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NCLA Asks U.S. Supreme Court to Review and Reject SEC’s Illegal Gag Rule that Censors Americans

Thomas J. Powell, et al. v. Securities and Exchange Commission

Washington, DC (March 16, 2026) – Today, the New Civil Liberties Alliance [asked](#) the Supreme Court to hear [Powell, et al. v. Securities and Exchange Commission](#) and put an end to SEC’s unconstitutional “Gag Rule.” In place for more than 50 years, the Gag Rule forbids every American who settles a regulatory enforcement case with SEC from even truthfully criticizing their cases in public for the rest of their lives. Representing several Americans censored by the Gag Rule who want to tell their stories, and two media outlets that want to report those stories, NCLA urges the Justices to decide that the Gag Rule violates the First Amendment by preventing settling defendants from criticizing the government. NCLA has reteamed with former U.S. Solicitor General Greg Garre and his colleagues from Latham & Watkins on this effort.

The Gag Rule silences NCLA clients Thomas Powell, Cassandra Toroian, Gary Pryor, Joseph Collins, Michelle Silverstein, Rex Scates, [Ray Lucia](#), [Barry Romeril](#), [Christopher Novinger](#), and countless other people nationwide. The Bill of Rights explicitly forbids Congress from abridging Americans’ freedom of speech or press. Yet the SEC, a mere agency, claims power Congress itself lacks. The rule is not narrowly tailored, serves no legitimate or compelling government interest, restricts speech based on content and viewpoint, and restrains future speech, violating the First Amendment. Criticizing this policy, SEC Commissioner Hester Peirce has said it is designed to improperly hide agency actions from the public.

NCLA joined our clients in December 2023 in renewing a petition asking SEC to repeal the Gag Rule. The agency refused over a dissent by Commissioner Peirce. The U.S. Court of Appeals for the Ninth Circuit upheld the SEC’s refusal, opening the door for more agencies to forever silence Americans. The Ninth Circuit decision flouted Supreme Court precedents that robustly protect even convicted criminals’ First Amendment rights to criticize their prosecutions, misread its own precedents, and created conflicts with other federal appeals courts’ decisions. The Supreme Court should take this case and resolve those circuit splits.

The Gag Rule also erases legal due process, forcing settling parties to “consent” to a gag without notice or opportunity for a court or agency hearing on any aspect of their settlement, and it violates the Federal Rules of Civil Procedure, including by incorporating certain settlement terms by reference. It even bans speech that “indirectly creates the impression” that any allegation of SEC’s complaint against the settling party is factually baseless, and it forbids them from letting others say so.

The ruinous price of settling with SEC is a permanent record that you are presumed guilty of all charges. This unconstitutional condition defies Supreme Court and circuit court precedents. It gives government sole control of the narrative and the only public word on all settled cases (*i.e.*, 98% of all SEC cases), incentivizing SEC enforcement abuses. Worse, SEC has unconstitutionally compelled speech by banning settling parties from publicly saying they did not admit to its findings without also saying that they did not deny them.

NCLA released the following statements:

“What kind of government says, ‘We can bring ruinous charges against our citizens imposing millions in defense costs and consuming years of their productive life, *but*, if you want us off your back, the price of peace means you can never contest any allegation we made—even though we proved nothing against you’? No government has a monopoly on the truth. And in America, the First Amendment forbids it.”

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

“The SEC Gag Rule silences the very Americans in the best position to call attention to bad enforcement policies and practices. It is also a forbidden prior restraint on speech. This case provides the Supreme Court with the best possible vehicle to confront this problem and vindicate the First Amendment rights of SEC enforcement targets.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [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.

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