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NCLA Asks Court to Overturn SEC's Lifetime Gag on Free Speech

SEC v. Barry D. Romeril, et al.

Washington, DC (July 8, 2019) – The Securities and Exchange Commission's (SEC) "Gag" Rule is a regulation almost unique to the SEC. Since the Rule was created without notice and comment in 1972, it has managed to impact the freedom of speech of hundreds of Americans. Barry D. Romeril, former Chief Financial Officer of the Xerox Corporation, is one person whom this Rule has silenced for life since he entered into a Consent Order with the SEC in 2003. The New Civil Liberties Alliance (NCLA) has filed a reply [memorandum of law](#) in support of its motion for relief from judgment in SEC v. Romeril. Despite the passage of nearly 16 years, Mr. Romeril continues to be bound by the gag order. NCLA has asked the court to remove the gag placed on Mr. Romeril as part of a Consent Order with the SEC because it violates the First Amendment to the U.S. Constitution. The Consent permanently forbids Mr. Romeril from contesting any of the allegations in the Commission's original Complaint against him, regardless of the accuracy of those allegations or the truth of his remarks. He faces the threat of reopened and renewed prosecution even for truthful speech challenging the allegations. 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.

"The Gag Rule has silenced generations of Americans and kept them from criticizing the SEC's enforcement practices. The idea that a powerful administrative agency may force settling parties to surrender future free speech rights—a form of prior restraint that the First Amendment expressly forbids—requires the Southern District of New York's prompt correction." — **Peggy Little, Senior Litigation Counsel, NCLA**

Separately, NCLA [petitioned](#) the SEC to amend the rule in October 2018, contending that the Commission lacks the authority to use the Gag Rule because it directly infringes upon the First Amendment rights of Americans and hides the agency's enforcement practices from public scrutiny.

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.

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