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MUNICIPAL ADVISORS - TENNESSEE

Tennessee Republican Party v. Securities and Exchange Commission

United States Court of Appeals, Sixth Circuit - July 13, 2017 - F.3d - 2017 WL 2979166

Political parties from three states petitioned for review of Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities. Following consolidation, SEC moved to dismiss.

The Court of Appeals held that:

- Injury was not self-evident, as would render proof required for Article III standing superfluous;
- Mere allegations that one individual suffered injury as a result of original rule was insufficient to demonstrate injury stemming from rule's amendment;
- Speculative injury was insufficient for Article III standing; and
- Petitioners lacked organizational standing.

Injury resulting from Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities was not self-evident, as would render proof of injury required to demonstrate Article III standing superfluous. Since petitioners challenging final agency action could put forth evidence of individual municipal advisor professionals who were affected by the rule amendments, there was no inability to specifically identify their injury as would make it self-evident.

Mere allegations that one participant in the municipal securities market stated that he would contribute more than $250 to an official in a future election if Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities did not apply to him, was insufficient to demonstrate injury, as required for Article III standing in political party's suit seeking review of agency's actions, absent evidence that participant was not constrained from contributing to candidates or soliciting contributions for a political party before the amendment became effective.

Political parties petitioning for review of Securities and Exchange Commission's (SEC) amendment to rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities failed to demonstrate Article III standing through citations to the administrative record, or affidavits or other evidence attached to their opening brief, since the only allegations of injury they made concerning their ability to marshal their forces stemmed from effects of the original rule, rather than from the amendments to the rule, which they challenged.

Political party's allegations, that they expected an amendment to Securities and Exchange Commission's (SEC) rule limiting campaign activities of persons who advised city and state governments on issuing municipal securities to cause more individuals to refrain from contributing to their party, were merely speculative, and thus insufficient to demonstrate injury necessary for Article III standing in suit seeking review of agency action; instead, party was required to attest that

the amendment had caused or would imminently cause injury to the party.

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