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**Federal Court Holds Back NCLA’s Effort to Inform Public of Major Misconduct at SEC**

*New Civil Liberties Alliance, Investor Choice Advocates Network, Patriot 28 LLC, and George R. Jarkesy, Jr. v. U.S. Securities and Exchange Commission*

**Washington, DC (January 9, 2025)** – The U.S. District Court for the Southern District of Texas has [rejected](https://nclalegal.org/filing/memorandum-opinion-and-order-of-the-u-s-district-court-for-the-southern-district-of-texas/) the New Civil Liberties Alliance’s request to force the Securities and Exchange Commission to immediately release information concerning profound misconduct within that agency. SEC had refused to comply with NCLA’s Freedom of Information Act (FOIA) request for records about what the agency called a “control deficiency,” in which SEC enforcement staff gained illicit access to and then downloaded confidential adjudicative documents in dozens of enforcement cases. Undeterred, NCLA will continue efforts to obtain this information further exposing SEC’s hopelessly compromised in-house adjudicatory regime.

SEC publicly admitted in April 2022 to the so-called control deficiency within its administrative adjudication system by filing notices in the Supreme Court case of [*SEC v. Cochran*](https://nclalegal.org/case/michelle-cochran-v-u-s-securities-and-exchange-commission/) and the U.S. Fifth Circuit Court of Appeals case of [*Jarkesy v. SEC*](https://nclalegal.org/case/amicus-brief-george-r-jarkesy-jr-et-al-v-u-s-securities-and-exchange-commission/). NCLA promptly filed a FOIA request with SEC, as did George Jarkesy, requests which SEC refuses to meaningfully comply with to this day. [The Wall Street Journal](https://www.wsj.com/articles/sec-says-employees-improperly-accessed-privileged-legal-records-11649205758) described the inexcusable breach as “the equivalent of a party in litigation having access to a judge’s briefs from her law clerks.”

In June 2023, weeks after NCLA client Michelle Cochran won a unanimous Supreme Court ruling that allowed SEC targets to vindicate their constitutional rights in federal court, the agency revealed that such misconduct occurred in far more enforcement cases than first reported. It then dismissed all 42 of its open cases, including two involving NCLA clients ([Michelle Cochran](https://link.mediaoutreach.meltwater.com/ls/click?upn=jDs0ztXrdZv1O-2BufaSOC814mS-2BnUzBwOU-2BE3OuGxqNUUWQuLqXIRTaBpUAAfL4aDutkY_UliKdVn-2Fym66ieOkKWmTiHW7JW2J3QKthSFHubO5WmQVxYaBz2skzdyAAIdmc3bWMAJ2Sj69R0IX5LpzXSkA-2FsnM0OhAjQ8j5okLc2zlw-2BelisSMjoHf1YEuLqtv-2Bj2mhFZ1SBwC-2BjTRux09Si-2BjQkqso3D8DG9MuHD1aBbvgDIiycXPILtip6EbZF57v71RRH9kxwpUATa-2FgaQjhL8U0KfF4r4s5nFJBdbA9F-2BVCYhZ875YPg9AeYHwKZifVcmdRTOAm3ZRkQGqn0m2rUVdRFO1R-2B96ifcJrVCvBC2Ce8WdO7j9cnSqh-2BCwy3HRqPtY-2BmCULLLnJvx3jV-2BIN966V6IxKJs4mMdq6PqNM-2BLpiGKFY5MZMhjeafYYUc3h3GYFkq-2BR-2BkwcCBCOA7BVG-2BLjyg-3D-3D), [Marian Young](https://link.mediaoutreach.meltwater.com/ls/click?upn=jDs0ztXrdZv1O-2BufaSOC86mc7Zk02UtDba-2BvtWLrFw-2FiMKOcd7guxjNJqKQP-2F0O48TlQSlYfNOv0YQcT3MK23i6m5s-2BkjDmt1E2tm3EIBSM-3D-fzS_UliKdVn-2Fym66ieOkKWmTiHW7JW2J3QKthSFHubO5WmQVxYaBz2skzdyAAIdmc3bWMAJ2Sj69R0IX5LpzXSkA-2FsnM0OhAjQ8j5okLc2zlw-2BelisSMjoHf1YEuLqtv-2Bj2mhFZ1SBwC-2BjTRux09Si-2BjQkqso3D8DG9MuHD1aBbvgDIiycXPILtip6EbZF57v71RRH9kxwpUATa-2FgaQjhL8U0KfF4r4s5nFJBdbA9F-2BVCYjg7qtETf1Glr2X0vubWaGX2w98xVnMlbiMlN7kfreBPpXtsInzWA3iCl-2FMUOVgo-2FzQKm4V8utN6104A4XvLDjd-2FcPwE-2BfuLUEl-2B-2BaZjQWqFte5WVa2Q0TVNVT-2FPvXwryv55KIwvP0LsUKD74nTE5KxrvE9dkGJYcoof4apWhBjCQ-3D-3D)) and one of a former client ([Christopher Gibson](https://link.mediaoutreach.meltwater.com/ls/click?upn=jDs0ztXrdZv1O-2BufaSOC814mS-2BnUzBwOU-2BE3OuGxqNXFRnbtVN2QW21pqKKU6ILgFqVx8TH19Pnbh-2FZO9-2FM7-2Bw-3D-3DHT4O_UliKdVn-2Fym66ieOkKWmTiHW7JW2J3QKthSFHubO5WmQVxYaBz2skzdyAAIdmc3bWMAJ2Sj69R0IX5LpzXSkA-2FsnM0OhAjQ8j5okLc2zlw-2BelisSMjoHf1YEuLqtv-2Bj2mhFZ1SBwC-2BjTRux09Si-2BjQkqso3D8DG9MuHD1aBbvgDIiycXPILtip6EbZF57v71RRH9kxwpUATa-2FgaQjhL8U0KfF4r4s5nFJBdbA9F-2BVCYh5eEyobwkvdLn8rahFdxgMG6WR5HAeSff2a7OYgySc3GXQSgu7a9d6awCcoKjw5VX8jnzM-2BM47hgyct3bpyBcwC65crkrLMP6Is9MLzzwKfy2Fk2wIVtvGu-2FaTERXeXPiF0p2jYcHCThGaF6EizpDZ-2FaS-2BDrKbXYB0LdRdEoWMpQ-3D-3D)). That mass dismissal denied these respondents their day in a real court and conveniently prevented all targets of this misconduct from gaining judicial discovery about the breach. Again, The Wall Street Journal [called out](https://www.wsj.com/articles/sec-security-breach-gary-gensler-george-jarkesy-supreme-court-9917cfc7?st=5H3xzH&reflink=desktopwebshare_permalink) the agency: “What is Gary Gensler Hiding?: The SEC prevents a security breach from public view.” SEC has never disclosed whether the 42 dismissed cases were the only ones where the “control deficiency” had occurred.

NCLA and the Investor Choice Advocates Network (ICAN), which both publish media content on administrative power, soon joined Mr. Jarkesy’s [Complaint](https://nclalegal.org/filing/complaint-for-declaratory-and-injunctive-relief-13/) to expedite these requests for records on this “control deficiency”—SEC having proposed in late 2023 a 10-year-long compliance schedule! Mr. Jarkesy later won an important June 2024 victory when the Supreme Court ruled in *SEC v. Jarkesy* that SEC enforcement targets are entitled to a jury trial in an Article III court, another reason the “control deficiency” is an urgent matter of public interest.

Yet, in December 2024, District Judge Jeffrey Brown denied expedited processing of the FOIA request. He incorrectly found that neither NCLA nor ICAN is legally entitled to expedited processing since they are not “primarily engaged in disseminating information” and the “control deficiency” records are not proven to be an urgent matter of public interest—despite the misconduct occurring in landmark constitutional cases and possibly many settled cases unbeknownst to the settling defendant. But NCLA and ICAN are media organizations *and* litigation groups. NCLA writes op-eds and blogs, produces podcasts, videos, a newsletter, and other original content, and releases records to the public exposing the Administrative State’s abundant pathologies. The relevant statute requires expedited FOIA processing for groups like these in cases involving urgent matters of public interest, including the profound misconduct that SEC’s “control deficiency” entails.

**NCLA released the following statements:**

“FOIA has become a paper tiger that government agencies can defy with impunity. Open and accountable government—as well as the rights of the people to know how powerful agencies operate—are the obvious and avoidable casualties.”

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

“The incoming leadership at SEC has a golden opportunity to repudiate the Gensler regime’s sad track record of dishonesty, obfuscation, and due process denial. NCLA hopes that FOIA will not be necessary in this matter much longer, because the new Chairman will see the wisdom in exposing the agency’s recent sins to the light of day.”

**— Mark Chenoweth, President, NCLA**

“The SEC's attempt to slow-walk the release of information about this serious breach of integrity is deeply troubling. As an organization dedicated to protecting investor choice, ICAN believes the public deserves to know the full scope of this misconduct and its impact on enforcement proceedings. Transparency isn't just a buzzword—it's essential for maintaining the integrity of our markets and the trust of investors.”

**— Nick Morgan, President, ICAN**

“It is beyond irony that the very agency that routinely prosecutes companies for ‘control deficiencies’ and lack of transparency exhibits nothing but contempt for transparency when it is caught doing the same thing. This cover-up is one of many reasons the SEC has squandered its authority to police the financial markets.”

**— S. Michael McColloch, Counsel for George Jarkesy and Patriot 28 LLC**

**For more information visit the case page** [here](https://nclalegal.org/case/new-civil-liberties-alliance-et-al-v-u-s-securities-and-exchange-commission/)**.**

**ABOUT NCLA**

[NCLA](https://nclalegal.org/) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](https://nclalegal.org/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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