
Law

Melcher challenges Fed's constitutionality

by Edward Spannaus

Senator John Melcher (D-Mont.), a longtime foe of the Federal Reserve System, has recently filed a motion seeking to intervene in an ongoing federal court case challenging the constitutionality of the Federal Reserve System.

The lawsuit into which Melcher is seeking to intervene challenges the Federal Reserve's constitutionality on two grounds:

1) that the statutes which created the Fed represent an unconstitutional delegation of powers under Article I, Section 8 of the U.S. Constitution; and

2) that the Federal Open Market Committee (FOMC) is composed of members who have not been appointed by the President and confirmed by the Senate as required by the "Appointments Clause" (Article II, Section 2) of the Constitution.

Taking on the FOMC

The FOMC consists of 12 members, the 7 members of the Board of Governors of the Federal Reserve System, and 5 members selected by the regional Federal Reserve banks. Melcher's suit charges that the five regional representatives were not nominated by the President and their nominations submitted to the Senate, and yet their functions go far beyond those which may be performed by officers of the United States.

The suit charges that the membership of the FOMC also violates the Fifth Amendment's due process clause, in that the five Reserve Bank representatives have a self-interest in the matters being regulated.

Melcher stated that he is intervening because the FOMC, "one of the most powerful regulatory agencies in the U.S. government," contains members who have not been appointed in the constitutionally prescribed manner. "Therefore, I am asking the court to protect my constitutional right as a member of the U.S. Senate by permanently prohibiting the five current members of the Committee, who were selected by Federal Reserve banks, from serving as members, or alternately, from voting or serving as officers of the Committee."

He added that the FOMC, through its control of the money supply, affects the value of U.S. currency, foreign ex-

change rates, interest rates, investment, and employment throughout the United States.

Melcher's motion to intervene in the suit against the Fed is an attempt to resolve an extremely complicated procedural dilemma created by courts which have lacked the courage to rule on the issue of the Fed's constitutionality. This revolves around the technical concept of "standing," that is, whether the plaintiff has the legal right to bring an action in court. This has been used, in the words of one participating attorney, to enable the courts to "waltz away" from difficult issues they don't want to confront.

Previous challenges to the constitutionality of the Federal Reserve have all faltered on the issue of standing. In the first suit in the present series, Henry Reuss (D-Wisc.), former chairman of the House Banking Committee, was denied standing after suing in his capacity as a U.S. Representative whose impeachment power was impaired because the FOMC members were not properly appointed, and also in his capacity as a bondholder whose economic interests were directly effected by the FOMC's actions. The courts dismissed his claim on the grounds that he could not show sufficient direct injury to himself in either capacity.

The next suit was brought by Sen. Don Riegle (D-Mich.), who claimed that his constitutional right as a senator to "advise and consent" on presidential appointments was impaired by the unconstitutional composition of the FOMC. The Court of Appeals agreed he might have standing, but dismissed it because they said that a private citizen might have better standing—which of course contradicted the Reuss ruling.

Catch-22s finally challenged

Following this, a group of 800 plaintiffs organized by the Committee for Monetary Reform, including homebuilders, contractors, a union, and building trades employees all brought the current suit against the Fed in the U.S. District Court for the District of Columbia. Another judge dismissed this suit on the grounds that the plaintiffs had not shown direct injury as a result of the FOMC's actions. This came despite the fact that many of the plaintiffs had presented sworn evidence of enormous losses of business due to high interest rates, and other plaintiffs are building-trades workers who showed that they were unemployed due to the effects of high interest rates on the construction industry.

Shortly after the Committee for Monetary Reform suit was dismissed by the District Court, Senator Melcher moved to intervene—which now puts the courts in their own "Catch-22" of having to grant standing to either the Senator or to the private citizen plaintiffs if they are to be consistent with previous rulings.

Melcher's motion to intervene came just as the underlying suit was being appealed to the U.S. Court of Appeals. The plaintiffs have now asked the Court of Appeals to remand the case to the District Court so that Melcher's motion to intervene can be heard with it.