



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

July 5, 1979

TO: Federal Open Market Committee

FROM: Murray Altmann *M.A.*

Attached is a memorandum from the Committee's General Counsel and Mr. Siciliano of the Board's Legal Division, dated July 3, 1979, providing information on a suit filed by Senator Riegle of Michigan against the Committee and the Reserve Bank members and alternate members of the Committee.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date July 3, 1979

To Federal Open Market Committee

Subject: Donald W. Riegle, Jr. v.
Federal Open Market Committee, et. al.,
U.S.D.C. D.C. Civil Action No. 79-1703
(Filed July 2, 1979).

From Legal Division
(Messrs. Petersen
and Siciliano)

FOR INFORMATION ONLY

Senator Donald W. Riegle, Jr. (D., Michigan) has filed suit against the Federal Open Market Committee and the Reserve Bank members of the FOMC, including alternates, alleging that section 12A(a) of the Federal Reserve Act, which establishes the FOMC in its present form, violates in part the Appointments Clause of the Constitution, Article II, section 2, clause 2. More specifically, Senator Riegle alleges that section 12A(a) violates the Appointments Clause by permitting service on the FOMC by persons who have not been appointed by the President and confirmed by the Senate.

The identical issue was raised by Congressman Henry Reuss in a suit filed against the FOMC in 1976. That suit was dismissed by Judge Parker for lack of standing.^{1/} Judge Parker's decision was upheld by the U.S. Court of Appeals, and the Supreme Court declined to review the case. Mr. Riegle is represented in the present case before Judge Gesell by Grasty Crews, II, a member of Mr. Reuss' staff, who also represented Mr. Reuss in the previous lawsuit.

^{1/} "Standing" is an aspect of jurisdiction. Federal Courts have jurisdiction only with regard to actual cases or controversies; and where there is no case or controversy, there is no standing and, accordingly, no jurisdiction. Generally, a person has standing to sue if he can show that the challenged statute has injured or may injure him in fact.

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The FOMC may argue that Senator Riegle, like Congressman Reuss, lacks standing to sue. However, Senator Riegle's case is stronger than Mr. Reuss' because as a member of the Senate, he is able to argue that his power to vote to confirm FOMC appointees is impaired by the statute that he challenges. The question of whether this suit presents non-justiciable political questions that ought to be resolved in Congress may also be raised.

The FOMC's position on the merits was not tested in the Reuss litigation. The FOMC must answer the complaint within 60 days. A copy of the complaint is attached.

cc: Mr. Oltman
Mr. Mannion

JUL 2 1979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GENERAL COUNSEL'S OFFICE

x- - - - -x
DONALD W. RIEGLE, JR. :
1207 Dirksen Building :
United States Senate :
Washington, D. C. 20510 :
Telephone: 224-4822 :
:
Plaintiff, :
:
v. :
:
FEDERAL OPEN MARKET COMMITTEE, :
:
JOHN J. BALLE, :
:
ERNEST T. BAUGHMAN, :
:
ROBERT P. BLACK, :
:
ROGER GUFFEY, :
:
MONROE KIMBREL, :
:
ROBERT P. MAYO, :
:
FRANK E. MORRIS, :
:
THOMAS M. TIMLEN, :
:
PAUL A. VOLCKER, and :
:
WILLIS J. WINN, :
:
Defendants. :
:
x- - - - -x

GESELL, J.

CIVIL ACTION NO.

79- 1703

JUL 2 1979

COMPLAINT FOR INJUNCTION

General Statement

This is an action to enjoin the defendant individuals from acting as officers of the United States as members of the Federal Open Market Committee, and to enjoin the defendant agency (the Committee) from permitting them so to act, on the ground that nominations of the defendant individuals to be officers of the United States have never been submitted to the Senate as required by Article II, Section 2 of the Constitution, and their service as such deprives the plaintiff of his right to vote in determining the advice and consent of the Senate to their appointment.

Jurisdiction

1. This Court has jurisdiction of this action under §1337 of title 28, United States Code, because it arises under an act regulating commerce, *viz.*, section 12A of the Federal Reserve Act (12 U.S.C. §263).

2. This Court has jurisdiction of this action under §1331(a) of title 28, United States Code, as an action brought against an agency of the United States arising under Article II, Section 2, of the Constitution, and section 12A of the Federal Reserve Act (12 U.S.C. §263).

3. This Court has jurisdiction of this action under section 702 of title 5, United States Code, because the plaintiff is suffering legal wrong because of agency action.

The Plaintiff

4. The plaintiff has been a Member of the United States Senate since December 30, 1976, and is currently serving for a term expiring on January 3, 1983.

5. The plaintiff is a member of the Senate Committee on Banking, Housing and Urban Affairs, which, pursuant to Rule XXV.1(d)(1)7 of the Standing Rules of the Senate, has jurisdiction to consider nominations of officers of the United States to serve in the Federal Reserve System.

The Agency Defendant

6. The defendant Federal Open Market Committee is an agency of the United States, created by section 12A of the Federal Reserve Act (12 U.S.C. §263), to control purchases and sales of securities on the open market by Federal Reserve banks. Its structure and function are more particularly described hereinafter in paragraphs 22 through 28.

The Individual Defendants

7. Each of the defendant individuals was appointed as an officer of a Federal Reserve bank by the board of directors of such bank, with the approval of the Board of Governors of the Federal Reserve System, for a term ending February 28, 1981, as more particularly set forth in the following table:

<u>Name of Defendant</u>	<u>Position</u>	<u>Federal Reserve Bank</u>
John J. Balles	President	San Francisco
Ernest T. Baughman	"	Dallas
Robert P. Black	"	Richmond
Roger Guffey	"	Kansas City
Monroe Kimbrel	"	Atlanta
Robert P. Mayo	"	Chicago
Frank E. Morris	"	Boston
Thomas M. Timlen	First V.-P.	New York
Paul A. Volcker	President	New York
Willis J. Winn	"	Cleveland

8. The board of directors of each Federal Reserve bank consists of nine members. The chairman, deputy chairman, and one other member of each such board of directors are appointed by the Board of Governors of the Federal Reserve System. The other six members of the board of directors of each such bank are elected by the commercial banks which hold the stock of such bank. (Federal Reserve Act, §4, 12 U.S.C. §§302 et seq.)

9. Under the terms of the statute (Federal Reserve Act §12A(a); 12 U.S.C. §263(a)), 24 persons, the presidents and first vice presidents of the twelve Federal Reserve banks, are eligible for election to the five positions as Reserve bank representatives and the five positions as alternate representatives on the Federal Open Market Committee.

10. No officer or group of officers of the United States has power to direct or control who shall be elected to the Committee from among the persons who by statute are eligible for such election.

11. Each of the defendant individuals is serving as a member or alternate member of the Federal Open Market Committee for a term ending February 29, 1980, having been elected thereto as follows:

(a) Paul A. Volcker was elected a member, and Thomas M. Timlen an alternate, by the board of directors of the Federal Reserve Bank of New York.

(b) Willis J. Winn was elected a member, and Robert P. Mayo an alternate, by the boards of directors of the Federal Reserve banks of Cleveland and Chicago.

(c) Robert P. Black was elected a member, and Frank E. Morris an alternate, by the boards of directors of the Federal Reserve banks of Boston, Philadelphia, and Richmond.

(d) Monroe Kimbrel was elected a member, and Ernest T. Baughman an alternate, by the boards of directors of the Federal Reserve banks of Atlanta, Dallas, and St. Louis.

(e) John J. Balles was elected a member, and Roger Guffey an alternate, by the boards of directors of the Federal Reserve banks of Minneapolis, Kansas City, and San Francisco.

12. The defendants have admitted that the defendant individuals are acting as officers of the United States, in that in accordance with the practice of the defendant agency, the defendant individuals, in their capacity as members or alternates of the Federal Open Market Committee separate and apart from their capacity as officers of Federal Reserve banks, have taken the oath of office as officers of the United States in accordance with Article VI of the Constitution.

13. The defendant Paul A. Volcker is serving as vice chairman of the Federal Open Market Committee, and under section 3 of the Rules of Organization of the Committee, performs the duties of the chairman in the absence of the chairman.

14. None of the defendant individuals has been appointed to the Federal Open Market Committee by the President, by and with the advice and consent of the Senate, nor do any of the defendant individuals serve on the Committee by virtue of any other office to which they have been so appointed.

15. The functions of the members of the Federal Open Market Committee, as more particularly set forth in ¶¶22 through 28 of this complaint, go beyond those which may be performed by an inferior officer of the United States.

16. None of the defendant individuals has been appointed to the Federal Open Market Committee by any of the constitutionally permissible means for the appointment of inferior officers of the United States, nor do any of the defendant individuals serve on the Committee by virtue of any other office to which they have been so appointed.

Open Market Operations

17. The Federal Reserve banks own a substantial portfolio of United States Government securities. For example, their aggregate holdings of such securities in the month of April, 1979, averaged approximately \$105,618,000,000 (Federal Reserve Bulletin, May 1979, page A4).

18. The Federal Reserve Bank of New York, acting for itself and as an agent for the other Federal Reserve banks, makes substantial purchases and sales of United States Government securities in the open market.

19. The Federal Reserve Bank of New York, acting for itself and as an agent for the other Federal Reserve banks, makes substantial purchases and sales in the open market of foreign currencies or obligations payable in foreign currencies.

20. The open market operations of the Federal Reserve banks have a substantial effect in terms of regulating the value of foreign currencies relative to the currency of the United States.

21. The open market operations of the Federal Reserve banks constitute a major means by which monetary policy affects bank reserves, bank credit, money supply, interest rates, over-all credit conditions, investment, employment, and the value of the currency of the United States.

The Open Market Committee

22. The open market operations of the Federal Reserve banks are by statute subject to the direction and control of the defendant Federal Open Market Committee (Federal Reserve Act, §12A(b); 12 U.S.C. §263(b)), and in fact are conducted subject to and in accordance with such control and direction.

23. The formulation of Federal Reserve System open market policy by the defendant Federal Open Market Committee is and for the foreseeable future will continue to be a substantial and significant element in the determination of overall monetary policy, and as such has and will continue to have a profound effect on the value of the currency of the United States, foreign exchange rates, interest rates, investment, and employment.

24. The defendant Federal Open Market Committee by statute consists of twelve members, of whom seven serve as part of their duties as members of the Board of Governors of the Federal Reserve System, to which they have been appointed by the President by and with the advice and consent of the Senate. The other five are representatives of Federal Reserve banks who have not been so appointed, but who are elected by the boards of directors of such banks. (Federal Reserve Act, §12A(a); 12 U.S.C. §263(a)). The five persons currently serving as Federal Reserve bank representatives are, together with the five persons currently serving as alternates, the defendant individuals in this action. The manner in which they became eligible for election to the Committee is described in ¶7 of this complaint, and the manner in which they were elected is described in ¶11.

25. The seven presidents of Federal Reserve banks who, at any given time, are not currently members of the Federal Open Market Committee nevertheless customarily attend its meetings and express their views and in general act as *de facto* nonvoting members of the Committee.

26. When attending meetings of the Federal Open Market Committee as members (or alternates in the absence of members), the defendant individuals serve and vote on the same basis as those whose membership on the Committee is by virtue of the office they hold as members of the Board of Governors of the Federal Reserve System.

27. When voting as members or alternates on the Federal Open Market Committee, the defendant individuals are not subject to the direction, control, or supervision of any officer of the United States.

28. When voting as members or alternates on the Federal Open Market Committee, the defendant individuals exercise substantial power in the formulation of Federal Reserve System open market policy.

The Injury to the Plaintiff

29. By acting as officers of the United States when their nominations have never been submitted to the Senate, the defendant individuals deprive the plaintiff of his right to vote in determining the advice and consent of the Senate to their appointments.

30. By permitting the defendant individuals to act as officers of the United States when their nominations have never been submitted to the Senate, the defendant agency deprives the plaintiff of his right to vote in determining the advice and consent of the Senate to the appointments of the defendant individuals.

Prayer for Relief

WHEREFORE, the plaintiff prays:

I. That the Court permanently enjoin the defendant individuals from serving as members of the defendant agency, the Federal Open Market Committee; and that the Court permanently enjoin the defendant agency from permitting the defendant individuals to serve as members.

II. As an alternative to the relief sought in the foregoing paragraph I, that the Court permanently enjoin the defendant individuals from voting in, or serving as chairman or vice chairman of, the defendant agency; and that the Court permanently enjoin the defendant agency from permitting the defendant individuals so to vote or serve.

III. That the Court render judgment for the plaintiff for all the costs of this action.

IV. That the Court grant such other and further relief as may be proper.

Respectfully submitted,



Grasty Crews, II
3107 H.O.B. Annex 2
House of Representatives
Washington, D. C. 20515
Telephone: (202)225-3223

Attorney for the plaintiff