



FOR IMMEDIATE RELEASE

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NCLA Renews Ask for SEC to Amend or Revoke Gag Rule on Targets of Settled Enforcement Cases

Re: Renewed Petition for Rulemaking to Amend the Rule Restricting Speech, set forth in 17 C.F.R. § 202.5(e)

Washington, DC (December 20, 2023) – For over five decades, the Securities and Exchange Commission has violated the First Amendment by gagging every American with whom it settles a regulatory enforcement case, forbidding them from uttering even truthful criticism of their cases in public. More than five years ago, the New Civil Liberties Alliance petitioned SEC to abolish or amend its “Gag Rule,” but the agency has ignored that petition and continued its unconstitutional practice. Today, NCLA, its client Christopher Novinger, and former clients Barry Romeril and Ray Lucia filed a [renewed petition](#) demanding an end to this lifetime gag rule and posing the same question U.S. District Judge Ronnie Abrams asked last year: “What is SEC so afraid of?”

SEC enacted the 1972 Gag Rule without notice and comment after falsely framing it as an internal “housekeeping” measure that would not affect third parties. The agency never had statutory authority to implement such a substantive rule, and it bypassed Administrative Procedure Act (APA) requirements to publish, provide notice and allow comment before promulgating a rule binding on third parties. Speech bans must be narrowly tailored, serve a compelling government interest, and adopt the least restrictive means to protect that interest. SEC has never provided a legitimate nor compelling reason for silencing for life all enforcement targets who wish to settle.

By refusing to consider NCLA’s petition for more than five years, SEC has prevented NCLA from challenging the Gag Rule in court, a right enshrined under the APA. The agency thus has effectively nullified the constitutional right to petition the government, which has no meaning if government can simply fail to respond to petitions. NCLA renews this petition so that SEC can no longer elude a Gag Rule challenge via inaction. The longer SEC ignores NCLA’s petition, the more it infringes on the rights of Americans bound by its gag orders, some of whom are currently in their 70s and 80s and hope to finally speak out about the enforcement proceedings they endured.

The Gag Rule is punishing current and former NCLA clients Christopher Novinger, Barry Romeril and Ray Lucia in perpetuity. NCLA represents Mr. Novinger in appealing the gag provisions in his SEC enforcement settlement before the Fifth U.S. Circuit Court of Appeals. SEC has silenced Mr. Romeril with a gag order for more than 20 years. Mr. Lucia settled his case with the agency in 2020 after a successful trip to the U.S. Supreme Court.

SEC’s Gag Rule has drawn prominent judicial criticism. In their 2022 *Novinger v. SEC* opinion, Fifth Circuit Judges Edith Jones and Kyle Duncan said of the gag policy: “A more effective prior restraint is hard to imagine.” In her 2022 *SEC v. Moraes* ruling, District Judge Abrams similarly observed that the policy “raises the specter of violating the unconstitutional conditions doctrine[;]” (2) “has all the hallmarks of a prior restraint on speech[;]” and (3) “is a textbook content or viewpoint-based prohibition on speech.”

The Gag Rule also conceals vital information about SEC enforcement policies. Does SEC strong-arm enforcement targets? Does it over plead complaints to force settling? Has SEC overreached its statutory authority? Are SEC’s theories of violation and threatened penalties sound? Maybe having to answer such questions is exactly why SEC wants to keep enforcement targets silenced, but that’s no reason to allow it to continue violating the Constitution.

NCLA released the following statements:

“The First Amendment’s core function is to protect freedom of expression about government power. SEC’s unlawful arrogation of power to silence criticism by the 98% of enforcement targets who must settle their cases shields virtually all its operations from public scrutiny. NCLA will not rest until this dangerous and anomalous rule is declared unconstitutional.”

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

“SEC has allowed NCLA’s petition to languish for over five years. During that time, it has systematically and unapologetically silenced hundreds, if not thousands of individuals. SEC should either grant our petition and reject its unconstitutional Gag Rule or deny our petition and allow a real court to review the rule on the merits.”

— **Kara Rollins, Litigation Counsel, NCLA**

“SEC can run, but it cannot hide forever. The Commission will have to defend its Gag Rule to a real court soon, which will find—ineluctably—that the rule violates the First Amendment and likely the APA too.”

— **Mark Chenoweth, President and General Counsel, NCLA**

For more information read the petition [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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