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## D.C. Circuit rejects Cato Institute lawsuit over SEC 'gag' rule

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The U.S. Circuit Court of Appeals for the D.C. Circuit said a Libertarian think tank cannot block the U.S. Securities and Exchange Commission from enforcing settlements that ban defendants from denying the agency's claims.

A three-judge panel wrote on Tuesday that the Cato Institute had no standing to sue the SEC because, even if it prevailed, that would not release defendants from complying with the orders. The district courts that approved the settlements could still independently enforce them, the court wrote.

Robert McNamara of the Institute for Justice represents Cato and said on Tuesday that the ruling "inexplicably dismisses the whole case" instead of letting the group pursue claims over settlements that were not incorporated into court orders.

He expects to ask the court for reconsideration to clarify that point.

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A spokesperson for the SEC declined to comment on Tuesday.

Cato sued the SEC in January 2019, alleging orders in which defendants agreed not to deny the agency's allegations prevented the group from publishing its critical views.

The lawsuit claimed the SEC rule requiring its settlements to include "gag" provisions chilled Cato's message of skepticism towards government power.

U.S. District Court Judge Amy Berman Jackson dismissed the case last year, saying Cato had failed to allege any "actual impediment" to its ability to publish.

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U.S. Circuit Court Judges Robert Wilkins, Gregory Katsas and Raymond Randolph said on Tuesday that the case should instead be dismissed because it could not bring about the relief Cato sought.

"A merits opinion from this Court holding the no-deny provisions to be in violation of Cato's rights would not bind district courts 'in jurisdictions around the country' from enforcing their own judgments," the panel wrote.

The court rejected Cato's request for a ruling blocking the SEC from enforcing gag provisions in out-of-court settlements, saying its lawsuit had not alleged the defendants whose views Cato sought to publicize had entered such settlements.

Defendants themselves have raised the issue in other courts.

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The 2nd U.S. Circuit Court of Appeals heard arguments in February from former Xerox executive Barry Romeril, who alleges his 2003 settlement with the SEC violates the 1st Amendment.

A federal judge in Texas is also considering a request by Christopher Novinger, who settled fraud claims with the SEC in 2016, to undo the gag provision in his case.

Both cases are ongoing.

The case is Cato v. SEC, U.S. Circuit Court of Appeals for the D.C. Circuit, No. 20-5054.