

MSRB Pay-to-Play Challenge Stymied by Sixth Circuit over Standing

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Over the past few years, a few state political party committees have relentlessly sought to block or overturn pay-to-play laws overseen by the Securities and Exchange Commission (SEC). Yesterday, the Sixth Circuit delivered another defeat to an ongoing effort to challenge federal pay-to-play laws.

Last year, [we noted](#) that the Municipal Securities Rulemaking Board (MSRB) had drafted an amendment to its pay-to-play rule, Rule G-37, expanding their scope. Not long after our article, the Tennessee Republican Party, the Georgia Republican Party, and the New York Republican State Committee filed petitions to review the final rule adopting the MSRB's amendments.

The Sixth Circuit dismissed this latest challenge for lack of standing. The result is not entirely surprising in that the petitioners faced a high hurdle: because they challenged the *amendments* to the MSRB's rule, but not Rule G-37 itself, they were required to focus on activity restricted specifically due to the amendments and not the preexisting rule.

Essentially, the Court determined that the parties had not identified any particular person who could have made a contribution under the preexisting MSRB rule and would do so now but for the 2016 amendments. Similarly, the parties were unable to show that their fundraising efforts faced greater challenge post-amendment than under the old rule.

This opinion should not be seen as an endorsement of the substance of the pay-to-play rules. Rather, as with the an [earlier challenge](#) to the SEC's rule, yesterday's opinion from the Sixth Circuit emphasizes the importance of ensuring that the right people file their challenge in the right place at the right time.

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National Law Review, Volume VII, Number 195

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