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Discord Brews Over SEC Campaign-Finance Rule.

Critics Say 'Pay-to-Play' Regulation Needs to Be Broadened to Include Super PACs; Others Call for Scrapping It

A Securities and Exchange Commission rule designed to limit conflicts of interest in state contracting is becoming less effective amid the rise of super PACs and should be broadened, groups that track campaign finance say.

The SEC's so-called pay-to-play rule, which applies to state officials including governors, could become a prominent factor in the 2016 presidential election given that four or more Republican governors who would be in office during the campaign have said they may run or are thought to be considering a candidacy.

The rule effectively prohibits certain employees of financial-services companies that do—or might do—business with state agencies from contributing to the officials who oversee those agencies. The rule, adopted in 2010, was intended to prevent political contributions from influencing state contracting decisions.

Critics say the SEC rule's effectiveness could be blunted in 2016 by the rise of super PACs, which can raise money without contribution caps but can't coordinate with or give to candidates' campaigns, as well as politically active nonprofit groups. In particular, they point to the increasing number of super PACs that form to support only a single candidate. Critics argue that a contribution to a group that spends money on behalf of a single candidate is akin to giving to the candidate.

Others say the SEC rule should be eliminated, not expanded, with some noting that it creates an advantage for members of Congress, who aren't subject to the rule, over governors in campaign fundraising. Some states have rules that are even more restrictive than the SEC's.

Earlier this year, a federal judge dismissed a lawsuit brought by the state Republican parties of New York and Tennessee challenging the SEC rule on the grounds that it violated free-speech protections.

The SEC declined to comment. Its rule already covers contributions to certain PACs that coordinate with or donate to candidates, but doesn't specifically address super PACs.

"The ability to game these regulations with a super PAC shows that our campaign finance system is more loophole than law these days. The SEC should look into whether there's anything the agency can do to update these rules,'' said Adam Smith, a spokesman for Every Voice, a group that aims to reduce the influence of money in politics.

Craig Holman, a lobbyist for the nonpartisan nonprofit group Public Citizen, which advocates for tighter campaign spending limits, said he might appeal to the SEC to tighten the rules on contributions to single-candidate super PACs from employees covered by the pay-to-play rule.

Several compliance lawyers said their financial-services-industry clients are often reluctant to allow employees to make political contributions even to super PACs, to avoid any possible problems.

Joseph Birkenstock, a campaign-finance lawyer with Sandler Reiff, said he asks clients to give him a full explanation of what strings are attached to a contribution before they give to super PACs, including whether their contribution will allow them new access to a candidate or official.

In 2012, GOP Gov. Rick Perry of Texas was hardest-hit by pay-to-play rules. Officials for his presidential campaign said the restrictions unduly burdened their fundraising but not that of other candidates in the race.

“Had those rules not been in effect for him, we likely would have raised more funds and therefore might have been able to stay in the race longer,” said Ray Sullivan, communications director for the Perry campaign in 2012.

Despite limits on his fundraising on Wall Street, Mr. Perry received a surge of outside support through a cluster of seven super PACs, according to the nonpartisan Center for Responsive Politics. Those super PACs, which only supported Mr. Perry, spent at least $4.3 million on his behalf—about a quarter of what the governor raised for his campaign until he dropped out in early 2012.

In the 2014 elections, 42% of groups that spent more than $100,000 and were allowed to raise money without contribution caps supported a single candidate, according to a report by Public Citizen.

GOP governors who may join the White House race in 2016 include Chris Christie of New Jersey, Bobby Jindal of Louisiana, Scott Walker of Wisconsin and John Kasich of Ohio, among others.

The cost of breaking pay-to-play rules is high: In 2012, Goldman Sachs Group Inc. paid a $12 million settlement after the SEC found an employee had violated the rules by working on the political campaign of a former Massachusetts treasurer while winning bond underwriting business in the state. The firm was also temporarily restricted from underwriting bonds in the state. Goldman didn’t admit or deny the SEC’s findings.

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