' alleged injuries are generalized grievances of the type shared by all citizens and thus are not appropriately addressed by the courts. Hence, this appeal addresses only the question of standing. The merits of plaintiffs' claims have not been addressed by either court.

Challenges to the appointment of Reserve Bank members of the FOMC were dismissed on similar grounds in Reuss v. Balles, 584 F.2d 461 (D.C. Cir. 1978), cert denied, 439 U.S. 997 (1978), and in Bryan v. FOMC, 235 F.Supp. 877 (D. Mont. 1964). In Riegle v. FOMC, 656 F.2d 873 (D.C. Cir. 1981), cert denied, 454 U.S. 1082 (1981), the D.C. Circuit held that Senator Riegle had standing to raise the Appointments Clause issue but denied him relief based on a concept of informed equitable discretion. In the Riegle opinion, the Court indicated that one basis for denying the Senator relief was the likelihood that there are private plaintiffs who can raise the Appointments Clause issue. That language encouraged the filing

-3-

of the present suit and of a companion case, Melcher v. FOMC, D.D.C., No. 84-1335, in which a U.S. Senator is challenging the appointment of the Reserve Bank members of the FOMC. Senator Melcher has intervened as amicus curiae in the present case alleging that the plaintiffs' lack of standing here establishes his standing to sue under the Riegle doctrine^{1/}

A principal issue before the Court of Appeals is whether someone must have standing to challenge the appointments of Reserve Bank members of the FOMC. Plaintiff argues, based on the Riegle language cited above, that at least some among them are private plaintiffs with standing to raise this issue. Conversely, Senator Melcher argues that if no one of the 950 plaintiffs in this case can sue, he must have standing to sue as a legislator based on the same language in Riegle. We believe the so-called Riegle doctrine is inconsistent with more recent standing decisions of the U.S. Supreme Court, and with the D.C. Circuit's previous decision denying Congressman Reuss standing to raise the Appointments Clause question both in his capacity as a Congressman and in his capacity as an owner of Government bonds. Reuss and Riegle were decided by different panels of the D.C. Circuit. Though arguably inconsistent, both reflect the "law of the Circuit" at this time.

^{1/}Judge Harold Greene of the U.S. District Court has stayed proceedings in Melcher v. FOMC pending the outcome of this case.

-4-

The oral argument on March 22 was heard by a three-judge panel consisting of Judges Robinson, Edwards, and Ginsburg. Judge Edwards was also a member of the Riegle panel. The panels' questions to counsel reflected the following concerns:

- 1) Judge Edwards pressed plaintiffs' counsel to explain how plaintiffs' alleged injuries would be redressed by a decision in their favor, i.e., would monetary policy be any different if Reserve Bank representatives are removed from the FOMC, or if Congress defines stricter standards to guide the System in formulating monetary policy? He also wanted to know whether anyone would not have standing to challenge the appointment of government tribunals under plaintiffs' theory of the case.
- 2) Judge Edwards pressed System counsel to identify types of private plaintiffs who might have standing to challenge FOMC appointments. We insisted that the District Court's decision does not necessarily mean that no one would have standing, but we indicated that we do not believe Senator Melcher has standing.
- 3) Pointing out that System monetary policy decisions do not adjudicate individual rights, Judge Ginsburg suggested that this fact

-5-

distinguishes the present case from some others in which standing has been found. She also questioned the continued validity of the Riegle doctrine in light of more recent Supreme Court decisions.

We are cautiously optimistic based on the tone of the oral argument. The best result from the System's perspective would be a decision merely holding that these private parties may not sue to challenge the composition of the FOMC. However, a Pyrrhic victory is also possible, in the form of an opinion which denies plaintiffs standing but suggests or states that no private party has standing and that, in light of this result, Senator Melcher must have standing.