UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Cato Institute v. SEC

No. 20-5054, United States Court of Appeals for the District of Columbia Circuit (July 6, 2021)

SUMMARY

The D.C. Circuit held that Cato Institute lacked standing to challenge the SEC's policy of including "no-deny" provisions in consent decrees, because the alleged injury—inability to publish speech from SEC defendants bound by such provisions—was not redressable. Even if the SEC were enjoined from enforcing the provisions, the courts that issued the consent decrees could independently enforce them. The court did not reach the First Amendment merits, affirming dismissal on redressability grounds. Key topics: standing, redressability, consent decrees, no-deny provisions, SEC, First Amendment.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	WILKINS; KATSAS; RANDOLPH
JURISDICTION	Federal
DECIDED	July 6, 2021
DOCKET	20-5054
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal for lack of standing
STANDARD OF REVIEW	de novo
PRECEDENTIAL VALUE	published
PARTIES	Cato Institute v. Securities and Exchange Commission, et al.

TOPICS

standing · first amendment · civil procedure · administrative law

QUESTIONS PRESENTED

1. Whether Cato's alleged injury is redressable such that Cato has standing to sue.

HOLDINGS

1. Cato's alleged injury is not redressable because even if the SEC is enjoined, the courts that issued the consent decrees can still enforce the no-deny provisions, and Cato disclaims seeking an order controlling those courts. Therefore, Cato lacks standing.

KEY QUOTATIONS

> *"The fatal stumbling block for Cato is that even assuming that it will prevail on the merits and obtain the relief it seeks, Cato's alleged injury would not be redressed."* (6)

> *"That is because the no-deny provisions that bind the SEC defendants whose speech Cato wishes to publish are contained in consent decrees. "A consent decree no doubt embodies an agreement of the parties and thus in some respects is contractual in nature. But it is an agreement that the parties desire and expect will be reflected in, and be enforceable as, a judicial decree that is subject to the rules generally applicable to other judgments and decrees." Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 378 (1992)."* (6-7)

> *"Violations of court orders are punishable by criminal contempt, see United States v. United Mine Workers, 330 U.S. 258, 294 (1947), and a court may institute criminal contempt proceedings against an SEC defendant who violates a no-deny provision contained in a consent decree issued by that court even absent the SEC's consent, see Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 793–95 (1987); Morrison v. Olson, 487 U.S. 654, 676 (1988)."* (7)

FACTUAL BACKGROUND

Cato Institute challenged the SEC's practice of including no-deny provisions in consent decrees, claiming it violates the First Amendment. Cato had contracted to publish a manuscript written by someone subject to such a consent decree, and wished to host panel discussions with others similarly bound. The SEC defendants were prohibited from denying allegations, thus preventing Cato from publishing their speech. The consent decrees are court orders. The District Court dismissed for lack of standing.

PROCEDURAL HISTORY

The District Court dismissed Cato's complaint for lack of standing, finding that Cato had failed to allege an injury in fact. Cato appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. ITT Cont'l Baking Co., 420 U.S. 223, 235 (1975)
- SEC v. Clifton, 700 F.2d 744, 748 (D.C. Cir. 1983)
- Powell v. McCormack, 395 U.S. 486, 499 (1969)
- United Presbyterian Church in the U.S.A. v. Reagan, 738 F.2d 1375, 1378 (D.C. Cir. 1984)
- Renal Physicians Ass'n v. U.S. Dep't of Health & Human Servs., 489 F.3d 1267, 1273 (D.C. Cir. 2007)
- Am. Nat'l Ins. Co. v. FDIC, 642 F.3d 1137, 1139 (D.C. Cir. 2011)

- Committee on the Judiciary of the U.S. House of Representatives v. McGahn, 968 F.3d 755, 762 (D.C. Cir. 2020) (en banc)
- Davis v. Fed. Election Comm'n, 554 U.S. 724, 734 (2008)
- Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)
- Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 1548 (2016)
- Chamber of Commerce v. EPA, 642 F.3d 192, 200 (D.C. Cir. 2011)
- Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 103 (1998)
- Warth v. Seldin, 422 U.S. 490, 504 (1975)
- Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 378 (1992)
- United States v. United Mine Workers, 330 U.S. 258, 294 (1947)
- Young v. U.S. ex rel. Vuitton et Fils S.A., 481 U.S. 787, 793–95 (1987)
- Morrison v. Olson, 487 U.S. 654, 676 (1988)
- GTE Sylvania, Inc. v. Consumers Union of the U.S., 445 U.S. 375, 386 (1980)
- Overbey v. Mayor of Baltimore, 930 F.3d 215 (4th Cir. 2019)
- Pitt News v. Fisher, 215 F.3d 354 (3d Cir. 2000)
- Pitt News v. Pappert, 379 F.3d 96 (3d Cir. 2004)
- In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig., 928 F.3d 42, 54 (D.C. Cir. 2019)
- Cato Inst. v. SEC, 438 F. Supp. 3d 44, 52 (D.D.C. 2020)