

Court Dismisses Suit to Compel SEC to Adopt Political Spending Rule

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A complaint to force the SEC to adopt rules requiring public companies to disclose the use of corporate funds for political activities was dismissed by the U.S. District Court for the District of Columbia. The Plaintiff and Citizens for Responsibility and Ethics in Washington (CREW) submitted a petition for rulemaking to the SEC in May 2014, and about a year later sued the SEC under the Administrative Procedure Act (APA) to challenge the agency's inaction as arbitrary, capricious, and contrary to law, as well as to compel the SEC to act.

The Plaintiff claims that without regulation to provide transparency, he cannot determine whether corporate political contributions are in the best interest of companies and therefore is unable to fulfill his duties as a shareholder.

The Court dismissed the allegations that the SEC failed to respond for lack of jurisdiction, as initial APA review rests with the courts of appeals. In addition, the Court stated that an APA claim can only proceed where the plaintiff asserts that an agency failed to take action that it is required to take. The Court dismissed the second allegation that the SEC failed to grant the Plaintiff's rulemaking petition, since the Court determined that the SEC has not actually denied the petition, it has merely failed to respond to it.

Corporate political spending continues to be a hot issue. In December, a rider was inserted into the omnibus spending bill that prohibits the SEC from finalizing, issuing, or implementing any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax-exempt organizations, or dues paid to trade associations until the end of the fiscal year, September 2016. Nonetheless, a group of senators argued in a letter to the SEC that the provision does not prevent the SEC from "discussing, planning, investigating, or developing plans or possible proposals for a rule or regulation relating to the disclosure of political contributions" and urged the SEC to work on a rule.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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