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NCLA Lawsuit in Texas Seeks to End SEC’s Lifetime Gag Orders that Violate the First Amendment

U.S. Securities and Exchange Commission v. Christopher Novinger, et al.

Washington, DC (June 17, 2021) – In June 2016, Christopher Novinger and the U.S. Securities and Exchange Commission (SEC) reached a settlement of the agency’s claims that he and his company, ICAN Investment Group, LLC (ICAN), violated federal securities law. SEC required Mr. Novinger and ICAN to sign a consent order claiming that he had agreed to be bound forever by a “Gag Order”—an administrative tool meant to silence people with lifetime speech bans related to their prosecutions. For nearly 50 years, SEC has insisted that *all* people who settle their cases with the agency must agree to a gag that violates nearly every free speech doctrine.

Today the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [Motion for Relief from Judgment](#) in the U.S. District Court for the Northern District of Texas on behalf of Mr. Novinger and ICAN, challenging the constitutionality of the SEC Gag Order that continues to hold them—and the truth—hostage. Mr. Novinger simply wants to speak candidly about SEC’s enforcement proceedings without facing the threat of a reopened prosecution.

Mr. Novinger’s Gag Order is broad, all-encompassing, and fails to provide clear notice of what speech it forbids. Worse, the Gag Order never expires. The ban is longer even than a criminal sentence would have been for the charged violation, which is especially relevant here as Mr. Novinger was never criminally charged. Perpetually mandating silence on such unclear terms that forbid him to do what even convicted people have every right to do (*i.e.*, speak about their cases) violates Mr. Novinger’s due process rights.

The Gag Rule violates the First Amendment for a multitude of reasons: 1) it is a forbidden prior restraint on future speech; 2) it is a content-based restriction of speech; 3) it grants SEC unbridled enforcement discretion and silences Mr. Novinger in perpetuity; 4) it forbids truthful speech; 5) it unconstitutionally conditions settlement upon surrender of Americans’ inalienable rights of free speech; 6) it compels speech; and 7) it abridges Americans’ rights of petition long protected by the First Amendment. Any rule that racks up a list of constitutional violations this lengthy compels the conclusion that it could never have been a valid rule in the first place.

And, in fact, it was not. As NCLA points out, SEC created this Rule in 1972 without notice and comment, in violation of the Administrative Procedure Act. SEC dishonestly called it a “Housekeeping Rule.” Such rules cannot bind anyone outside the government, but SEC’s gag orders always bind outside parties. The Gag Rule was void from the day it was snuck into the Federal Register.

NCLA released the following statements:

“SEC is notorious for issuing press releases that instantly destroy careers, reputations, businesses, and lives. It is hard to imagine a policy better designed to suppress the truth about these important matters than SEC’s Gag Rule, which contrives to give the agency the last word and render those it charges powerless to defend themselves in the court of public opinion. Fortunately, our Constitution does not permit that baleful bargain.”

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

“The SEC requires settling defendants to state that they do not deny the SEC’s allegations if they truthfully say they do not admit them. The First Amendment forbids such compelled speech. The Gag Order also requires individuals to impute their own guilt. The Fifth Amendment does not permit such coerced self-condemnation. It is high time for SEC’s enforcement apparatus to be made to work within the confines of the Constitution.”

— **Kara Rollins, Litigation Counsel, 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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