No. 25-1100

IN THE

Supreme Court of the United States

THOMAS J. POWELL, ET AL.,
Petitioners,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE FORMER SECURITIES AND EXCHANGE COMMISSION ATTORNEYS IN SUPPORT OF PETITIONER

NICOLAS MORGAN
INVESTOR CHOICE ADVOCATES NETWORK
453 S. Spring Street, Suite 400
Los Angeles, CA 90013
(310) 849-0384
nicolas.morgan@icanlaw.org

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE[1]

Amici curiae are former attorneys and senior officials of the Securities and Exchange Commission ("SEC" or "Commission"). During their careers at the SEC, amici worked to promote transparency in the capital markets—a cornerstone of the Commission's mission and the foundation upon which investor confidence and market integrity rest. Amici have a direct and abiding interest in how the Commission exercises its enforcement authority and, in particular, whether that authority is exercised in a manner consistent with the transparency principles the SEC exists to advance.

The SEC's so-called "Gag Rule," 17 C.F.R. § 202.5(e), stands in direct contradiction to those transparency principles. By conditioning settlement on a defendant's agreement never to publicly deny—directly or indirectly—any allegation the SEC has made against them, the Gag Rule imposes a lifetime prior restraint on speech and buries information that may be material to the very investors and markets the Commission exists to protect. The rule does not promote transparency; it enforces opacity. It does not safeguard the integrity of the markets; it shields the Commission's own enforcement record from scrutiny. Amici submit this brief because the Gag Rule is fundamentally at odds with the transparency mission they

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[1] Pursuant to this Court's Rule 37.6, counsel for amici curiae state that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission. Pursuant to this Court's Rule 37.2, counsel for amici curiae has provided timely notice of intent to file this brief to counsel for all parties. A list of amici and their prior institutional affiliations, provided for identification purposes only, is set forth in the Appendix to this brief.

spent their careers advancing, and because this Court's review is urgently needed to address a rule that has silenced thousands of market participants for more than fifty years.

SUMMARY OF ARGUMENT

Congress built the federal securities laws on a single organizing principle: sunlight. Since 1933, Congress has made it unlawful for any person to obtain money or property by means of "any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading[.]" Securities Act § 17(a)(2), 15 U.S.C. § 77q(a)(2). Congress went further still in Section 11(a) of the Securities Act, imposing strict liability for registration statements that "[omit] to state a material fact required to be stated therein," 15 U.S.C. § 77k(a)—a recognition that some omissions are so harmful to investors that they warrant liability without proof of intent. And when the SEC implemented the antifraud mandate Congress granted in Exchange Act § 10(b), it promulgated Rule 10b-5, which tracks § 17(a)'s language word for word. This Court recently confirmed that the half-truth prohibition at the core of these provisions—the rule that a speaker may not make "representations that state the truth only so far as it goes, while omitting critical qualifying information"—reflects the enduring congressional judgment that incomplete disclosure is a form of fraud. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263 (2024) (quoting *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 188 (2016)). The SEC has enforced this mandate aggressively, successfully prosecuting private parties for failing to make adequate disclosure

about their own litigation and settlements. *See, e.g.*, *SEC v. Yuen*, 2006 WL 1390828 (C.D. Cal. Mar. 16, 2006), *remedies granted*, 2006 WL 1390837 (C.D. Cal. May 8, 2006) (SEC charged CEO with securities fraud for overstating company revenues by, among other things, mischaracterizing a litigation settlement as a purely licensing arrangement while concealing a $17.5 million prepaid advertising component). The Commission cannot credibly demand full disclosure from private parties about their litigation while exempting its own enforcement record from the same standard.

The SEC's Gag Rule, 17 C.F.R. § 202.5(e), inverts Congress's mandate. By conditioning settlement on a defendant's agreement never to deny—directly or indirectly, and for the rest of his or her life—any allegation in the SEC's complaint, the Gag Rule compels precisely the kind of omission Congress has repeatedly condemned. An SEC enforcement complaint is a one-sided charging document: written by one party, tested by no court, and stripped of every qualifying fact, contextual nuance, and affirmative defense that a defendant might offer. When the Gag Rule suppresses those facts permanently, the SEC's press release—which repeats and amplifies the complaint's unproven allegations as established truth—becomes a textbook half-truth: a statement that goes only so far as the SEC wishes it to go, while the "critical qualifying information" that would complete the picture is withheld by agency fiat. *Macquarie*, 601 U.S. at 263 (quoting *Escobar*, 579 U.S. at 188). That Congress made such omissions unlawful in 1933, and that the SEC built its own antifraud program on the same principle, makes the Gag Rule not merely ill-advised but fundamentally inconsistent with the statutory framework the Commission exists to enforce.

The asymmetry the Gag Rule creates is stark and self-serving. Defendants who take the SEC to trial and prevail — or even lose — retain every right the First Amendment and the adversarial process afford them: to present exculpatory evidence, contest the agency's allegations in open court, and speak freely and fully about their experience afterward. Market participants receive the benefit of that complete record. But the 98% who settle — not because they concede guilt, but because the cost of resistance is financially ruinous and the SEC's structural advantages make resistance nearly futile — are gagged for life, and the market receives only the SEC's one-sided account. From 2017 to 2023 alone, the SEC silenced an estimated 2,700 individuals and entities. Pet. 31. The cumulative effect is a systematic deprivation of material information from the very markets Congress charged the SEC to protect — an information vacuum filled exclusively by the agency's own uncontested press releases. That is the opposite of the transparency Congress mandated, and it is precisely the kind of market-distorting omission the securities laws exist to prevent.

The petition should be granted.

ARGUMENT

As former SEC enforcement attorneys, amici are well positioned to address the central irony this case presents: the agency that Congress charged with stamping out misleading omissions in the capital markets has for fifty years operated the most sweeping compelled-omission regime in federal regulatory practice. The sections below trace that irony from its statutory roots — the disclosure mandates Congress enacted in 1933 and has reinforced ever since — through the mechanics of the Gag Rule's inversion of those

mandates, and finally to the concrete harm that inversion inflicts on the investors and markets the SEC exists to serve.

I. CONGRESS MANDATED FULL DISCLOSURE AS THE FOUNDATION OF THE SECURITIES LAWS — A MANDATE THE SEC ENFORCES AGAINST EVERYONE EXCEPT ITSELF.

The federal securities laws rest on a single organizing principle: investors and markets are best served by complete, accurate information, and the deliberate suppression of material facts is fraud. As noted above, Congress anchored that principle in the statutory text of the Securities Act itself — Section 17(a)(2) prohibits obtaining money or property through any material omission that renders existing statements misleading, 15 U.S.C. § 77q(a)(2), while Section 11(a) imposes strict liability for registration statements that omit "a material fact required to be stated therein[,]" 15 U.S.C. § 77k(a), and Rule 10b-5 tracks § 17(a)'s language word for word. These provisions share a common purpose: what this Court, in *Lorenzo v. SEC*, 587 U.S. 71, 81 (2019) (quoting *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963)), called "substitut[ing] a philosophy of full disclosure for the philosophy of caveat emptor[.]" That philosophy carries a specific duty: once a speaker makes an affirmative statement, federal securities law "imposes a duty to disclose material facts that are necessary to make disclosed statements, whether mandatory or volunteered, not misleading." *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12 (9th Cir. 1996). Simply put, "once a defendant chooses to speak, he or she is not free to lie or mislead." *SEC v. Yuen*, 2006 WL 1390828, at *30 (C.D. Cal. Mar. 16, 2006). The disclosure required by the securities laws is "measured not

by literal truth, but by the ability of material to accurately inform rather than mislead investors." *Id*.

The SEC has enforced this mandate vigorously and has been particularly aggressive in requiring disclosure about litigation and settlements. In *Yuen*, the Commission prosecuted a CEO for, among other violations, mischaracterizing the terms of a litigation settlement in public filings and on an analyst conference call — treating a payment that was in significant part prepaid advertising as pure licensing revenue, while concealing that characterization from investors. Finding that the defendant was not free to speak about the settlement while omitting its material terms, the court imposed disgorgement of $10,577,692, prejudgment interest of $1,171,847, a civil penalty of $10,577,692, and a permanent officer and director bar. *SEC v. Yuen*, 2006 WL 1390837, at *2 (C.D. Cal. May 8, 2006), aff'd, 272 Fed. App'x 615 (9th Cir. 2008). *Yuen* is not an outlier. The SEC has brought enforcement actions based on the failure to disclose the submission of a settlement offer to a government regulator, *SEC v. RPM Int'l, Inc.*, 282 F. Supp. 3d 1 (D.D.C. 2017); the failure to disclose — and outright denial of the existence of — investor lawsuits filed against a defendant, *SEC v. Kirkland*, 521 F. Supp. 2d 1281, 1303 (M.D. Fla. 2007); and the provision of materially insufficient detail about pending litigation and defaults in SEC filings, *SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 73 (D.C. Cir. 1980). The Commission's consistent position across these cases is that investors are harmed when material information about litigation and settlements is withheld — that the public's ability to assess the significance of legal proceedings depends on access to the full picture, not merely the facts one party chooses to disclose.

The Gag Rule stands in irreconcilable tension with that position. An SEC enforcement complaint is drafted by one side, without input from the defendant, tested by no court, and stripped of every qualification and affirmative defense the defendant might offer. When the Gag Rule permanently suppresses the defendant's account, the SEC's press release amplifying those unproven allegations becomes precisely the kind of misleading half-truth the Commission has spent decades prosecuting others for creating — "[a representation] that state[s] the truth only so far as it goes, while omitting critical qualifying information." *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263 (2024) (quoting *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 188 (2016)). The same reasons the Commission has cited in *Yuen*, *RPM*, *Kirkland*, and *Falstaff* to compel disclosure by private parties about their litigation apply with equal force to the Commission's own enforcement record. The Gag Rule is not a principled exception to the disclosure mandate. It is a self-serving carve-out that exempts the Commission from the very standard of transparency Congress created it to uphold.

II. THE GAG RULE MANUFACTURES THE HALF-TRUTHS THE SECURITIES LAWS FORBID.

The SEC's enforcement complaints are not neutral records. They are drafted by one party — the agency — to make the strongest possible case for the allegations it has chosen to bring. They contain no admissions by the defendant, no exculpatory facts, no context that would qualify or undermine the charged conduct, and no defenses. They are, by design, incomplete. That incompleteness is not a flaw; it is the nature of a

charging document. The adversarial process exists precisely to complete the picture — to test the SEC's allegations against the defendant's evidence, to expose weaknesses in the agency's theory, and to present a factfinder with information the complaint never mentions. When that process runs its course, the public record reflects that adversarial testing. When it does not — when a defendant settles — the complaint stands alone. And under the Gag Rule, it stands alone forever: the defendant who settles must agree never to deny, directly or indirectly, any allegation the complaint contains. The SEC's one-sided account becomes the permanent, unchallengeable public record, immune to correction even where the underlying allegations are wrong.

The cases of Mark Cuban, Nelson Obus, and Leon Cooperman illustrate what markets gain when defendants can speak — and permanently lose when they cannot.

The SEC charged Mark Cuban in November 2008 with insider trading, alleging that Mamma.com's CEO had called Cuban, "prefaced the call by informing Cuban that he had confidential information to convey to him," and that "Cuban agreed that he would keep whatever information the CEO intended to share with him confidential." Compl. ¶ 14, *SEC v. Cuban*, No. 3:08-cv-2050 (N.D. Tex. Nov. 17, 2008). The complaint alleged that at the end of the call Cuban himself said "Well, now I'm screwed. I can't sell" — confirming his agreement not to trade. *Id.* Cuban declined a $2 million settlement, spent approximately $12 million in legal fees, and took the case to trial. His defense demonstrated that the PIPE information had already appeared in SEC filings publicly available before he sold,

that market reaction to the announcement was not statistically significant — undermining the SEC's materiality theory — and that no binding agreement not to trade had ever been formed. A jury acquitted him unanimously after less than five hours of deliberation. Afterward, Cuban publicly condemned the SEC's conduct, stating that the agency had "lied" and had targeted him because of his celebrity status, and that defendants of lesser wealth "could have been bullied." *See* Dina ElBoghdady, Billionaire Mark Cuban Takes On the SEC, Wash. Post (Nov. 20, 2013). "I'm glad I'm able to be the person who can afford to stand up to them," he said. *Id*.

The SEC charged Nelson Obus and Wynnefield Capital in April 2006 with insider trading, alleging that a GE Capital employee named Strickland had tipped Obus's analyst Black about the pending acquisition of SunSource, and that immediately after receiving the tip, Obus called SunSource's CEO and revealed that "a 'little birdie' at GE Capital had told him that SunSource management was planning to sell the company to a financial buyer." Compl. ¶ 21, *SEC v. Obus*, No. 06-cv-3150 (S.D.N.Y. Apr. 25, 2006). The complaint alleged the resulting purchase — 287,200 shares, comprising 99% of all SunSource shares traded that day — "represented the largest purchase of SunSource stock that Obus had ever directed[.]" *Id*. ¶ 27. After thirteen years of investigation and litigation, a Manhattan jury found Obus, Black, and Strickland unanimously not liable. The defense had demonstrated that Wynnefield had a long history of independently researching and investing in SunSource for reasons entirely unrelated to any tip — a body of evidence the complaint, focused exclusively on the alleged tip, never acknowledged. That exculpatory record,

painstakingly assembled over more than a decade, was available to the market only because Obus could afford to fight. "The lamest insider trader in history" — his own defense counsel's characterization of the SEC's theory — was the jury's verdict too. *See* Bloomberg News (May 29, 2014).

Leon Cooperman's case demonstrates what the Gag Rule does to that information. The SEC charged Cooperman in September 2016 with insider trading, alleging that he had obtained confidential information about Atlas Pipeline Partners' impending sale of its Elk City facilities from a senior APL executive, and that despite "explicitly agree[ing] that he could not and would not use the confidential information APL Executive 1 told him to trade APL securities," he proceeded to do exactly that. Compl. ¶ 34, *SEC v. Cooperman*, No. 2:16-cv-05082 (E.D. Pa. Sept. 21, 2016). The complaint further alleged that when the SEC began investigating, Cooperman "attempted to fabricate a story" and sought the executive's assurance that no confidential information had been shared — knowing that assurance would be false. Id. ¶ 5. Cooperman publicly insisted the charges were "without merit" and that his lawyers assessed the probability of winning as "overwhelmingly high." *See* Leon Cooperman: SEC insider trading case was 'extraordinarily abusive', CNBC (May 30, 2017). But trial, he concluded, would cost $15 to $20 million and last years. He settled for $4.9 million, admitting nothing. The Gag Rule then did its work. "I cannot say I'm innocent, and I cannot say I'm guilty," Cooperman told an interviewer afterward. *See* Leon Cooperman on Life After an SEC Investigation, Institutional Investor (Oct. 23, 2017). The defenses he would have presented, the weaknesses in the SEC's theory, the evidence that his lawyers believed

would have prevailed — all of it is sealed from the market permanently, while the complaint's allegation that he "explicitly agreed" not to trade and then "attempted to fabricate a story" stands as the unchallengeable public record.

The *Tullos* case adds a darker dimension: the Gag Rule can suppress not merely a defendant's defenses, but evidence of the government's own misconduct. In 2008, the SEC settled civil options-backdating charges against Nancy Tullos, Broadcom Corporation's Vice President of Human Resources, extracting $1.4 million in penalties and disgorgement and gagging her in the process. *SEC v. Tullos*, No. SACV 08-242-AG (MLGx) (C.D. Cal. Mar. 10, 2008), ECF No. 6. Silenced, Tullos could say nothing about why she settled, the ambiguous accounting standards at issue, the pressure the government had brought to bear, or the defenses she would have asserted. The public learned what she could not say only because a parallel criminal case against other Broadcom defendants happened to be tried before the same judge — who announced from the bench that the government had subjected Tullos to interrogation on twenty-six separate occasions, during which it "interjected its views of the evidence and, at least on one occasion, told her that she would not receive the benefits of cooperation unless she testified differently than she had initially." Tr. of Proceedings at 5196–97, *United States v. Ruehle*, No. SACR 08-00139-CJC (C.D. Cal. Dec. 15, 2009). On that basis, the judge dismissed the criminal cases and discouraged the SEC from proceeding further, observing that "the accounting standards and guidelines were not clear." Id. at 5201. The SEC then quietly eliminated the $1.4 million it had extracted from the gagged defendant. Am. Final J., *SEC v. Tullos*, No. SACV 08-242-CJC

(MLGx) (C.D. Cal. Nov. 10, 2010), ECF No. 11. If no criminal case had existed — as is true of virtually all SEC enforcement actions — the Gag Rule would have ensured that none of this ever became public.

The contrast is the point. Cuban and Obus could speak, and markets received the full picture: the publicly available PIPE disclosures that undercut the SEC's materiality theory; Wynnefield's years of independent SunSource research establishing a legitimate basis for its purchase; the jury's judgment that the SEC had failed to prove its case. Cooperman could not speak, and the market is left only with the SEC's complaint. The information loss is not hypothetical — it is the direct and intended consequence of the Gag Rule's operation. Congress enacted the antifraud provisions precisely because one-sided, incomplete information distorts investor decision-making. An SEC complaint, stripped of all qualifications and permanently insulated from challenge by a gagged defendant, is the paradigm case of the half-truth Congress condemned in 1933 and the SEC has spent decades prosecuting others for creating: a statement of the truth only so far as the SEC chooses to tell it, while the "critical qualifying information" that would complete the picture is withheld by agency fiat. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263 (2024). From 2017 to 2023 alone, the SEC silenced an estimated 2,700 defendants this way. Pet. 31. The cumulative effect is not a byproduct of settlement practice — it is a systematic, agency-administered program of compelled omission imposed on the very market participants best positioned to inform the public about the SEC's own enforcement conduct and perpetuated by the very agency Congress charged with stamping out exactly that kind of market-distorting silence.

A disclosure regime that depends on defendants being wealthy enough to spend tens of millions of dollars fighting the SEC to verdict is no disclosure regime at all. It is a system in which the completeness of public information about the government's own enforcement conduct is rationed by the size of a defendant's legal budget and fortitude — in which truth reaches the market only when a Cuban or an Obus can afford the price of admission (and is willing to pay it), and is permanently suppressed for the thousands who cannot. Congress mandated full disclosure to protect markets from exactly that kind of information asymmetry. The Gag Rule institutionalizes it.

III. THE GAG RULE CREATES THE MARKET DISTORTION THE SECURITIES LAWS EXIST TO PREVENT.

Congress enacted the securities laws on the premise that markets make decisions based on information — and that when information is distorted, markets malfunction and investors are harmed. The empirical literature on SEC enforcement has now confirmed and quantified that premise with precision. Professor Jonathan Karpoff of the University of Washington and his co-authors, in a landmark study of all 585 firms targeted by SEC enforcement actions for financial misrepresentation from 1978 through 2002, found that when the SEC announces charges, firms lose on average 38% of their market value. Jonathan M. Karpoff, D. Scott Lee & Gerald S. Martin, *The Cost to Firms of Cooking the Books*, 43 J. Fin. & Quantitative Analysis 581, 581–82 (2008), *available at* https://ssrn.com/abstract=652121. Of that market reaction, only a small fraction — 8.8% — reflects the market pricing in expected legal penalties such as fines and class-action settlements. The far larger share — 66.6%, more than

7.5 times the legal penalty — is what the authors call the "reputational penalty": the expected loss in the present value of future cash flows as customers, suppliers, and counterparties change the terms on which they do business with the accused firm. *Id*. For each dollar a firm misleadingly inflates its market value, it loses that dollar when the misconduct is revealed, plus an additional $3.08 — of which $0.36 is attributable to legal penalties and $2.71 to lost reputation. *Id*.

These findings establish something critical for the Gag Rule analysis: the dominant market consequence of an SEC enforcement action is not the formal sanction — it is the informational event. The 38% market value loss is not driven by fines or disgorgement orders. It is driven by the announcement — by the disclosure of allegations that investors, customers, and counterparties treat as credible information about the accused firm's integrity and future prospects. That is the market doing precisely what Congress designed it to do: rapidly incorporating information about corporate misconduct into prices.

But the Karpoff research also illuminates what the Gag Rule does to that process — and why it is so damaging. Reputational penalties, unlike legal penalties, are not self-correcting. A fine, once paid, is discharged. A reputational loss, by contrast, persists until the market receives credible information that allows it to revise its assessment. In cases that proceed to trial and produce a verdict — including acquittals like those of Cuban and Obus — that corrective information arrives. Markets learn that the SEC's allegations were not proven, that exculpatory facts existed, and that the reputational penalty initially imposed by the complaint announcement was excessive relative to what

the evidence actually supported. The market adjusts, at least partially, because the adversarial process has introduced new information.

Under the Gag Rule, that corrective information never arrives. The defendant who settles is permanently prohibited from disclosing the facts that would allow the market to distinguish between a case in which the SEC's allegations were well-founded and one in which they were contested, overstated, or simply wrong. The SEC's announcement — with its attendant 38% average market value loss — stands as the only public information. The reputational penalty is locked in. And because the settling defendant cannot speak, the market has no mechanism to calibrate the severity of that penalty against the actual strength of the underlying case.

This produces a market distortion of precisely the kind the securities laws were enacted to prevent: a permanent, one-sided informational event that denies investors, customers, and counterparties the corrective disclosure they need to price risk accurately. Under the antifraud provisions, private parties are held liable for making disclosures that are materially incomplete — statements that are true as far as they go, but that withhold the "critical qualifying information" that would allow the market to form an accurate judgment. *Macquarie Infrastructure Corp. v. Moab Partners, L.P.*, 601 U.S. 257, 263 (2024). The SEC's complaint, amplified into a press release and stripped of all qualifying context by the Gag Rule, is that kind of disclosure — material, public, one-sided, and permanently insulated from correction. The agency enforces the an-

tifraud provisions against exactly this practice. It engages in the practice systematically in its own settlements.

The individual consequences compound the institutional ones. Karpoff and his co-authors separately tracked the fortunes of all 2,206 individuals identified as responsible parties in 788 SEC and Department of Justice enforcement actions for financial misrepresentation from 1978 through 2006. Jonathan M. Karpoff, D. Scott Lee & Gerald S. Martin, The Consequences to Managers for Financial Misrepresentation, 88 J. Fin. Econ. 193, 193 (2008). Fully 93% lost their jobs by the end of the enforcement period; most were explicitly fired. These career consequences, like the firm-level reputational penalties, are information-driven — they flow from the announcement of charges, not from any finding of liability. An individual accused by the SEC faces immediate, severe, and lasting professional harm regardless of whether the underlying charges are ever proven. Under the Gag Rule, that individual is then legally prohibited from disclosing the facts — the defenses, the context, the evidence of innocence — that might arrest or mitigate those consequences. The result is that the SEC's unproven allegations function as a self-executing professional sentence, with no mechanism for the affected individual to introduce the corrective information that markets and employers require to reassess.

This is not an abstract concern. Cooperman's fund lost nearly $4 billion in assets under management — more than half its total — in the eighteen months between the SEC's complaint announcement and his settlement, before any finding of liability and while he was publicly protesting that the charges were without

merit. *See* CNBC Interview (Jan. 5, 2017). Once he settled, the Gag Rule ensured that the market's response to those unproven allegations would never be calibrated against the defenses and evidence he said he had. The $4 billion in losses was the reputational penalty Karpoff's research predicts. It was imposed on the basis of information — the SEC's complaint — that was never tested. And because Cooperman settled and was gagged, it was never correctable.

Congress designed the securities laws to combat precisely this outcome: the permanent distortion of market prices by material, one-sided information that excludes the qualifying facts necessary to form an accurate judgment. The SEC has built that outcome into every settlement it reaches, at industrial scale, for more than fifty years. A disclosure regime that the agency operates for the benefit of investors cannot exempt the agency's own enforcement record from the disclosure standards it imposes on everyone else.

The petition should be granted.

CONCLUSION

The federal securities laws were built on a promise: that investors and markets would have access to complete, accurate information, and that those who suppress material facts do so at their legal peril. The SEC has been the primary enforcer of that promise for nearly a century, wielding it aggressively against private parties — including, as this brief has shown, against those who failed to provide adequate disclosure about their own litigation and settlements.

The Gag Rule breaks that promise in the SEC's own backyard. It compels precisely the kind of one-sided, permanently incomplete disclosure that Congress made unlawful in 1933. It imposes on settling

defendants — the majority of whom never had their day in court — reputational penalties that empirical research confirms are severe, lasting, and driven entirely by the informational event of the SEC's announcement. And it ensures that the corrective information that would allow markets to calibrate those penalties against the actual strength of the underlying case is suppressed forever, leaving an information vacuum that the SEC fills exclusively with its own account of its own conduct.

Amici have spent their careers at the Commission enforcing the transparency principles Congress embedded in the securities laws. They know from experience what the Gag Rule does: it does not protect markets. It protects the SEC — from scrutiny, from accountability, and from the voices of the thousands of defendants who settled not because they were guilty, but because they could not afford the price of the truth. That is not a disclosure regime. It is the antithesis of one.

For the foregoing reasons, amici curiae respectfully urge the Court to grant the petition.

Respectfully submitted,

NICOLAS MORGAN
INVESTOR CHOICE
ADVOCATES NETWORK
453 S. Spring Street,
Suite 400
Los Angeles, CA 90013
(310) 849-0384
nicolas.morgan@icanlaw.org

April 20, 2026

Counsel for Amici Curiae

APPENDIX

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List of Amici Curiae 1a

APPENDIX

List of Amici Curiae

Brent R. Baker, U.S. Securities & Exchange Commission, Senior Special Counsel (1989–2004)

Stephen A. Cazares, U.S. Securities & Exchange Commission, Division of Enforcement, Los Angeles Regional Office (1998–2004)

Chris Davis, U.S. Securities & Exchange Commission, Senior Counsel (2010–2014), Senior Trial Counsel (2014–2019)

Jacob S. Frenkel, U.S. Securities & Exchange Commission, Staff Attorney & Senior Counsel (1988–1997)

Mark T. Hiraide, U.S. Securities & Exchange Commission, Division of Enforcement, Los Angeles Regional Office, Branch Chief (1986–1990); Attorney-Advisor, Division of Corporation Finance (1990–1994)

Robert Knuts, U.S. Securities & Exchange Commission, Division of Enforcement, New York Regional Office, Senior Trial Counsel & Assistant Regional Director (1994–2003)

Michael R. MacPhail, U.S. Securities & Exchange Commission, Staff Attorney (1991–1994), Senior Counsel (1994–1999), Branch Chief, Denver Regional Office (1999–2002), Deputy Assistant Director, Denver Regional Office (2002–2005)

Nicolas Morgan, U.S. Securities & Exchange Commission, Senior Trial Counsel (1998–2005)

Stanley C. Morris, U.S. Securities & Exchange Commission, Enforcement Attorney (1992–1996)

Michael Piazza, U.S. Securities & Exchange Commission, Regional Trial Counsel, Pacific Regional Office (2004–2006)

Michael J. Quinn, U.S. Securities & Exchange Commission, Staff Attorney, Los Angeles Regional Office (1997–2000)

Thomas A. Zaccaro, U.S. Securities & Exchange Commission, Chief Trial Counsel, Pacific Regional Office