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U.S. Courts Must Not Ignore How the SEC Gag Rule Violates Americans' First Amendment Rights

SEC v. Barry D. Romeril, et al.

Washington, DC (November 18, 2019) — Barry D. Romeril is being held hostage by the U.S. Securities and Exchange Commission's "Gag" Rule—a little-known administrative tool meant to silence people for life regarding any agency case brought against them. The New Civil Liberties Alliance represents Mr. Romeril, a former Chief Financial Officer of Xerox, who after more than 16 years is still silenced by a Consent Order entered into with the SEC in 2003. He is determined to put an end to this unconstitutional practice.

For generations now the SEC has cooked up deals like this that violate the First Amendment. Few other agencies embrace such a practice, but Americans who settle with the SEC mostly out of fear of fighting this administrative Goliath are prohibited from engaging in even truthful speech taking issue with flaws in the SEC's original complaint.

Mr. Romeril faces the threat of reopened and renewed prosecution if he speaks up. NCLA argues that the gag order violates the First Amendment both because it is a forbidden prior restraint on future speech and because Romeril had no ability to waive the rights of the public to hear the truth from him about the Xerox case. In addition, the speech ban serves no valid government interest, as the SEC's wish not to have its enforcement practices criticized is not a legitimate basis for gagging Americans' speech.

NCLA filed a [Motion for Relief from Judgment](#) in May with the U.S. District Court for the Southern District of New York on behalf of Mr. Romeril asking the court to remove the gag order. Today that motion was [denied](#) by Judge Denise Cote for two main reasons. First, she said that he waited too long to file the motion for relief. Second, she said that only a jurisdictional problem—something which Mr. Romeril has not alleged—would justify voiding the judgment against him.

"Judge Cote's decision comes as a surprise. NCLA is confident that the Second Circuit will ultimately correct the glaring deficiencies in the court's ruling. We look forward to a robust challenge to this decision on appeal, especially since the Second Circuit's controlling precedent on prior restraints of speech is quite clear."

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

"The Constitution does not have an expiration date. Barry Romeril is not trying to overturn the judgment against him. He merely asks to be allowed to speak the truth about his case after 16 years. Judge Cote's decision to keep the gag order in place makes her sadly complicit in the SEC's ongoing unconstitutional scheme."

—**Mark Chenoweth, Executive Director and General Counsel, NCLA**

ABOUT NCLA

NCLA is a nonprofit civil rights organization 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. For more information visit us online: **NCLAlegal.org**.

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