No. 22-842

In the Supreme Court of the United States

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,
Petitioner,

v.

MARIA T. VULLO,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* FORMER AND CURRENT PROSECUTORS AND REGULATORS IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE[1]

Amici are a bipartisan group of current and former state and federal prosecutors and regulators. Given their experience holding public offices, *amici* know full well that discretionary decisions regarding how to deploy their offices' limited resources invariably express a viewpoint—usually, one that aligns with the preferences of the same voters or appointing authorities who gave *amici* their jobs.

Prosecutors and regulators routinely express viewpoints through exercises of their discretionary authority, and such expressions have historically been immune from judicial review, let alone viewpoint-based challenges under the First Amendment. *Amici* are troubled by the adverse consequences of a ruling in Petitioner's favor, which would stymie prosecutive and regulatory actions at all levels under a deluge of new § 1983 civil claims.

SUMMARY OF ARGUMENT

Enforcement actions do not occur in a vacuum. They are a product of public officials, whether elected or appointed, serving their constituencies' interests. It is no secret that prosecutors and regulators have viewpoints; in fact, publicly stating them is often how these enforcers obtain (or keep) their jobs. Indeed, enforcers' policies stem from specific viewpoints that

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[1] Pursuant to Supreme Court Rule 37.6, *amici* certify that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

resonate with the concerns and preferences of their voters or appointing bodies. At the federal, state, and local levels, prosecutors and regulators—in choosing how to deploy and prioritize use of their limited resources—invariably express a viewpoint. Such exercises of enforcement discretion have historically been immune from judicial review, let alone subject to First Amendment lawsuits alleging viewpoint-based discrimination.

Petitioner's proposed rule would vastly expand First Amendment jurisprudence, enabling targets of enforcement actions to file collateral actions accusing prosecutors and regulators of infringing on free speech based on little else than vague, conclusory allegations. This would chill prosecutorial and regulatory efforts, further constraining the over-taxed resources of enforcers and courts alike. As a result, enforcers could selectively target certain actors, while foregoing charges against others, to avoid the newly created risks of parallel civil suits. A ruling in Petitioner's favor would impair the timely and fair administration of justice, a result that can be avoided by affirming the Second Circuit's well-founded decision below.

ARGUMENT

I. Prosecutors and Regulators Routinely Express Particular Viewpoints Through Their Enforcement Actions and Policies.

While admitting that "[g]overnment officials may of course express their opinions without violating the First Amendment," Petitioner complains here that a regulator exercised her authority consistent with a

particular viewpoint, as if that is remarkable. (Pet. Br., at 16.) Whether elected or appointed, prosecutors and regulators espouse the views of their voters or appointing bodies when deciding how they should wield their enforcement powers. Further, as these officeholders adopt, and publicly voice, positions in response to the dynamic and evolving concerns of their constituencies, differing enforcement strategies enjoy their moment as the policy *du jour*.

For instance, the Department of Justice has—over the past few Administrations—advanced varying viewpoints through alternate prosecution strategies. At one point, it would be "tough on crime," "taking back our neighborhoods one block at a time."[2] Later, it would be "smart on crime," "promot[ing] fairer enforcement of the laws and alleviat[ing] disparate impacts of the criminal justice system," while "ensur[ing] that finite resources are devoted to the most important law enforcement priorities."[3] Then, the DOJ pivoted again, elevating as a "core principle that prosecutors should charge and pursue the most serious, readily provable offense," and rescinding any

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[2] U.S. DEP'T OF JUSTICE, *The Clinton Administration's Law Enforcement Strategy: Combating Crime with Community Policing and Community Prosecution* (Mar. 1999), *available at* https://www.justice.gov/archive/dag/pubdoc/crimestrategy.pdf (last accessed Feb. 15, 2024).

[3] U.S. DEP'T OF JUSTICE, *Smart on Crime—Reforming The Criminal Justice System for the 21st Century* (August 2013), *available at* https://www.justice.gov/sites/default/files/ag/legacy/2013/08/12/smart-on-crime.pdf (last accessed Feb. 15, 2024).

prior contrary policy statements.[4] Currently, the DOJ has committed itself to addressing "disproportionately severe sentences for certain defendants and perceived and actual racial disparities in the criminal justice system" by declining mandatory minimum charges in drug prosecutions unless enumerated aggravating factors exist.[5]

In each iteration, the DOJ (or, more accurately, the Attorney General at the time, speaking on behalf of the DOJ) advanced a viewpoint: that rampant crime had to be addressed by stiff charging and sentencing policies; that the criminal justice system has wrought disproportionate impacts on certain communities, which the DOJ should work to alleviate, not exacerbate; and so on. The discretionary allocation of prosecutorial resources to advance one or another policy served as further expression of that viewpoint.

Similarly, state and local prosecutors—many of them elected—also advance their voters' viewpoints when formulating enforcement strategies or policies. This may include, for example, the decision not to

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[4] Attorney General Jefferson B. Sessions, Memorandum Regarding Department Charging and Sentencing Policy (May 10, 2017), *available at* https://www.justice.gov/archives/opa/press-release/file/965896/download (last accessed Feb. 19, 2024).

[5] Attorney General Merrick B. Garland, Memorandum on Additional Department Policies Regarding Charging, Pleas, and Sentencing in Drug Cases (Dec. 16, 2022), *available at* https://www.justice.gov/d9/2022-12/attorney_general_memorandum__additional_department_policies_regarding_charges_pleas_and_sentencing_in_drug_cases.pdf (last accessed Feb. 15, 2024).

prosecute "quality-of-life crimes," such as "public camping, offering or soliciting sex, public urination, blocking a sidewalk, etc.," based on a viewpoint that communities are over-policed.[6] Or it may involve increased efforts to investigate and prosecute "wage theft and other forms of worker harassment and exploitation" stemming from a belief that "individuals and companies that cheat their workers" must be held to account.[7]

Regulators are no different. To cite a recent example, the SEC—while attempting to discharge its mandate of protecting investors—has taken different approaches to regulating the cryptocurrency markets, based on differing viewpoints of its Chair at the time. One strategy includes informing investors about the potential risks associated with crypto investments, while deferring most oversight over crypto trading platforms to state regulators.[8] An alternate strategy,

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[6] Recent Election, San Francisco District Attorney Chesa Boudin Recalled, 136 Harv. L. Rev. 1740, 1741 & n. 12 (2023).

[7] Manhattan District Attorney's Office, "'Worker Protection Unit' to Combat Wage Theft, Protect New Yorkers From Unsafe Work Conditions" (Feb. 16, 2023), *available at* https://manhattanda.org/d-a-bragg-announces-creation-of-offices-first-worker-protection-unit-to-combat-wage-theft-protect-new-yorkers-from-unsafe-work-conditions/ (last accessed Feb. 15, 2024).

[8] *See* Chairman Jay Clayton's Testimony before the United States Senate Committee on Banking, Housing, and Urban Affairs (Feb. 6, 2018), *available at* https://www.sec.gov/news/testimony/testimony-virtual-currencies-oversight-role-us-securities-and-exchange-commission (last accessed Feb. 21, 2024).

more bullish about direct federal oversight, takes the position that "the vast majority of crypto tokens are securities," and that "[c]rypto investors should benefit from compliance with the same [securities] laws * * * laid out to protect against fraud, manipulation, front-running, wash sales, and other misconduct."[9] These differing enforcement policies are direct expressions of viewpoints. So, too, is the recent increase in FTC civil enforcement actions targeting companies whose employment agreements have non-compete clauses, reflecting the viewpoint (as articulated by the current FTC Chair) that such provisions "can block workers from securing higher wages and prevent businesses from being able to compete."[10]

In short, that prosecutors or regulators—at the federal, state, or local levels—would advance specific viewpoints through their discretionary enforcement policies or decisions is entirely unremarkable. These "viewpoints," and their expression through different enforcement priorities or actions, reflect the reality that prosecutors or regulators have limited resources.

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[9] *See* Testimony of Chair Gary Gensler before the United States House of Representatives Committee on Financial Services (Apr. 18, 2023), *available at* https://www.sec.gov/news/testimony/gensler-testimony-house-financial-services-041823 (last accessed Feb. 21, 2024).

[10] Press Release, FEDERAL TRADE COMM'N, "FTC Cracks Down on Companies That Impose Harmful Noncompete Restrictions on Thousands of Workers," *available at* https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-cracks-down-companies-impose-harmful-noncompete-restrictions-thousands-workers (last accessed Feb. 19, 2024).

How to deploy those resources is a critical aspect of prosecutorial discretion, which has been "long * * * regarded as the special province of the Executive Branch," and thus immune from judicial review, "insomuch as it is the Executive who is charged by the Constitution to 'take care that the Laws be faithfully executed.'" *Heckler v. Chaney*, 470 U.S. 821, 832 (1985) (quoting U.S. Const., Art. II, § 3).

Against this backdrop, "when the government speaks for itself"—*e.g.*, by exercising prosecutorial or regulatory discretion in a particular way—"the First Amendment does not demand airtime for all views. After all, the government must be able to 'promote a program' or 'espouse a policy' in order to function."[11] To that end, "[t]he Constitution * * * relies first and foremost on the ballot box, not on rules against viewpoint discrimination, to check the government when it speaks." [12]

Here, as detailed below, Petitioner seeks to bypass the ballot box, collaterally attacking the discretionary enforcement actions of a public regulator. Petitioner's approach, if sanctioned by this Court, would create a playbook for future litigants to siderail well-founded enforcement actions—while attacking the prosecutors or regulators that bring

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[11] *Shurtleff v. City of Boston, Ma.*, 596 U.S. 243, 247–48 (2022) (quoting *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200, 208 (2015)).

[12] *Id.* at 252.

them—based on little more than vague (even fantastical) allegations of viewpoint discrimination.

II. A Ruling in Petitioner's Favor Would Have a Chilling Effect on Prosecutorial and Regulatory Actions.

Much like its complaint—which the Second Circuit noted was replete with "conclusory allegations that [Respondent]'s statements and actions were 'threatening' and 'coercive'"[13]—Petitioner's contention that Respondent's "enforcement actions * * * signaled coercion aimed at suppressing protected speech" rests on speculation and innuendo. (Pet. Br., at 32.) What's more, allowing Respondent's enforcement decisions—which targeted violations of New York law that fell squarely within Respondent's regulatory authority—to be subjected to First Amendment scrutiny, as Petitioner advocates, sets a dangerous precedent. A ruling in Petitioner's favor would open the floodgates to First Amendment litigation, providing the targets of enforcement actions a new avenue to attack routine, and lawful, exercises of prosecutorial or regulatory discretion at all levels.

Under Petitioner's suggested approach, so long as a criminal defendant or regulated entity can craft a facially viable connection between an enforcement action and some type of protected speech, they can file a civil lawsuit against the prosecutor or regulator, alleging a First Amendment violation. The adverse consequences of such a scheme are varied in scope,

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[13] *Nat'l Rifle Ass'n of Am. v. Vullo*, 49 F.4th 700, 708 n.7 (2d Cir. 2022).

and predictable in outcome. First, enforcers will have to weigh the risks of parallel First Amendment litigation *every time* they bring an action against a criminal defendant or regulated entity. Second, the onslaught of First Amendment lawsuits will burden the already limited time and resources of government officials discharging enforcement functions, draining taxpayer funds earmarked for those functions with new (and unnecessary) litigation costs; even lawsuits deemed meritless through orders of dismissal or summary judgment would incur substantial costs and resources related to discovery, motion practice, and other phases of litigation. Third, these increased litigation risks will discourage enforcers from discharging their mandates of investigating and pursuing violations of the law, simply to stem the tide of First Amendment claims. And fourth, the deluge of First Amendment lawsuits will further strain courts at the federal, state, and local level, adding to judges' overcrowded dockets and delaying the timely administration of justice. In sum, vastly expanding the First Amendment's reach, as Petitioner advocates, will further drain the already overburdened resources of prosecutors, regulators, and the judiciary.

Typically, if the facts and law are in support, prosecutors and regulators are free to take action against alleged illegal activity without fear of First Amendment litigation. Not so under Petitioner's proposed regime. In Petitioner's view, persons or entities that are outspoken on issues wholly unrelated to any illegal conduct could bring civil claims against prosecutors or regulators discharging their ordinary duties. Here, for instance, the regulatory actions at

issue were directed against private insurers who violated New York state law—not Petitioner. Despite this, Petitioner conflates those enforcement measures with discrimination against its own viewpoints, claiming Respondent attempted to punish Petitioner's speech "indirectly." This new and unprecedented weaponization of First Amendment liability would not be cabined to parties like Petitioner who allege "indirect" coercion. If adopted, Petitioner's proposed rule would allow targets of investigations, prosecutions, and regulatory actions to claim—based on little else than conclusory allegations—that any enforcement actions brought against them are "direct" coercion, aimed at stifling their protected speech. Such a rule would chill prosecutorial and regulatory actions from high-profile cases to even day-to-day enforcement matters.

Take, for example, the federal prosecutions of a vocal critic of the Administration.[14] Suppose the DOJ

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[14] *See, e.g.*, Michael Avenatti, *Michael Avenatti: The Case for Indicting the President*, N.Y. Times, September 13, 2018, *available at* https://www.nytimes.com/2018/09/13/opinion/michael-avenatti-trump-indictment-stormy-daniels.html?searchResultPosition=34 (last accessed February 14, 2024); Emma Brown and Beth Reinhard, *Michael Avenatti is using Trump tactics to battle Trump, a strategy that comes with risks*, May 14, 2018, *available at* https://www.washingtonpost.com/politics/michael-avenatti-is-using-trump-tactics-to-battle-trump-some-say-that-may-hurt-his-client-stormy-daniels/2018/05/14/6ea957b2-553a-11e8-a551-5b648abe29ef_story.html (last accessed February 14, 2024); Jack Holmes, *Michael Avenatti: Trump is Afraid to Tweet At Me*, Esquire, June 1, 2018, *available at* https://www.esquire.com/news-politics/a21048894/michael-avenatti-interview-trump-afraid-of-me/ (last accessed February 14, 2024).

seeks indictments against this person, but the charges have nothing to do with his critiques of the Administration. Rather, the charges relate to the defendant (a lawyer) taking out fraudulent loans, pocketing his clients' settlement payments, and extorting opposing parties by promising to settle claims in exchange for payments.[15] Under Petitioner's proposed rule, the defendant would have a facially valid First Amendment claim against the prosecutors who brought those charges because he could *allege* that his indictments were government coercion, intended to silence his critiques of the Administration.

Similarly, as of December 2023, there have been over one thousand arrests arising out of the January 6th Capitol riots, for offenses ranging from simple misdemeanors to felony conspiracies.[16] Many of the charged defendants publicly stated their beliefs that the 2020 Presidential "election was stolen"; their prosecutions, however, were not based on this viewpoint. Rather, the charges relate to breach of the Capitol grounds, trespassing on federal land, assaults

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[15] *See* Indictment, *United States v. Michael John Avenatti*, Case No. 8:19-cr-00061-JVS (C.D. Cal., Apr. 10, 2019), Dkt. No. 16; Superseding Indictment, *United States v. Michael Avenatti*, Case No. 1:19-cr-00373-PGG (S.D.N.Y., Nov. 13, 2019), Dkt. No. 72; Indictment, *United States v. Michael Avenatti*, Case No. 1:19-cr-00374-JMF (S.D.N.Y., May 22, 2019), Dkt. No. 1.

[16] Alan Feuer and Molly Cook Escobar, *The Jan. 6 Riot Inquiry So Far: Three Years, Hundreds of Prison Sentences*, N.Y. Times, Jan. 3, 2024, *available at* https://www.nytimes.com/interactive/2024/01/04/us/january-6-capitol-trump-investigation.html (last accessed February 14, 2024).

against federal police, and other clear-cut criminal acts.[17] Despite this, multiple defendants have filed (so far, unsuccessful) motions to dismiss their charges on First Amendment grounds.

These motions have invariably been denied, on the rationale that, even if their conduct were protected by the First Amendment, "applying [the statutes implicated in the indictment] to Defendants imposes no more than an incidental limitation on First Amendment freedoms, if even that."[18] Under Petitioner's proposed rule, however, those decisions would be revisited and—more critically—potentially spawn their own series of parallel First Amendment coercion cases under § 1983. Even more concerning, the government's ability to protect its property would be significantly diminished, as every person who damaged government property during a protest would be able to resist charges by claiming First Amendment protection under Petitioner's rule.

The threat of weaponized First Amendment litigation under Petitioner's proposed approach is just as real in the regulatory context. For instance, if the EPA were to take enforcement action against a climate-change activist who, as an act of protest, dumps hazardous waste onto protected federal lands, the protestor would have an avenue to pursue First Amendment coercion claims against the EPA. It would no longer matter that this enforcement action

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[17] *Id.*

[18] *See, e.g.*, *United States v. Nordean, et al.*, 579 F. Supp. 3d 28, 52–54 (D.D.C. 2021).

falls directly within the ambit of the EPA's regulatory mandate and would be based on facts completely independent of the protestor's views on climate change. The protestor, under Petitioner's proposed rule, could claim "direct" coercion, arguing that the EPA's regulatory actions were aimed at silencing his comments on climate change. Consider, also, a criminal or regulatory action against a person selling misbranded or mislabeled medications as alleged "cures" for COVID-19, who happens to be a vocal anti-vaccine activist. Like the above examples, any regulatory enforcement or criminal action against this individual would have nothing to do with his expressed viewpoints and everything to do with his violations of law. Yet, under Petitioner's proposed rule, this individual would have an avenue to claim First Amendment coercion in separate civil litigation, arguing that the enforcement action aims to silence his anti-vaccine speech.

Outside of these high-stakes circumstances, under Petitioner's rule, *any* run-of-the-mill, day-to-day action by *any* regulator could be subject to costly, time- and labor-intensive parallel civil litigation. For example, if a CEO of a bank writes a blog post criticizing the SEC, and the SEC later initiates unrelated regulatory action for improper filings, the bank and the CEO would be able to initiate a parallel suit for First Amendment coercion. Under Petitioner's proposed rule, the coincidence of timing between the CEO's speech and the SEC's enforcement action would be enough to state a viable First Amendment claim, notwithstanding the merits of the enforcement action that has—on its face—nothing to do with speech. The

above pattern repeats itself in this case; Respondent's enforcement actions targeted insurance products that were unlawful under New York law, for reasons *completely unrelated* to Petitioner's viewpoint of public advocacy. And yet, under Petitioner's rule, every time an enforcer pursues action supported by the facts and evidence, they will need to consider the potential for a criminal defendant or regulated entity to bring a separate First Amendment suit against them. Every tier of law enforcement and regulation would be faced with similar choices—enforce the laws as written and risk litigation, or abdicate these enforcement duties simply to avoid such risks.

These chilling effects would extend further, to prosecutors' and regulators' policymaking function. Under Petitioner's proposed rule, any past policy statements by enforcers could be cited by litigants to stymie later enforcement actions. Mindful of this, prosecutors and regulators will likely silence themselves, failing to voice policy positions that fall within the ordinary scope of their duties, simply to avoid the risk that those public statements could be quoted in later civil complaints, forming the basis of First Amendment coercion claims. This, in turn, would frustrate enforcers' ability to connect with their constituencies, convincing their voters or appointing bodies—through public expression of their own policy viewpoints—why they should get, or keep, their jobs.

The consequences of a ruling in Petitioner's favor would, moreover, burden more than just overworked prosecutors and regulators—the influx of § 1983 civil actions challenging cases on First

Amendment grounds would impose a significant new drain on the federal judiciary. In the 12-month period ending March 31, 2023, the U.S. District Courts had close to 600,000 civil cases pending, with over 284,000 new civil cases filed.[19] The Courts of Appeals saw over 40,000 cases added to the over 32,000 pending cases in the same timeframe.[20] Under Petitioner's rule, this case load would increase significantly. Many criminal actions (68,950 in federal courts, alone, in the period referenced above) [21] could potentially spawn new parallel civil suits in District Court, to say nothing of the civil cases arising out of regulatory actions by administrative agencies. Further, when accounting for the inevitable parallel civil litigation arising out of state criminal and regulatory cases, these numbers would increase astronomically. Indeed, in 2022, there were over 10 million criminal cases filed in state courts nationwide.[22] If even one percent of these cases resulted in parallel federal First Amendment litigation, that would be an additional 100,000 cases added to the federal courts' already significant case load, which, in turn, would require state enforcers to

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19 *Judicial Caseload Indicators – Federal Judicial Caseload Statistics 2023*, United States Courts, https://www.uscourts.gov/judicial-caseload-indicators-federal-judicial-caseload-statistics-2023 (last accessed February 14, 2024).

20 *Id.*

21 *See id.*

22 *Trial Court Caseload Overview – Total Criminal*, Court Statistics Project, https://www.courtstatistics.org/court-statistics/interactive-caseload-data-displays/csp-stat-nav-cards-first-row/csp-stat-overview (last accessed February 14, 2024).

litigate these parallel federal civil suits in tandem with the underlying state-court actions.

Under existing immunity jurisprudence, these types of cases are often dismissed in short order before they become an excessive drain on judicial resources. Petitioner's rule, however, would not only lead to an increase in cases, but erode traditional immunity protections and the presumption of regularity behind enforcement actions, meaning that those cases will often proceed past the motion-to-dismiss stage, thus increasing by orders of magnitude the time, effort, and expenses needed to resolve them.

This influx of unprecedent civil litigation would be a significant drain on prosecutorial, regulatory, and judicial resources at all levels nationwide. It would severely impede regulation and enforcement of laws as written. But beyond the deluge of parallel civil suits, Petitioner's proposed rule would also discourage investigations or prosecutions based on the identity or publicly stated viewpoints of the targets, and, most concerningly, lead to potentially selective enforcement practices, as noted below.

III. A Ruling in Petitioner's Favor Would Lead to Disparate Enforcement of Laws.

Targeting specific crimes, practices, or conduct for enforcement actions—consistent with the views of voters or appointing authorities—is within the nature of prosecutive or regulatory work. Once a policy is set, however, it is the enforcer's obligation to discharge it

"without fear or favor," treating like cases alike.[23] Yet the hobbling of prosecutions and regulatory action discussed above will almost certainly lead to the disparate and selective enforcement of laws. Further, targets with the financial means to file parallel civil suits would have a new, and disproportionate, advantage to challenge enforcement actions against them compared to indigent parties.

Before Petitioner's proposed expansion of First Amendment coercion principles, the examples of prosecutions or regulatory actions listed above would have been routinely pursued if the evidence supported them. Under Petitioner's rule, however, enforcers would be forced to stop and consider any unrelated First Amendment activity of investigative targets and the associated threat of parallel civil litigation before performing their duty to enforce the laws as written. This could lead to the selective non-prosecution of persons or entities that publicly state controversial views to avoid the threat of baseless (yet costly) civil litigation.

Take, for example, two attorneys engaged in the same fraud against their clients; two individuals who assaulted police officers while trespassing on federal land; or two charlatans peddling false "cures" for COVID-19. Ordinarily, if enforcers decided to deploy their resources against these individuals, they should be targeted equally. Under Petitioner's rule, however, enforcers would be forced to weigh the risks of parallel civil litigation if any individual among the above pairs

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[23] ABA Standards for Criminal Justice (3d ed. 2013), § 26-2.15, at 176 (cmt.).

made public statements that the enforcement actions could be deemed—even facially—to suppress. What's more, prosecutors and regulators may be put in the untenable position of foregoing action against one of two equally situated targets, to avoid the risk of First Amendment civil lawsuits and their attendant drain on the enforcers' already limited resources.

This disparate enforcement of laws is anathema to *amici,* and to the oaths they each swore to enforce the law "without fear or favor" when taking on their offices, past or present. Yet it is the logical endpoint of Petitioner's proposed rule.

In sum, this Court should not upend decades of First Amendment jurisprudence, based on little else than *allegations* in a civil complaint, which the Second Circuit rightly noted were conclusory. Respondent was entitled to state her viewpoints. She was entitled to take enforcement action consistent with those viewpoints, as prosecutors and regulators nationwide routinely do. The only question is whether those enforcement actions, which did not even target Petitioner—let alone its viewpoints or speech—were supported by the facts and the law. They were. That should end this Court's inquiry.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

Respectfully Submitted,

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APPENDIX

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2. **Ramin Fatehi**, Commonwealth's Attorney, City of Norfolk, Virginia.

3. **George Gascón**, District Attorney, Los Angeles, California.

4. **Eli Savit**, Prosecuting Attorney, Washtenaw County, Michigan.

5. **Mike Schmidt**, District Attorney, Multnomah County, Oregon.

6. **Cyrus Vance**, Partner, Baker McKenzie, and former District Attorney of New York County, New York.

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[1] The views expressed herein do not necessarily reflect the views of the institutions with which *Amici* are or have been affiliated.