

United States Court of Appeals for the Federal Circuit

AMERICAN BANKERS ASSOCIATION,
WASHINGTON FEDERAL, N.A., INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,
Plaintiffs-Appellants

v.

UNITED STATES,
Defendant-Appellee

2018-1341

Appeal from the United States Court of Federal Claims
in No. 1:17-cv-0194-SGB, Senior Judge Susan G. Braden.

Decided: August 8, 2019

STEPHEN JOSEPH OBERMEIER, Wiley Rein LLP, Wash-
ington, DC, argued for plaintiffs-appellants. Also repre-
sented by CLAIRE J. EVANS, MICHAEL E. TONER.

ERIC PETER BRUSKIN, Commercial Litigation Branch,
Civil Division, United States Department of Justice, Wash-
ington, DC, argued for defendant-appellee. Also repre-
sented by JOSEPH H. HUNT, ROBERT E. KIRSCHMAN, JR.,
KENNETH M. DINTZER, CLAUDIA BURKE; KATHERINE H.

WHEATLEY, Board of Governors of the Federal Reserve System, Washington, DC.

Before WALLACH, CHEN, and HUGHES, *Circuit Judges*.

HUGHES, *Circuit Judge*.

This case arises out of legislation amending the statutory rate for dividend payments on Federal Reserve Bank stock. The Federal Reserve Act of 1913 set the dividend rate at six percent per year, which remained in effect until Congress amended the dividend provision in 2016. The amendment effectively reduced the dividend rate for certain stockholder banks from the fixed six percent rate to a lower variable rate. American Bankers Association and Washington Federal, N.A. sued the United States in the Court of Federal Claims, arguing that banks who subscribed to Reserve Bank stock before the amendment are entitled to dividends at the six percent rate. The complaint alleged that, by paying dividends at the amended statutory rate, the United States breached a contractual duty or, in the alternative, effected a Fifth Amendment taking. The trial court dismissed the complaint under Rules of the U.S. Court of Federal Claims 12(b)(6) for failure to state a claim. American Bankers and Washington Federal now appeal. Because the complaint does not allege facts establishing the existence of a contract or an unconstitutional taking, we affirm.

I

A.

We begin with a brief overview of the Federal Reserve System and its statutory origins. The Federal Reserve Act

of 1913, Pub. L. No. 63–43, ch. 6, 38 Stat. 251 (1913),¹ established a system to oversee banking operations and promote greater economic stability. The Federal Reserve System includes the Federal Reserve Board of Governors, *see id.*, §§ 10–11, 38 Stat. 260–63, and twelve regional Reserve Banks, *see id.* § 2, 38 Stat. 251–52. The Board exercises broad regulatory supervision over the Reserve Banks, which serve as banks to the U.S. government and to commercial banks who are members of the Federal Reserve System.

The Act sets forth the conditions under which commercial banks may join the Federal Reserve System. One of the conditions of membership is that member banks must “subscribe” to the stock of their regional Reserve Bank in an amount “equal to six per centum of the paid-up capital stock and surplus of [the] applicant bank” § 5, 38 Stat. 257. Every national bank² is required to join the system and subscribe to Reserve Bank stock. § 2, 38 Stat. 252. Other financial institutions, such as state banks, are permitted but not required to apply for membership and subscribe to stock. § 9, 38 Stat. 259.

Reserve Bank stock is “divided into shares of \$100,” which “shall not be transferred or hypothecated.” § 5, 38 Stat. 257. From 1913 to 2015, the Act provided that “the stockholders of the [Reserve] bank shall be entitled to

¹ The Federal Reserve Act is codified as amended in scattered sections of Chapter 3 of Title 12 of the United States Code. *See* 12 U.S.C. §§ 221–522. This opinion cites to the original 1913 Act, which is the same as the current version except where otherwise noted.

² A national bank refers to a commercial bank chartered by the federal government under the National Bank Act. *See* 12 U.S.C. § 21 et seq.

receive an annual dividend of six per centum on the paid-in capital stock” § 7, 38 Stat 258.

On December 4, 2015, Congress passed the Fixing America’s Surface Transportation Act (FAST Act), which authorized substantial appropriations for surface transportation infrastructure. *See* Pub. L. No. 114–94, 129 Stat. 1312. The FAST Act included an amendment to the statutory dividend rate for Reserve Bank stock owned by member banks with consolidated assets of more than \$10 billion. Under the amended dividend provision, these banks would receive a variable dividend rate equal to the lesser of: (1) the rate of the 10-year Treasury note or (2) six percent. *See* § 32203, 129 Stat. 1739 (codified as amended at 12 U.S.C. § 289(a)(1)).

B.

Prior to 2013, Washington Federal operated as a federally chartered savings and loan association. On May 29, 2013, Washington Federal received approval from the Office of the Comptroller of the Currency to convert to a national bank, contingent on, *inter alia*, Washington Federal applying for membership in the Federal Reserve System.

On July 8, 2013, Washington Federal submitted an application for Reserve Bank stock to the Reserve Bank of San Francisco (BSF). A letter from BSF, dated July 17, 2013, informed Washington Federal that its application and payment for stock had been processed and enclosed an Advice of Holdings for 479,610 shares of BSF stock. The letter further noted that “[d]ividends are paid at the statutory rate of 6 percent per annum, or \$1.50 per share semi-annually.” J.A. 65.

From 2013 to 2015, Washington Federal received dividend payments on its stock at a rate of six percent per year. After the FAST Act took effect on January 1, 2016, Washington Federal received dividends at the rate of the 10-year Treasury note. In 2016, Washington Federal received

dividends totaling \$502,471.53, reflecting an annual rate of approximately two percent.

C.

Washington Federal and American Bankers Association³ filed a complaint against the United States in the Court of Federal Claims on February 9, 2017.⁴ The complaint alleged that, by paying dividends at a rate lower than six percent in 2016, the government breached a contractual duty to member banks that subscribed to Reserve Bank stock before December 4, 2015. The complaint also asserted, in the alternative, that the government's conduct effected a Fifth Amendment taking.

The government filed a motion to dismiss for lack of standing under RCFC 12(b)(1) and failure to state a claim under RCFC 12(b)(6). The Court of Federal Claims determined that American Bankers failed to meet the requirements for associational standing because the damages requested would require individualized proof for each association member. The court found that Washington Federal had standing but dismissed all counts of the complaint under RCFC 12(b)(6) for failure to state a claim. Washington Federal and American Bankers now appeal the court's dismissal of the claims and its standing determination. We have jurisdiction under 28 U.S.C. § 1295(a)(3).

³ American Bankers Association is a national trade association for the banking industry. Its members include Washington Federal, as well as other banks affected by the amendment to the dividend rate, i.e., member banks with more than \$10 billion in consolidated assets.

⁴ The complaint was subsequently amended on April 14, 2017. This opinion refers to the amended complaint unless otherwise stated.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.