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Federal Reserve Board,
Washington, D.C.
Mr. Walter Wyatt, General Counsel.

My dear Mr. Wyatt:

After two oral arguments in the Court of Appeals of the case of L and N Railroad Company v. Federal Reserve Bank of Atlanta (Nashville Branch) and American National Bank of Nashville, Tennessee, that Court on May 21, 1928 entered an order transferring the case to the Supreme Court of Tennessee on the ground that a "constitutional question" was involved, and necessary to the decision of the case. The alleged "constitutional question", as stated by the Court of Appeals, was the power of Congress to delegate to the Federal Reserve Board the authority to promulgate rules and regulations governing Federal reserve banks when acting as clearing houses; and, secondly, whether the Federal Reserve Act, as a matter of construction, conferred on the Federal Reserve Board the authority to issue a regulation of the tenor and character of Regulation J, Series of 1924. The second question, standing alone, and involving merely a matter of statutory construction, would not have defeated the jurisdiction of the Court of Appeals, but as that Court, under the Act creating it, Chapter 100, Acts of 1925, has no jurisdiction of cases involving "constitutional questions", the exclusive jurisdiction concerning which is vested in the Supreme Court of Tennessee, the Court of Appeals, stating that a "constitutional question" was raised by the challenged power of Congress to confer upon executive or administrative boards or commissions authority by regulations to change the general commercial law of a state, transferred the case to the Supreme Court of Tennessee.

In the Supreme Court the whole case will be presented and determined, unless indeed that Court should conclude that the challenged power of Congress presents merely a frivolous or colorable Federal question in which event it will remand the case to the Court of Appeals for determination. As the case, however, will undoubtedly be heard by the Supreme Court of Tennessee on the merits, and regardless of the decision of the Court of Appeals, Mr. Vertrees and I have concluded not to make a motion in the Supreme Court to remand for the reason that if the motion was sustained the case would be remanded to the Court of Appeals, and three or four months elapse before it would be decided by that Court, when it would go to the Supreme Court of Tennessee for final determination. With a view of saving time, we have, therefore, decided not to make a formal motion to remand in the Supreme Court.

We have prepared a supplemental brief which you will understand will be used not as a substitute, but in conjunction with our main printed brief filed in the Court of Appeals when the case is argued before the Supreme Court of Tennessee on June 15, 1928. I enclose herewith a draft of this proposed supplemental brief and invite any suggestions or criticisms which you may feel impelled to make. I will ask you to inform me of any suggestions or criticisms on or before next Wednesday, as this supplemental brief will have to be put in the printer's hands on that date in order that printed copies may be filed in the Supreme Court of Tennessee in accordance with the rules of that Court before June 15, 1928, on which day oral argument will be heard.

I have just received your letter of May twenty-eighth, and agree with you that counsel for Federal reserve banks throughout the United States should, whenever the opportunity presents itself, insist that regulations of the Federal Reserve Board have the force and effect of laws. You will doubtless recall that in the pending case, Mr. Vertrees and I argued and cited authorities in support of this proposition, although as a matter of precaution we pleaded and proved Regulation J as a defence in the pending case.

I thank you for calling my attention to the excerpt from Federal Statutes Annotated dealing with this point.

Please do not hesitate freely to criticize the proposed supplemental brief in any way that may occur to you, for I wish you to be assured in advance that your co-operation, advise and counsel have always been and always will be deeply appreciated by me.

With best regards, I am,

Sincerely yours,

E. J. Smith (signed)

May 30, 1928.