**ORAL ARGUMENT NOT YET SCHEDULED**

**Case No. 25-5339**

**UNITED STATES COURT OF APPEALS**
**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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SGCI Holdings III LLC, et al.,

Petitioners,

v.

FEDERAL COMMUNICATIONS COMMISSION, et al.,

Respondents.

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On Appeal from the U.S. District Court for the
District of Columbia, No. 24-cv-1204-RC

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# BRIEF OF THE ADMINISTRATIVE LAW AND AGENCY PRACTICE COMMUNITY OF THE DISTRICT OF COLUMBIA BAR AS AMICUS CURIAE IN SUPPORT OF PRIVATE APPELLEES

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March 20, 2026

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Under Circuit Rule 28(a)(1), amicus curiae Administrative Law and Agency Practice Community of the District of Columbia Bar certifies the following:

**Parties and Amicus**

The Administrative Law and Agency Practice Community of the District of Columbia Bar (Administrative Law and Agency Practice Community) is participating as amicus curiae before this Court. All other parties appearing to date in this court are referenced in the briefs of the parties.

**Rulings Under Review**

Under appeal is the order of the U.S. District Court for the District of Columbia dismissing the action. No. 1:24-cv-01204-RC, (D.D.C. Aug. 19, 2025) (ECF No. 75).

**Related Cases**

Counsel is aware of the following related cases within the meaning of D.C. Cir. Rule 28(a)(1)(C):

1. SGCI Holdings III LLC v. FCC, No. 23-1083 (D.C. Cir.) — appeal from the FCC's Hearing Designation Order; dismissed by this Court as premature.

2. In re SGCI Holdings III LLC, No. 23-1084 (D.C. Cir.) — petition for writ of mandamus seeking to compel FCC action; denied by this Court.

Counsel is not aware of any other related cases.

## RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Under the disclosure required by Federal Rules of Appellate Procedure 26.1 and Circuit Rule 29(c), amicus curiae Administrative Law and Agency Practice Community has no parent corporation, and no publicly held corporation owns 10% or greater ownership of it.

## CIRCUIT RULE 29(d) CERTIFICATE

Amicus curiae Administrative Law and Agency Practice Community is not aware of any other amicus in this case.

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## STATUTES AND REGULATIONS

All applicable statutes and regulations are set forth in the Brief for private Appellees.

## STATEMENT OF AMICUS CURIAE[1]

The Administrative Law and Agency Practice Community respectfully submits this brief as amicus curiae in support of private Appellees, to ask this court to affirm the District Court's dismissal of this action, upholding the First Amendment rights of individuals and their representatives to petition the government without fear of litigation over the content of those communications.[2]

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[1] No party's counsel authored this brief in whole or in part. Moreover, no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than amicus curiae, its members, or its counsel made such a monetary contribution. All parties have consented to the filing of this amicus brief.

[2] The views expressed in this brief are presented on behalf of the Administrative Law and Agency Practice Community, a voluntary association of individuals, most, but not necessarily all of whom, are members of the D.C. Bar. This brief was unanimously approved by the Administrative Law and Agency Practice Community Steering Committee, with two members recusing. The D.C. Bar itself made no monetary contribution to fund the preparation or submission of this brief. Moreover, the views expressed herein have been neither approved nor endorsed by, and do not necessarily reflect the views of, the D.C. Bar, its Board of Governors, or all members of the D.C. Bar or of the Administrative Law Agency Practice Community.

The Administrative Law and Agency Practice Community is one of twenty-three Communities at the D.C. Bar. Communities constitute the voluntary membership component of the Bar and include both practice area-based groups and other member groups. They promote professional development through networking opportunities, educational programming, and the development of practice resources. Communities may support amicus briefs and public statements on important issues that affect the nation's judicial system, legal practitioners, and their areas of practice.[3]

## SUMMARY OF THE ARGUMENT

The First Amendment right to petition the government is a fundamental right in our country with a history that predates the nation itself. The right to petition extends not only to individual speech but also to those engaged in advocating for and assisting individuals in communicating such speech. Holding individuals and their lawyers

[3] *See* https://www.dcbar.org/for-lawyers/communities/public-statements.

personally liable for communication of an individual's opinions and advocacy positions to the government would unconstitutionally interfere with their fundamental First Amendment right to petition the government. Such a holding would chill public participation in administrative proceedings at all levels of government and across a wide range of regulated subject areas. Our government's ability to operate as a representative democracy would also be diminished.

Holding lawyers liable for the position of their clients would give rise to an irreconcilable conflict between the clients' interests and the lawyer's duties under the District of Columbia Rules of Professional Conduct, which require zealous advocacy and the absence of conflict with their clients' interests.

Here, the Appellants argue that the First Amendment does not protect speech when it may be unlawful in other contexts. Appellants' claims of tortious interference and civil conspiracy as to the Goodfriend private Appellees are particularly troublesome. Those claims impute to lawyers their clients' alleged state of mind, positions, and speech, and

suggest that regular lawyer-client communications and the interactions between private parties and agencies in the public comment process constitute conspiracies.

The Administrative Law and Agency Practice Community is concerned about the negative effects on the practice of law should the Appellants be permitted to pursue their claims against the private Appellees. The precedent would be detrimental to legal advocacy, clients' right to representation, and lawyer-client relationships.

## ARGUMENT

### I. The First Amendment right to petition the government is a broad fundamental right that may not be abridged.

#### A. The right to petition is steeped in our country's history.

Appellants challenge the private Appellees' First Amendment right to petition the government in good faith without fear of punishment or retribution. The right to petition the government is "deeply rooted in this Nation's history and tradition." *Hale v. Exec. Off. of the President*, 784 F. Supp. 3d 127, 164 (D.D.C. May 27, 2025), *citing Dept of State v. Munoz*, 602 U.S. 899, 910 (2024). The right derives from the English Bill of Rights

(1689), which declared that "it is the right of the subjects to petition the king." This principle was honored within the self-government of the British colonies in America. *See* A Short History of the Right To Petition Government for the Redress of Grievances, Higginson, 96 Yale Law Journal Vol 142, 144 (1986). King George III's silent disregard for the colonists' petitions of their grievances was one of the central issues that gave rise to the American War of Independence, and the inclusion of the right to petition the government in the Bill of Rights. *Id.* at 155. The First Amendment formally protects the right "to petition the Government for a redress of grievances." U.S. Const. amend. I.

The right to petition the government is "integral to the democratic process." *Borough of Duryea*, 564 U.S. 379, 388 (2011). As the Supreme Court has declared, "We have recognized this right to petition as one of 'the most precious of the liberties safeguarded by the Bill of Rights.'" *United Mine Workers v. Illinois Bar Ass'n*, 389 U.S. 217, 222 (1967). The Court has explained that this right is implied by "the very idea of a government,

republican in form," *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524-25 (2002); *quoting United States v. Cruikshank,* 92 U.S. 542, 552, 23 L. Ed. 588 (1876).

**B. The right to petition the government protects unpopular or otherwise unlawful speech.**

Efforts to disfavor the right to petition based on specific subject matters have been controversial and relatively short-lived. Perhaps the first notable instance was Congress's 1840 absolute gag on petitions "praying the abolition of slavery." History of Right To Petition Government at 158, *citing* H.R. Rep. No. 3, 28th Con., 1st Sess., 14-20 (1844). This prohibition was voted into the rules of the House of Representatives by southern lawmakers who felt their states' economies were threatened by proposals to abolish slavery. They no longer wanted to consider the voluminous number of petitions submitted by abolitionists demanding Congressional debate over the morality and lawfulness of slavery. *See* A Short History of the Right To Petition at 158-65. The refusal of Congress to address such petitions sparked a vigorous debate, putting the scope and importance of the right to petition to the test. *Id.* After four years of debate led by John Quincy Adams, the House of Representatives reembraced the

long-held right to petition and abolished the gag rule. Cong. Globe, 28th Cong., 2d Sess. 7 (Dec. 3, 1844).

The courts have upheld First Amendment rights regardless of how unpopular the views expressed may be. "[T]he Constitution protects expression and association without regard to the race, creed, or political or religious affiliation of the members of the group which invokes its shield, or to the truth, popularity, or social utility of the ideas and beliefs which are offered." *NAACP v. Button*, 371 U.S. 415, 444-45 (1963). "Even conduct that would otherwise be illegal may be "protected by the First Amendment when it is part of a direct petition to government." *Venetian Casino Resort, L.L.C. v. NLRB*, 793 F.3d 85, 90 (D.C. Cir. July 10, 2015). Putting aside questions about the sufficiency of the Appellants' claims, the content of private Appellees petitions to the FCC was well within the speech protected by the First Amendment.

### C. These First Amendment protections depend upon whether the challenged speech constitutes a petition to the government.

The Constitutional right to petition extends to lawful efforts to influence all branches of the government in a variety of forms and forums.

The colonies, and later the states and Congress, struggled with the volume of private petitions they received. Congress's response was to develop the institutions by which the federal government could efficiently respond to such petitions, establishing the courts to consider petitions seeking adjudications and administrative agencies to review petitions to create regulations. *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). Therefore, the "right to petition extends to all departments of the Government." *Id.* at 510; *see also BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 525 (2002).

This court explained that, under the *Noerr-Pennington*[4] doctrine, the right to petition includes advocating "causes and points of interest" related to their "business and economic interests," includes efforts to "influence the passage or enforcement of laws," and depends upon "the context and nature of the activity." *Venetian Casino Resort,* 793 F.3d at 90 (citations

[4] The Doctrine is named after two cases: *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961) and *United Mine Workers of Am. v. Pennington*, 381 U.S. 657 (1965).

omitted). The District Court cited *Noerr-Pennington* as the controlling precedent for recognizing the private Appellee's actions to petition the Federal Communications Commission to influence the agency's decision on issues of public interest, the transfer of television licenses to a competitor, was protected First Amendment speech that shields private Appellees from being sued in court for the content of that speech. *SGCI Holdings III LLC v. FCC*, 2025 U.S. Dist. LEXIS 160913, *45 (D.D.C. Aug. 19, 2025). The holding falls squarely within the controlling precedent, holding that the First Amendment is the source of the protection of lawful petitions to federal agencies to influence government decisions affecting the speaker's economic interests.

**D. Protecting the First Amendment right to petition federal agencies is necessary to protect access to the courts.**

In the context of discretionary administrative decisions vested in government agencies, public participation in the decision-making process not only makes the government more accountable to the public, but a party's participation, whether in an agency adjudication or rulemaking, is also a legal prerequisite for that party to have standing to challenge the

agency's decision in court. *Eagle Cnty. v. Surface Transp. Bd.*, 82 F.4th 1152, 1173 (D.C. Cir. 2023), *citing Water Transp. Ass'n v. ICC*, 819 F.2d 1189, 1193 (D.C. Cir. 1987). Even if a party participated in an agency proceeding and, therefore, has standing to challenge the agency decision in court, each issue the party wishes to raise in court must have first been presented to the agency for its consideration. *Eagle Cnty.* at 1185.

An individual who is discouraged from participating in an administrative proceeding or from raising a particular issue before an agency, because they fear being the subject of a lawsuit as a result, would then be denied access to the courts to challenge that agency action.

The private Appellees' submissions to the Federal Communications Commission, providing information and opinions on matters before the agency, are clearly protected as First Amendment activity, and that protection extends to their lawyers.

## II. Effective legal representation would be diminished were lawyers to be held liable for the positions of their clients.

The First Amendment right to petition the government extends to lawyers acting on behalf of their clients. *See Tanner-Brown v. Haaland*, 105

F.4th 437, 444, 466 U.S. App. D.C. 314 (D.C. Cir. 2024). Absent such protection—subjecting a lawyer to potential personal liability for their client's viewpoints—would have a chilling effect on the willingness of lawyers to represent clients who hold unpopular or controversial opinions. Lawyers concerned about possible personal liability for their clients' positions would walk a tightrope suspended between their own interests and their responsibilities to their clients under the rules governing legal ethics.

The District of Columbia Rule of Professional Conduct 1.3 requires lawyers to advocate for their clients with diligence and zeal. Lawyers worried about being held personally liable for their clients' views may think twice about how zealously they communicate those clients' more unpopular and controversial positions to the government in a public forum. Furthermore, Rule 1.7 requires lawyers to be free from conflicts between their own interests and those of their clients. The potential for a lawyer to be held personally liable for advancing their clients' unpopular

or controversial positions would clearly create irreconcilable conflicts of interest between lawyers and clients.

These tensions between a lawyer's ethical responsibilities and a client's right to effective representation would likely come to the fore when the subject matter of an action is more controversial or unsettled. Unsettled and divisive subjects—gun rights, reproductive rights, religious liberties, and sexual orientation, for example—present some of the hardest issues, requiring committed and thoughtful advocacy. Clients on both sides of these issues may be facing the most difficult challenges of their lives and have the greatest need for legal representation to petition the government. And the party that does not prevail in such cases is likely to experience more injury and be more likely to seek recompense from their opponents' attorneys, if so permitted by the courts. The holding urged by the Appellants would decrease the availability of lawyers willing to represent parties seeking to petition the government.

## III. Failure to protect the right to petition the government would negatively affect administrative decision-making on innumerable subject areas at all levels of government.

Finally, a decision here to vacate the District Court's dismissal of the claims against the private Appellees would negatively impact government decision-making at every level and in a broad scope of issues that are the subject of government decision making. Local government agencies consider applications for zoning and variances, special use permits, short term rental property licenses, entertainment and amusement licenses, alcohol licenses, and permits for live music, arcades, gas stations, nightclubs, daycare centers, group homes for the disabled or those recovering from substance abuse, clinics, hospitals, and taxis. State agencies consider casino and gambling licensing, cannabis licensing, alcohol sales, utility and telecommunications franchises, banking and financial institution charters, insurance company licensing, and environmental and natural resource permits related to air pollution, water discharge, and mining permits. Beyond television and radio station licensing, the federal government routinely makes decisions concerning

energy infrastructure, nuclear facilities, environmental permitting and reclamation, mining, food safety, pharmaceuticals and medical devices, authorities to operate different modes of transportation in interstate commerce, and import/export licenses.

Controversies can arise in any of these subject areas that evoke emotions in the parties. They can consist of highly technical subjects and require an understanding of complex legal settings. Both clients and the government are well served by the participation of responsible, expert lawyers who, without fear of personal liability, articulate their clients' positions zealously while maintaining professional detachment.

## CONCLUSION

A decision here vacating the dismissal of the claims against the private Appellees would immediately throw a blanket of reluctance and fear over citizens' willingness to petition their government on a wide range of regulatory subjects at every level of government. The availability of lawyers willing to help parties petition the government would also be depressed. Lawyers would begin to weigh their ethical duty to provide

their clients with zealous representation against the prospect of facing personal liability for the effort. Such potential personal liability would also create conflicts of interest between lawyers and their clients that do not exist today.

Diminishing protections for the public's right to petition in the administrative landscape would also irreparably damage representational democracy. The government would be denied the benefit of the full range of opinions and information from those it represents, particularly in the hardest or most controversial issues. Rather than being representative of the public at large, administrative decisions would become more influenced by those willing or able to withstand the risk of liability for the content of their petitions.

The Administrative Law and Agency Practice Community urges the Court to affirm the district court's dismissal of Appellants' claims and continue to protect everyone's unencumbered First Amendment right to petition the government.

Respectfully submitted,

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Dated: March 20, 2026

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**CERTIFICATE OF COMPLIANCE**
**WITH TYPE-VOLUME LIMITATION**

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) and D.C. Cir. R. 32(e)(2)(B) in that the brief contains 2605 words excluding those parts exempted by Fed. R. App. P. 32(f).

Dated: March 20, 2026

*/s/ Paul D. Cullen, Jr.*
Paul D. Cullen, Jr.

*Counsel of Record for Amicus Curiae*

**CERTIFICATE OF SERVICE**

I certify that on March 23, 2026, an electronic copy of the foregoing brief was electronically filed and served on all parties of record via the Court's CM/ECF system.

Dated: March 23, 2026

*/s/ Paul D. Cullen, Jr.*
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