



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

TO: Federal Open Market Committee

DATE: July 8, 1985


FROM: Normand Bernard *N.B.*

Attached for your information is a memorandum from Messrs. Bradfield, Ashton, and Siciliano regarding the decision of the U. S. Court of Appeals on the constitutional challenge brought by the Committee for Monetary Reform and numerous other organizations and individuals.

Attachment

July 1, 1985

Federal Open Market Committee

Messrs. Bradfield, Ashton  
and Siciliano 

Committee for Monetary  
Reform et al. v. Board of  
Governors of the Federal Reserve  
System et al. D.C. Cir.  
No. 84-5067 (June 28, 1985)

FOR INFORMATION ONLY

On June 28, 1985, the U.S. Court of Appeals for the District of Columbia Circuit sustained a previous district court ruling that the Committee for Monetary Reform ("CMR") and over 800 private individuals and organizations lack standing to challenge on constitutional grounds various provisions of the Federal Reserve Act establishing the mechanisms through which monetary policy is formulated and implemented by the System.

The suit presented three challenges to the structure of the FOMC.

First, the CMR claimed that the Reserve Bank members of the FOMC may not constitutionally sit on that body because they are not appointed by the President subject to the advice and consent of the Senate.

Second, the CMR claimed that inclusion on the FOMC of members whose selection is ultimately controlled by commercial banks (which vote to elect two-thirds of each Reserve Bank's board of directors) violates due process because significant governmental authority has been delegated to individuals directly interested in the operations of a government agency.

Third, CMR claimed that the statutes which govern the establishment of reserve requirements and the operation of the discount window represent an unconstitutional delegation of the power of Congress to coin

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money because these statutes do not establish meaningful criteria to guide the conduct of the Board, the Reserve Banks, and the FOMC.

The Court of Appeals held that the CMR lacks standing to sue chiefly because its claimed economic injuries cannot fairly be traced to System monetary policy decisions and also because the court concluded that CMR cannot demonstrate that these alleged economic injuries would be redressed by a decision in its favor. Most important, the Court accepted the argument that the courts do not have the "competence and authority" to determine whether the economic injuries complained of were caused by the policies of the FOMC, issues the court felt "are better addressed through political and economic debate over the role of monetary policy in the national economy." CMR has 90 days to decide whether to request the Supreme Court to review the Court of Appeals' decision.<sup>1/</sup>

A pending related suit brought by a United States Senator also challenges the constitutionality of the FOMC's structure. Melcher v. Federal Open Market Committee, D.D.C. No. 84-1335. The Court of Appeals has previously ruled in

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<sup>1/</sup> The Supreme Court refused to review Court of Appeals decisions declining to reach the merits in two previous cases challenging the constitutionality of the FOMC structure. Riegle v. FOMC, 656 F.2d 873 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981); Reuss v. Balles, 584 F.2d 461 (D.C. Cir.), cert. denied, 439 U.S. 997 (1978).

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Riegle v. FOMC that although the courts have the power to hear a lawsuit brought by a senator challenging the composition of the FOMC, the courts should exercise their discretion not to hear such a case, noting, among other things, that private parties could bring such a lawsuit. Senator Melcher will undoubtedly argue that CMR's lack of standing in the recently decided case compels the district court to permit him to challenge the FOMC's structure. In a footnote to its opinion in the CMR case, the Court of Appeals states, "We find it unnecessary to speculate on the appropriate disposition of [the Melcher] case, and accordingly express no opinion on the question, the resolution of which must await another day." Slip Opinion at 13, note 38. Proceedings in Melcher were stayed pending the outcome of the CMR case.