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NCLA Asks Court to Uphold Suit, Stop SEC's Unauthorized and Unlawful 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 16, 2024) – The New Civil Liberties Alliance has made the latest key [filing](#) in its *Davidson, Restivo, NCPPR v. Gensler, et al.* lawsuit, which seeks to block the Securities and Exchange Commission's unlawful "Consolidated Audit Trail" program—also known as the "CAT." NCLA's clients are suing SEC and CAT LLC, the company that SEC established to operate the CAT database. NCLA's new brief in the U.S. District Court for the Western District of Texas opposes motions that Defendants filed to dismiss the case and reiterates its earlier request that the court instead issue a preliminary injunction halting the CAT.

The CAT is an unprecedented database that radically changes SEC's role—enabling it to directly monitor tens of millions of people's investments. The program requires every broker-dealer to report all of their retail customers' stock purchases and sales to a centralized database. SEC then combs through that database to search for possible legal violations. The CAT amasses the largest collection of personal financial data in American history.

The CAT violates the constitutional rights of ordinary investors, including NCLA clients Erik Davidson, John Restivo, and the National Center for Public Policy Research. Because the CAT seizes their private financial data without due process of law, it violates the Fourth and Fifth Amendments. It also forces them to tell the government their private decisions about how they invest or donate their stock, running roughshod over their First Amendment freedom of association and expression.

SEC created the CAT without permission from Congress, so the program also violates the Constitution's Vesting Clause, which assigns all lawmaking powers solely to Congress. It further violates the Administrative Procedure Act. And even though the cost to set up the CAT is more than SEC's entire annual budget, SEC did not ask Congress for an appropriation. Instead, SEC is funding the CAT by requiring securities industry self-regulatory organizations, like FINRA, to charge their members the billions of dollars needed. That agency self-appropriation ignores the Constitutional provisions that reserve tax and appropriations powers to Congress alone.

The Defendants' motions to dismiss argue that SEC did not overreach when it created the CAT and deny that the CAT violates the Constitution. NCLA's new brief persuasively explains how governing law supports the Court's stepping in to end this unauthorized, unlawful intrusion on so many ordinary American investors' civil liberties.

NCLA released the following statements:

"SEC's arrogation of power to set up the CAT's Orwellian surveillance scheme violates the right of every American to be governed only by laws enacted by Congress. This scheme also tramples their First, Fourth and Fifth Amendment rights against unlawful government intrusion. Adding insult to injury, SEC's self-appropriation of funds, nearly doubling its entire budget, will be passed through to ordinary investors as an unlegislated tax."

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

“The CAT is an illegal power grab in which the SEC has massively expanded its own role, appointing itself for the first time ever as the real-time, direct monitor of the investments of tens of millions of Americans. The Court should find it unlawful and put an end to this database.”

— **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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