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NCLA Asks en Banc Ninth Circuit to Rehear First Amendment Case Seeking to End SEC's 'Gag Rule'

Thomas Joseph Powell, et al. v. United States Securities and Exchange Commission

Washington, DC (September 23, 2025) – The New Civil Liberties Alliance has [petitioned](#) the U.S. Court of Appeals for the Ninth Circuit for *en banc* rehearing in [Powell, et al. v. Securities and Exchange Commission](#), NCLA's lawsuit challenging SEC's refusal to amend its "Gag Rule." NCLA expressed concern that the panel opinion entirely neglected to address the claims on behalf of our press clients (who did not consent to any gag), ignored several petitioners' as-applied claims (which challenged the voluntariness of consent), and let SEC get away with skipping steps when issuing the Rule. The panel decision also treated binding precedent in ways that conflicted with the Supreme Court, misread Ninth Circuit precedent, and created splits with other circuits' law.

The Gag Rule silences NCLA clients Thomas Powell, Cassandra Toroian, Gary Pryor, Joseph Collins, Michelle Silverstein, Rex Scates, and returning clients [Ray Lucia](#), [Barry Romeril](#), and [Christopher Novinger](#). The Ninth Circuit panel failed to address several of NCLA's arguments on their behalf, including the observation that SEC violated the Administrative Procedure Act by failing to publish, provide notice and allow comment before promulgating this rule that binds third parties. The panel opinion also ignored the petitioning Reason Foundation and *The Cape Gazette's* claims that the Gag Rule infringes their right to Freedom of the Press—that is, to hear and report the views SEC enforcement targets wish to express about the agency's flawed cases against them.

This 1972 Rule forbids every American who settles a regulatory enforcement case with SEC from even truthfully criticizing their cases in public for the rest of their lives. SEC ignored NCLA's initial 2018 petition challenging the Gag Rule, only issuing a denial after NCLA filed a [renewed petition](#) in December 2023. A Ninth Circuit panel in *Powell* upheld the Gag Rule last month, skirting well-established court precedents and creating circuit splits.

SEC never had statutory authority to enact the Gag Rule. Congress did not and could not empower SEC to gag anyone, as the First Amendment forbids such prior restraint of future speech. The Gag Rule is not narrowly tailored, does not serve any compelling government interest, and it restricts speech based on content and viewpoint in violation of the First Amendment. Once SEC charges you, the settlement price is a permanent record that you are guilty of all charges. This unconstitutional condition flouts Supreme Court and Ninth Circuit precedents. It gives government sole control over the narrative and the last public word on all settled cases (*i.e.*, 98% of cases).

SEC's Gag Rule and this case raise matters of national importance that the *en banc* Ninth Circuit should resolve. The panel decision opened the door for more agencies to forever silence Americans who settle. Its ruling contradicts Supreme Court decisions that held criminals may not be forbidden to speak about their cases and conflicts with previous Ninth Circuit rulings that forbade agency-favoring speech suppression by the government.

NCLA released the following statements:

"The panel decision puts the SEC in charge of who may criticize the agency. It is a dangerous aberration that puts the Ninth Circuit at odds with controlling Supreme Court and conflicting circuit precedents. The full court should

grant review and bring the SEC in line with all other agencies that robustly regulate Americans without gagging them for life.”

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

“SEC’s Gag Rule is a menace to the First Amendment. The agency passed it over 50 years ago without taking proper steps. The *en banc* court should rehear this case and set aside the Rule on that ground—at the very least.”

— **Mark Chenoweth, President, 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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