

Cap () () () speech push reaches U.S. Supreme Court

SEC gag rule challenged under First Amendment



SOURCE: ADOBE STOCK/JIM GLAB

By Melissa Steele April 25, 2026

The Cape Gazette’s push for First Amendment rights has reached the Supreme Court, and an attorney with the effort says recent case law may work in its favor.

“This is one of the most First Amendment-friendly Supreme Courts in a long time, and we’re hopeful,” said Margaret A. Little, senior litigation counsel for the New Civil Liberties Alliance, a petitioner along with the Cape Gazette and others asking the U.S. Supreme Court to hear a case that would end the Securities and Exchange Commission gag rule, which prevents anyone who has settled a case from ever speaking about it.

A writ of certiorari was filed March 16, the latest action in a four-year fight by Deborah Bessah investment advisor who was targeted by the SEC. The SEC argued that the gag rule would benefit her and her family w

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After first vowing to fight against the SEC claim, Cassandra Toroian settled in 2023, signing a consent order that barred her from working in the securities industry and prohibited her from talking about her case.

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Toroian said during a 2024 NCLA discussion that she settled in order to get on with her life. She had already spent millions in legal fees and paid the SEC a \$220,000 fine, and if she continued her challenge, she would have faced years of legal battles and millions of dollars more.

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Before settling, Toroian had told the Cape Gazette the SEC's cherry-picking accusation was based on a single day of trading, not on long-term performance.

In 2024, Toroian was one of 11 petitioners, including the Cape Gazette and the NCLA, that filed an appeal with the Ninth Circuit Court of Appeals over the SEC's gag rule that effectively silences anyone who settles a regulatory enforcement case. Only the SEC and the Commodity Futures Trading Commission have the power to forbid anyone who settles a case with them from ever sharing their side.

Free speech is a fundamental right under the First Amendment, and the Cape Gazette joined the petition in order to force a change that would end the gag rule, and allow Toroian and others to be able to lawfully tell their stories.

Chris Rausch, publisher and owner of the Cape Gazette, said free speech and the ability for a publication to print someone's opinion is at the crux of the First Amendment.

"The SEC gag rule is a clear example of prior restraint, limiting the ability of organizations like the Cape Gazette to inform the public with the full body of knowledge surrounding these cases," Rausch said. "The notion that defendants voluntarily agree to these terms ignores the reality of the SEC's leverage and the pressure it exerts to force settlements."

The Cape Gazette's First Amendment claim, however, was ignored by the Ninth Circuit Court panel.

"The panel decision did not address that at all," Little said. "It didn't even name the Cape Gazette or Reason Magazine in the opinion. It just referred to them as other organizations."

While a glaring omission, Little said she believes previous U.S. Supreme Court rulings will have the most weight in the latest court action.

"Our biggest chance of getting review is that the Ninth Circuit panel ruling is not consistent with Supreme Court rulings on the First Amendment," Little said. "They want to hear only cases where different lower courts have reached different results, so you have an uncertainty in the law. Or, the lower courts are not following Supreme Court precedents as they must do. We actually have both of those in play."

The Supreme Court has held that speech cannot be restricted – even for convicted criminals – the result of a Son of Sam Law over infamous serial killer David Berkowitz's memoir and a later SCOTUS decision allowing publication proceeds from the story of mobster Henry Hill, the protagonist of the movie "Goodfellas."

"No matter what you've done, even the most horrific serial killer crimes, the state cannot prevent you from publishing or profiting from your speech," Little said.

In contrast, anyone who simply settles with the SEC can never tell their story.

"Here you have people who have never been convicted of anything. They settled their cases, and if you settle your case, you can't speak about it, you can never defend yourself," Little said.

Ironically, if a person was convicted instead of settling, Little said, they would be allowed to speak freely.

Several recent SCOTUS decisions conflict with what the Ninth Circuit did, Little said, and she believes petitioners will be granted a writ of certiorari because the law was not followed.

Little said petitioners could hear back from the U.S. Supreme Court in June, and if the court grants the writ of certiorari, the case will be briefed. If the case continues, she estimated arguments could be held by fall.

"Those recent decisions in the Supreme Court are very helpful. We're doing everything we can," Little said.



Melissa Steele is a staff writer covering the state Legislature, government and police. Her newspaper career spans more than 30 years and includes working for the Delaware State News, Burlington County Times, The News Journal, Dover Post and Milford Beacon before coming to the Cape Gazette in 2012. Her work has received numerous awards, most notably a Pulitzer Prize-adjudicated investigative piece, and a runner-up for the MDDC James S. Keat Freedom of Information Award.

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