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NCLA Asks Supreme Court to Rein in SEC Practice of Seeking Penalties in Excess of Statutory Caps

Jocelyn M. Murphy, Michael S. Murphy, and Richard C. Gounaud v. Securities and Exchange Commission

Washington, DC (June 26, 2023) – Securities and Exchange Commission (SEC) penalties have exploded in size in recent years, in large part because the agency ignores statutory penalty caps Congress set in 1990. SEC civil penalties have become wildly inconsistent and unpredictable from case to case, depriving regulated parties of any semblance of fair notice about the potential consequences of their behavior. The New Civil Liberties Alliance has filed a [petition](#) for a *writ of certiorari* with the U.S. Supreme Court on behalf of its client Richard Gounaud in *Jocelyn M. Murphy, Michael S. Murphy, and Richard C. Gounaud v. SEC*. NCLA asks the Justices to stop SEC from counting the number of violations in arbitrary ways when seeking penalties, to clarify who must register with SEC as a “broker,” and to uphold jury trial rights when the government seeks to impose punitive sanctions.

Mr. Gounaud was fined more than \$300,000—without a jury trial—for not registering with SEC as a securities broker under the Securities Exchange Act of 1934, a penalty Congress capped below \$10,000. SEC obtained a penalty more than 30 times the statutory cap by convincing the U.S. District Court for the Southern District of California and the U.S. Court of Appeals for the Ninth Circuit to count each month Mr. Gounaud was unregistered as a separate violation. This arbitrary approach has no textual basis in the Securities Exchange Act, obliterates the statutory cap for this strict liability offense, and violates the Excessive Fines Clause of the Eighth Amendment. SEC also convinced these lower courts to adopt a novel interpretation of who must register as a securities broker—one that threatens to require many market participants to register who never before considered themselves brokers.

On behalf of Mr. Gounaud, NCLA is requesting that the Supreme Court review the case and bring much-needed consistency, predictability, and discipline to the assessment of SEC penalties, as well as to the definition of what it means to be a securities broker. The cert petition is joined by Jocelyn Murphy and Michael Sean Murphy, who are separately represented by Robert Knuts of the Sher Tremonte law firm.

NCLA released the following statements:

“The case raises several important, recurring issues in SEC enforcement—first and foremost that SEC statutory penalty caps are routinely manipulated, resulting in wildly inconsistent and unpredictable penalties that vastly exceed those caps and violate the Eighth Amendment.”

— **Russ Ryan, Senior Litigation Counsel, NCLA**

“SEC routinely seeks penalties many times the size of statutory caps established by Congress, employing a wide variety of inconsistent methods to count the total number of violations. When district courts bless such SEC slicing and dicing, they effectively permit the prosecutor to set penalties instead of Congress.”

— **Mark Chenoweth, President and General 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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