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DC Circuit Dismisses Challenge to SEC Rule 206(4)-5

On August 25, 2015, the U.S. Court of Appeals for the District of Columbia Circuit upheld the D.C. District Court's dismissal of a challenge to Securities and Exchange Commission (SEC) pay-to-play Rule 206(4)-5 (the Rule) and found the plaintiffs' claim to be time-barred. The suit was originally filed against the SEC in August 2014 by the New York and Tennessee State Republican Parties. The Rule prohibits investment advisers from providing compensated investment advisory services to government clients for two years after certain political contributions made by the adviser, its PAC, or its covered associates to certain state or local candidates or officials, including a state or local official running for federal office.

The Circuit Court affirmed the District Court's holding that only the Circuit Court has jurisdiction to hear claims against rules under the Investment Advisers Act (the Act). Upon exercising that jurisdiction, it dismissed the suit as time-barred, holding that claims against rules issued under the Act must be filed within 60 days of issuance, even where, as here, the claim raises constitutional issues under the First Amendment. The Circuit Court did not address the plaintiffs' standing, which the District Court had cast doubt upon in its ruling. Additionally, the Circuit Court noted that the plaintiffs could still seek pre-enforcement review by petitioning the SEC for amendment or repeal of the Rule, as authorized by SEC regulations, and then requesting review of a denial of that petition by the court.

The case is *New York Republican State Committee v. SEC*, no. 14-1194.

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