



Supreme Court Fails To Bite At Bulldog And Oxfam America Sues The SEC

BY KEITH PAUL BISHOP ON MAY 18, 2012 IN ADMINISTRATIVE PROCEDURE, SECURITIES LITIGATION

Supreme Court says “no” to Bulldog

In March, I wrote that the Bulldog group of funds had asked the United States Supreme Court to determine the constitutionality of Massachusetts’ ban general solicitations in connection with the offer and sale of unregistered securities. Despite representation by Harvard Law School Professor Laurence H. Tribe and an amicus brief from the Cato Institute, the Supreme Court on Monday denied Bulldog’s petition for certiorari.

Oxfam America Sues the SEC

In a post entitled “Waiting For the SEC . . .”, I wrote about Oxfam America’s threat to sue the SEC for failing to comply with Congress’ mandate to adopt regulations governing disclosures by resource extraction issuers pursuant to Section 1504 of the Dodd-Frank Act. Earlier this week, Oxfam America followed through on its threat by filing this complaint against the SEC in the U.S. District Court in Massachusetts (Oxfam America is headquartered in Boston).

As I mentioned in my earlier post, one hurdle for Oxfam America will be whether it can establish standing. To establish constitutional standing, a plaintiff must generally establish injury, causation and redressability. The complaint alleges that Oxfam America is directly injured both as an investor in issuers and as an organization with a mission to “end the resource curse”. As to causation, Oxfam America alleges that its inability to access information is “directly traceable” to the SEC’s failure to adopt regulations. As to redressability, Oxfam America claims that this injury can only be redressed by a court order. However, the court can’t adopt the rule itself. It can only order the SEC to do so and the SEC has already failed to comply with one order –

Congress' order. As to the question of whether a court order carries more weight than a Congressional order, I'm reminded of the apocryphal quotation attributed to President Andrew Jackson after the Supreme Court's decision in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832): "John Marshall has made his decision; now let him enforce it!"