

PACs that are not established exclusively for state and local (*i.e.*, nonfederal) activity to register and report receipts and expenditures to the FEC. These reports are available for free and online from the FEC's Web site. The FEC's Web site provides the ability to view actual financial reports filed by PACs from 1993 to the present. These reports usually reflect contributions to federal campaigns. In addition, some reports reflect state and local campaign activity. The FEC website also provides researchers with the ability to electronically search the records for contributions to PACs by individuals, contributions made or received by a specific committee using various criteria, and contributions received by a specific campaign using a candidate's name, state, or party affiliation. While the information on the FEC website may be of limited use to persons searching for state and local contributions, the FEC website also links to state records offices that receive campaign finance reports and make them publicly available. These state records offices provide a wealth of information about contributions to state and local officials by corporations and their affiliated PACs. In addition, section 527 of the Internal Revenue Code, which provides tax-exempt status for political organizations, including PACs and federal, state and local committees, requires that political organizations that receive \$25,000 or more in gross receipts and wish to be tax exempt under section 527 to file certain informational forms. Currently, it is possible to find additional information about bank PACs on the IRS Web site.

Constitutional Issues

NAST reiterates constitutional issues that the organization raised in 1993 when rule G-37 was first proposed. Specifically, NAST questions whether the rule violates the First Amendment because it is underinclusive or overinclusive, and "whether the rule is justified by a compelling governmental interest and whether it is narrowly tailored to achieve the goal."⁷ NAST also raises again issues of federalism stating that, "[w]hile the scope and subject matter of the rule is the regulation of municipal securities dealers (and related professionals), it is also clear that the rule has a direct

impact on state and local political speech and the conducting of state and local elections." NAST goes on to say that "extending the proposed rule to federal officials would remove the present inequity of having a federal rule which limits the fundraising ability of state and local officials running for national office, while leaving incumbent federal officials free to take political contributions and gifts from the securities industry."

MSRB Response. All of the constitutional issues raised by the NAST comment letter were addressed and rejected in both the SEC's 1994 rule G-37 Approval Order and the United States District Court of Appeals for the District of Columbia Circuit decision in *Blount v. Securities and Exchange Commission*.⁸ In *Blount*, a unanimous panel of the District of Columbia Circuit found that rule G-37 was constitutional under a strict scrutiny analysis by finding that the rule was narrowly tailored to serve a compelling governmental interest.⁹ The court found the purposes of the rule of protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be substantial and compelling. The court also held that rule G-37 self-evidently advanced that interest, noting that,

Underwriter's campaign contributions *self-evidently* create a conflict of interest in state and local officials who have power over municipal securities contracts and a risk that they will award the contracts on the basis of benefit to their campaign chests rather than to the government entity. (Emphasis added)

The court further concluded that "the link between eliminating pay-to-play practices" and the goals of "perfecting the mechanism of a free and open market" were also "self-evident."

Finally, the court held that the rule was "narrowly tailored" to serve these compelling governmental interests.¹⁰

⁸ In 1994, William Blount, the then Chairman of the Alabama Democratic Party and a municipal securities dealer, brought an action against the SEC alleging that rule G-37 was unconstitutional. *Blount v. SEC*, 61 F. 3d 938 (D.C. Cir. 1995), *cert. denied*, 116 S. Ct. 1351 (1996).

⁹ In 1996, the Supreme Court denied Blount's petition for a writ of *certiorari* to review the Court of Appeal's decision.

¹⁰ The court observed that the dealer is barred from engaging in business with the particular issuer for only two years after making the contribution, and from soliciting contributions only during the time it is engaged in or seeking business with the issuer associated with the donee. It noted further that municipal finance professionals are still able to contribute up to \$250 per election to each official for whom they are entitled to vote, without triggering the business bar. Finally it observed that, as interpreted by the SEC, "the municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the

Accordingly, the court concluded that the rule met the strict scrutiny test, noting that the rule is closely drawn and thus avoids unnecessary abridgement of First Amendment rights.¹¹

NAST's federalism concerns were also addressed and rejected in the SEC's 1994 rule G-37 Approval Order. Specifically, the Commission stated that "the proposed rule change is a necessary and appropriate measure to prevent fraudulent and manipulative acts and practices and the appearance of fraud and manipulation in the municipal securities market by eliminating 'pay-to-play' arranged underwritings." The Commission also noted that:

The Commission believes that it is not necessary to extend the proposal to include contributions to candidates for federal office. The proposal addresses abusive political contributions to officials of issuers who may influence the selection of municipal securities underwriters. Because federal office holders do not influence the underwriter selection process, the Commission believes it would not be appropriate to include federal candidates under the rule's requirements. By the same token, the Commission also believes that any resulting hardship to candidates for federal office who are currently local officials is not a reason for eliminating these requirements.¹²

Ballot Referenda

One commentator, Mr. Hartenstein, raised the issue of contributions to ballot measure campaigns. He states that contributions to ballot measure campaigns are an inappropriate influence "in the selection of investment banks and other municipal market participants for the consulting work that is generated by successful local bond measures." He notes that, "[t]his influence is not unlike the pernicious effects that the rule is intended to curb." Mr. Hartenstein states that, "in the ballot measure context, investment banking firms may freely make money contributions in order to directly influence the appointed and elected public officials who decide which firms to hire for the public agency's bond business, without

expression of their views, giving speeches, soliciting votes, writing books, or appearing at fundraising events."

¹¹ The court also specifically rejected *Blount's* claims that rule G-37 is fatally underinclusive, noting that "a rule is struck for underinclusiveness only if it cannot 'fairly be said to advance any genuinely substantial governmental interest.'"

¹² The United States District Court of Appeals for the District of Columbia Circuit in *Blount* also summarily rejected as meritless petitioner's claim that rule G-37 had an effect on states' own election processes and, as such, usurps the states' power to control their own elections.

⁷ NAST continues, "[a]s an example of a potential First Amendment problem, NAST submits that the rule remains vulnerable to attack as being underinclusive in that it does not reach all the municipal securities professionals who participate in municipal securities transactions and who have a comparable incentive and opportunity to engage in unethical and anti-competitive behavior."