

NCLA Petitions Supreme Court to End Decades-Long Suppression of Free Speech by SEC Gag Order

Mar 21, 2022 | [Press Releases](#)

Washington, DC (March 21, 2022) – Settling defendants whom the Securities and Exchange Commission (SEC) has muzzled for decades might get a chance at finally having their voices heard. Today, the New Civil Liberties Alliance filed a [petition](#) for a *writ of certiorari* with the U.S. Supreme Court in *Romeril v. SEC*, seeking a review of the constitutionality of SEC’s “gag orders,” which the Commission requires in virtually all settled cases.

As a result of SEC’s gag policy, Petitioner Barry Romeril, who reached a no-admit-no-deny settlement with the Commission in 2003, has since been unable to discuss his case publicly. Mr. Romeril, who formerly served as Chief Financial Officer at Xerox, desires to speak truthfully about SEC’s case and offer his opinions about the proceedings against him. However, because he does not want to violate an SEC Order that was transformed into a binding federal court order—nor even risk doing so—he has refrained from making statements that might be deemed to “create an impression” that the Complaint in his case lacked a factual basis or was without legal merit.

In the decades since it issued the Gag Rule in 1972, SEC has commenced and settled thousands of cases with judgments containing a lifetime restraint on speech barring the settling defendant from ever even “indirectly” leaving the “impression” that “any allegation” in the agency’s original complaint is “without factual basis.” No act of Congress authorizes, or ever could authorize, such a sweeping speech restriction. This unlawful mechanism allows SEC to obtain something as the price of settlement that it could never win at trial—the coerced silence of the thousands of defendants with whom it settles.

The limitation on Mr. Romeril's ability to criticize the SEC abridges his freedom of speech. It is a quintessential prior restraint, described by the Supreme Court as "the most serious and the least tolerable infringement on First Amendment rights." Moreover, the lifetime nature of the ban, its application to wholly truthful speech, and its content-and viewpoint-discrimination (permitting praise but not criticism of SEC) also violates First Amendment precedent. It is hard to conceive of a better mechanism to systematically silence a powerful agency's critics.

Additionally, the Gag Rule violates the due process of law by requiring defendants to waive their constitutional rights if they settle with the agency, including rights to be heard on the Consent agreement, rights to notice of what speech would violate the Gag Order, and the right to freely share their views of the administrative process they endured at the end of the government's proceedings.

SEC has no lawful—much less compelling—interest in suppressing speech critical of its settled enforcement actions. Orders such as the one imposed on Mr. Romeril stifle public debate and deprive the public of useful information. They require defendants to make the difficult choice to surrender their rights to speak out or to forgo consent settlements with the Commission and face the potentially ruinous costs and risks of litigating to the bitter end. SEC's speech ban has already silenced Mr. Romeril for 18 years. Unless the Supreme Court grants cert. and determines the Gag Rule is unconstitutional, that ban will continue to silence him for the rest of his life.

NCLA released the following statements:

"The Constitution forbids Congress itself from enacting prior restraints, the most serious and least tolerable First Amendment violations. SEC's successful effort to self-confer such power by an unlawful rule must end. The agency's profoundly dangerous 'gag rule' scheme systematically silences criticism of the SEC by those who know its shortcomings best. The Supreme Court should grant cert. and fulfill its duty to ensure that administrative agencies—and the courts—abide by the Constitution."

— **Peggy Little, Senior Litigation Counsel, NCLA**

"SEC has often described its mission and vision as seeking to increase public trust and promote transparency in the markets and its regulation thereof. But the unlawful and coerced silencing of individuals and businesses has hampered public discourse for decades now about how the Commission might better conduct its enforcement efforts. It is past time for this unconstitutional practice to stop."

— **Kara Rollins, Litigation Counsel, NCLA**

For more information visit the case page [here](#). Watch the case video [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

[Download the full document](#)

Recent Posts

Watch: The Weaponization of NLRB Against Ben Domenech's Joke Tweet Raises Free Speech

NCLA Petitions Supreme Court to End Decades-Long Suppression of Free Speech by SEC Gag Order

NCLA Argues Against Unconstitutional and Dangerous Federal Government Control over State Taxes

NCLA Amicus Brief Urges Supreme Court to Confront Religious Inequality in Admin. Policymaking

Energy Security Is National Security

Categories

Adi Dynar

Blog

Brian Rosner

Caleb Kruckenberg

Case Documents

ChevronWatch

COVID-19

Covid-19 Articles

Ethan Beck

Gelane Diamond

Haley Connor

Harriet Hageman

In the News

Jared McClain

Jay Schaefer

Jenin Younes

Jessica Thompson

Jessop v. City of Fresno

John J. Vecchione

Kara Rollins

Lauren Renslow

Lunch & Law Speaker Series

Madeleine Case

Mark Chenoweth

Max Hyams

Michael P. DeGrandis

Multimedia

Nathaniel Lawson

NCLA

Official Case Page

Opinion

Peggy Little

Philip Hamburger

Press Releases

Richard Samp

Sheng Li

Steve Simpson

Uncategorized

USA v. Havis

Wine & Cheesed Speaker Series

Zoie Mestayer

Archives

March 2022

February 2022

January 2022

December 2021

November 2021

October 2021

September 2021

August 2021

July 2021

June 2021

May 2021

April 2021

March 2021

February 2021

January 2021

December 2020

November 2020

October 2020

September 2020

August 2020

July 2020

June 2020

May 2020

April 2020

March 2020

February 2020
January 2020
December 2019
November 2019
October 2019
September 2019
August 2019
July 2019
June 2019
May 2019
April 2019
March 2019
February 2019
January 2019
December 2018
November 2018
October 2018
September 2018
August 2018
July 2018
June 2018
May 2018
April 2018
September 2014



New Civil Liberties Alliance | 1225 19th Street Northwest, Suite 450,
Washington, DC 20036 | (202) 869-5210

2022 © New Civil Liberties Alliance. All Rights Reserved.