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Media Inquiries: [Judy Pino](mailto:judy.pino@ncla.org), 202-869-5218

Ten Amici Curiae Join NCLA's First Amendment Challenge to SEC's Gag Rule

SEC v. Romeril

Washington, DC (April 21, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group would like to thank four (4) prominent First Amendment scholars and six (6) public interest groups who have filed in support of NCLA's [opening brief](#) at the U.S. Court of Appeals for the Second Circuit. The briefs *amici curiae* urge the Court to decide the case of NCLA client Barry D. Romeril, the former Chief Financial Officer of Xerox, against the U.S. Securities and Exchange Commission (SEC). The appeal seeks reversal of the district court's [decision](#) to deny his [motion for relief from judgment](#) and challenges the constitutionality of a gag order the SEC imposed in a 2003 settlement and consent order.

“Since 1972 the SEC, a mere administrative agency, has been imposing gag orders on Americans who settle their cases with the agency. Those gags prohibit people from speaking publicly about their prosecution, or permitting others to speak in a way that even “creates an impression” that they were not guilty of everything the SEC charged them with. The SEC lacks any authority to seek such gags and courts have no power to impose them. These powerful amicus briefs call for prompt correction of an unconstitutional agency practice that has defied the First Amendment and the rule of law for far too long.”

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

Excerpts from the three briefs *amici curiae* submitted in support of NCLA's opening brief:

“[T]he SEC gag clause prohibits truthful speech and enshrines the SEC's narrative in perpetuity. That is the antithesis of the rights guaranteed by the First Amendment, and this Court should reject the SEC's decades-long project to silence criticism of its actions.”

— [Americans for Prosperity Foundation \(AFP\)](#)

“A more obvious attempt to silence a government critic to “avoid creating” a disfavored public “impression” could scarcely be imagined. To Romeril's door, this ‘wolf comes as a wolf.’ Romeril is not the only one whose doorstep has been darkened by this wolf. For the last forty years, the Commission has systematically coerced ‘thousands’ of defendants into ‘agree[ing]’ to identical gag provisions.”

— [Competitive Enterprise Institute \(CEI\)](#)

“[T]he gag provision places the SEC in an ethically unseemly and constitutionally infirm position. To the extent the SEC is seeking to suppress the disclosure of truthful information, its actions come perilously close to trafficking in hush money... The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”

— [First Amendment Law Scholars, Rodney Smolla, Burt Neuborne, Alan Garfield, Clay Calvert; Reason Foundation; Institute for Justice; Goldwater Institute; Pelican Institute for Public Policy](#)

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.

For more information visit us online at NCLAlegal.org.

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