



**FOR IMMEDIATE RELEASE**

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## **NCLA Asks Court to Halt SEC's Unauthorized and Unlawful Mass Data Collection Regime**

*Erik Davidson, John Restivo, National Center for Public Policy Research v. Gary Gensler, U.S. Securities and Exchange Commission, Consolidated Audit Trail, LLC*

**Washington, DC (May 28, 2024)** – The New Civil Liberties Alliance has filed a [motion](#) asking the U.S. District Court for the Western District of Texas for a stay and preliminary injunction in *Davidson, Restivo, and NCPFR v. Gensler* to halt the Securities and Exchange Commission's "Consolidated Audit Trail." The unconstitutional CAT is the largest government-mandated mass collection of personal financial data in American history. Without any statutory authorization from Congress, SEC is forcing brokers, exchanges, clearing agencies and alternative trading systems to capture and send detailed information on every investor's trades in U.S. markets to a centralized database, which SEC and private regulators can access forever (but whose security they cannot ensure). The Court should order SEC to prevent the CAT from collecting or accessing any more data and prohibit the Financial Industry Regulatory Authority (FINRA) from requiring broker-dealers to send any more information to the CAT.

Like thousands of other Americans, NCLA clients Erik Davidson, John Restivo and the National Center for Public Policy Research expected the government to respect their constitutional rights. Scheduled to be "fully operational" on May 31, SEC's CAT system continues to irreparably harm them by seizing their private financial data without due process of law in violation of the Fourth Amendment. This *ultra vires* action also violates the Administrative Procedure Act, as Congress never authorized SEC to set up such a data collection and surveillance system.

A stay and preliminary injunction halting the CAT would be in the public interest. SEC Commissioner Hester Peirce has [called](#) the system "a dangerous dog." She has said Americans would never tolerate government organizations partnering with private firms created by government order to collect complete information on their purchases or to give government a "direct feed" of movements from their GPS systems. The CAT database would reportedly be the largest securities database ever created, and the most massive government database of any kind outside the National Security Agency (NSA), putting every American's financial data and security at grave and needless risk from cybersecurity breaches. Amassing all such data in a single government database exponentially increases the likelihood and severity of a security breach, imperiling the financial security of all Americans.

The CAT costs more than SEC's entire annual budget, so the agency funds its illicit scheme by unilaterally taking billions of dollars from self-regulatory organizations like FINRA. This self-appropriation of billions of dollars constitutes taxation without representation and brazenly ignores the Constitution and statutes that reserve tax and appropriations powers to Congress alone. SEC controls CAT's operating organization, CAT LLC, so closely that it is indisputably a state actor, so the Court must issue a stay and enjoin both the agency and the CAT itself.

### **NCLA released the following statements:**

"Congress never authorized the SEC to create the Consolidated Audit Trail, which flagrantly violates the constitutional rights of all investing Americans. This Orwellian surveillance scheme was quietly put into place by unelected and unaccountable bureaucrats at the SEC. It imposes billions in deadweight costs on investors while

putting the security of their savings, retirement and college funds at grave and irreparable risk. The Court must shut down this lawless bureaucratic power grab while there is still time to protect Americans from these dangers.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

“The Consolidated Audit Trail program is unlawful several times over, and it is inflicting irreparable damage on millions of ordinary investors. It presents the Court with a classic case for a legal stay and a preliminary injunction.”

— **Andrew Morris, Senior Litigation Counsel, NCLA**

**For more information visit the case page [here](#).**

## **ABOUT NCLA**

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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