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PAY-TO-PLAY - LOS FEDERALES

New York Republican State Committee v. Securities and Exchange Commission

United States Court of Appeals, District of Columbia Circuit - June 18, 2019 - F.3d - 2019 WL 2508986

State political parties filed petition for review of Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts.

After one party was dismissed, petition was transferred.

The Court of Appeals held that:

- Party suffered sufficient injury-in-fact to establish standing to challenge rule;
- SEC acted within scope of its statutory authority to uproot pay-to-play corruption in financial markets when it adopted rule;
- SEC did not act arbitrarily and capriciously when it adopted rule; and
- Rule did not violate Free Speech Clause.

State political party suffered sufficient injury-in-fact to establish standing to challenge Securities and Exchange Commission (SEC) rule governing political contributions of Financial Industry Regulatory Authority (FINRA) members who solicited government officials for investment advisory services contracts, even though party was not regulated by challenged rule, where placement agent covered by rule averred that he would solicit contributions for party if rule were no longer in effect.

Securities and Exchange Commission (SEC) acted within scope of its statutory authority to uproot pay-to-play corruption in financial markets when it adopted rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official's electoral campaign or to transition or inaugural expenses of successful candidate, even though Federal Election Campaign Act (FECA), which gave Federal Election Commission (FEC) general authority to regulate political contributions, did not bar contributions from placement agents.

Securities and Exchange Commission (SEC) did not act arbitrarily and capriciously when it adopted rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official's electoral campaign or to transition or inaugural expenses of successful candidate, despite contention that SEC failed to show that rule targeted corruption beyond that already prevented by federal and state laws against bribery or by Federal Election Campaign Act (FECA); pay-to-play corruption addressed by rule encompassed conduct not prohibited by bribery laws, and SEC was aware of several instances in which placement agent's contribution to government official—lawful under FECA—influenced that

official’s decision to award advisory services contract.

Securities and Exchange Commission (SEC) rule prohibiting Financial Industry Regulatory Authority (FINRA) members who acted as placement agents from accepting compensation for soliciting government business from certain candidates and elected officials within two years of having contributed to such official’s electoral campaign or to transition or inaugural expenses of successful candidate was closely drawn to further compelling governmental interest in preventing pay-to-play corruption or appearance of corruption, and thus did not violate Free Speech Clause.

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