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Powerful *Amici* Briefs Endorse NCLA Suit Against SEC’s Unauthorized and Illegal Mass Data Dragnet

Erik Davidson, John Restivo, National Center for Public Policy Research v. Gary Gensler, in His Official Capacity as SEC Chairman, U.S. Securities and Exchange Commission, Consolidated Audit Trail, LLC

Washington, DC (August 26, 2024) – Nineteen states, current and former government officials, research organizations, advocacy groups, and litigators have filed seven forceful *amici curiae* briefs in support of NCLA’s lawsuit seeking to block the Securities and Exchange Commission’s unlawful “Consolidated Audit Trail”—or “CAT”—program. The 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. SEC and private regulators can access this database forever, but they cannot ensure its security. Representing Erik Davidson, John Restivo, and the National Center for Public Policy Research, NCLA thanks *amici* for standing up against this unprecedented assault on Americans’ constitutional rights.

Excerpts of the briefs filed by *amici curiae* in support of NCLA’s lawsuit follow:

“The Commission has existed for nearly a century without having real-time access to the personally identifiable information of every retail investor in America. ... Congress never gave the Commission the authority to construct this unprecedented surveillance. ... Congress never even appropriated funds for it ... [SEC] chose to fund the CAT through user fees that will ultimately be passed along to the very investors whose information is being put at risk. ... The economic value of such centralized detailed information, both commercially and to foreign interests and hackers, cannot be overstated.”

— [States of Arkansas, Alabama, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Mississippi, Missouri, Montana, Nebraska, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and West Virginia](#)

“The major questions doctrine was designed for cases like this. ... Because human dignity requires that individuals have ‘personal privacy’ over who they support with their economic transactions, ... investors are entitled to invest based on their moral, ethical, or religious beliefs without making a public statement or coming under perpetual surveillance. ... A data breach could also allow cybercriminals to break into the brokerage accounts of everyday Americans and steal their investments. ... The significance of [the] threat [of improper enforcement by SEC] has increased with the advent of artificial intelligence. The Commission has already signaled its plans to use AI in the CAT database to go fishing for potential enforcement leads.... [This] make[s] it likely that federal agents will open investigations into countless innocent investors based on inadequate AI queries, incomplete AI analyses, or incorrect AI conclusions. ... The financial, reputational, and operational harms to businesses and individuals from SEC investigations can be ruinous. ... The process itself becomes the punishment. The CAT program clearly violates [the Fourth Amendment’s] limits by collecting private information on tens of millions of investors without any connection to suspected wrongdoing.”

— [American Securities Association, Former Attorney General William Barr, and American Free Enterprise Chamber of Commerce](#)

“[T]he Fourth Amendment was the founding generation’s response to the reviled “general warrants” and “writs of assistance” of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.’ ... [SEC’s CAT] is a massive threat to privacy rights and our constitutional order ... a radically new form of surveillance that implicates both Fourth and Fifth Amendment rights. ... [It is] in essence, a blanket subpoena for the sensitive personal and financial information of anyone who chooses to participate in the financial markets. ... As Justice Samuel Alito [then Deputy Assistant Attorney General], observed: ‘The individual should be free to refuse to create or organize records on fifth amendment grounds.’ Government agencies cannot be allowed to mandate new ‘customs’ of records collection and then use those ‘required customs’ to evade Americans’ Fifth Amendment rights.”

— [Cato Institute and Investor Choice Advocates Network](#)

“People engage in individual, personal financial transactions as part of daily life. They do not expect the details of those transactions, including their identifying information, to be supplied to a massive government database. ... The deanonymization of digital asset users, by making their identities and their other blockchain transactions available, is akin to publishing that individual’s entire credit card transaction history online, but even more invasive. ... It would be like the government and other actors being able to rummage through a person’s drawers, with their entire financial life on display, without being accused of any wrongdoing.”

— [Blockchain Association and DeFi Education Fund](#)

“The spark that ignited the American Revolution, the Boston Tea Party, was not just a regulation of commerce in tea; rather, it was a tax on citizens. Parliament had forced the colonists to pay indirect and special taxes on tea without the consent of their representatives in the legislature. The SEC, through the ... CAT, is trying to exercise the same kind of improper authority ... [by] forc[ing] broker-dealers to pay for an enforcement tool without the involvement of their representatives in the legislature. ... [T]his funding scheme jeopardizes political accountability ... [and] jettison[s] the traditional mechanism for congressional control over the agency. ... Once the SEC has seized the power of the purse, there is no limiting principle on what the SEC can do with that power. Preserving ... Congress[’s exclusive] power of the purse ... is crucial for upholding the separation of powers.”

— [Competitive Enterprise Institute](#)

“[SEC and CAT LLC] concoct a revisionist history of the CAT... Defendants’ brief is rife with misinterpretations and misdirection about the securities laws. ... The SEC has taken a statute aimed at making the securities trading systems better and cheaper for investors and co-opted it to make the SEC’s and SROs’ jobs of regulation and enforcement easier. ... If [SEC] desire[s] improved enforcement capabilities, ... SEC should ... request authority from Congress rather than use a statute with a different purpose to find a power that does not exist there.”

— [Andrew N. Vollmer of Mercatus Center, former SEC Deputy General Counsel](#)

“Federal regulatory agencies are circling this case like jackals, watching to see if this Court will allow them to tear away at powers the Constitution reserves only to Congress, or the People. The SEC has circumvented congressional authorization and appropriation powers by launching a massive surveillance program against the American people and compelling private entities it regulates to build and pay for it. ‘Through a long train of abuses and usurpations,’ the SEC has been piecing together this unconstitutional chimera since 2012, hacking off powers from one branch of government and monstrously grafting them on to parts of others, while amputating various parts of the Bill of Rights. The SEC, a regulatory agency in the executive branch, has abrogated the congressional power of the purse by force, funding CAT through entities it regulates that are in no position to protest. In turn, CAT surveilles Americans on a mass scale without benefit of judicial warrant and chills First Amendment freedoms of speech and association.”

— [Advancing American Freedom, Inc., 48 Public-Interest Organizations and Individuals](#)

NCLA released the following statements:

“These powerful *amici* briefs expose SEC’s utter lack of authority for the CAT, its manifold disregard of Americans’ civil liberties, its reckless exposure of investor savings to the ravages of foreign and domestic cybercrime, its heedless foray into enforcement-by-bots and its bypassing of blockchain innovations that can protect and anonymize such sensitive information. The CAT imposes billions of dollars of unlegislated taxation upon the very investors whose assets they have jeopardized and whose freedoms and rights of association they have trampled. Courts must step in and set aside this unlawful scheme.”

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

“The support of so many formidable *amici*—even at the trial level—demonstrates this case’s historic importance. These briefs explain in depth why the CAT is unlawful several times over: how it violates the Constitution, various other laws, and basic civil liberties. They provide perspectives from a wide range of stakeholders, showcasing the damage this program does to tens of millions of ordinary Americans.”

— **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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