

Wiley Files *Amicus* Brief on Behalf of Buckeye Institute to Vacate SEC's Gag Rule

June 27, 2024

Washington, DC – Wiley, a DC-based law firm, filed an *amicus brief* along with The Buckeye Institute, a Columbus, Ohio-based public-interest legal center, in *Powell v. Securities and Exchange Commission*. The brief calls for the U.S. Court of Appeals for the Ninth Circuit to sustain a constitutional challenge to the SEC's gag rule.

Adopted in 1972, the gag rule concerns consent decrees entered when the SEC settles an enforcement action with a defendant. The gag rule directs the SEC to include language in those settlement agreements barring the defendant from publicly contesting the SEC's allegations. Of the hundreds of federal agencies, only a small handful have a rule like this. A group of constitutional scholars have called the rule a "prior restraint on steroids" that is "animated by the government's self-serving desire to shield itself from criticism."

The petitioners submitted a rulemaking petition with the SEC, asking it to amend the rule to eliminate this requirement. But the SEC denied that request. The petitioners now ask the Ninth Circuit to vacate the SEC's denial of their rulemaking petition and order the SEC to amend the gag rule in accordance with their rulemaking petition. The petitioners argue, among other things, that the gag rule violates the First Amendment and exceeds the SEC's statutory authority.

The *amicus* brief highlights the need for judicial review of the gag rule, explains that the rule is reviewable on denial of the rulemaking petition, and supports the petitioners' request to order rulemaking to prevent further deprivations of Americans' core constitutional rights. "Any additional delay," the brief explains, "will give rise to new irreparable First Amendment injury."

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First Amendment/Commercial Speech
Issues and Appeals
Judicial Review of Agency Action
Securities Enforcement and Litigation
White Collar Defense & Government
Investigations

Wiley special counsel Michael J. Showalter, associate Joel S. Nolette, and The Buckeye Institute's attorneys David Tryon and Alex Certo represent The Buckeye Institute.

Read the full brief [here](#).