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NCLA Asks Supreme Court to Hear Case on Privacy Rights for Records Shared with Third Parties

James Harper v. Douglas O'Donnell, in His Official Capacity as Acting IRS Commissioner, et al.

Washington, DC (February 21, 2025) – Today, the New Civil Liberties Alliance [petitioned](#) the U.S. Supreme Court to hear the *Harper v. O'Donnell* lawsuit and reform the “third-party” doctrine, which denies individuals Fourth Amendment protection against government intrusion into their records stored with third parties. The Internal Revenue Service unlawfully seized financial records of NCLA client James Harper and more than 14,000 others from the Coinbase cryptocurrency exchange through abuse of a “John Doe” summons. IRS took Mr. Harper’s documents without any individualized suspicion to believe he had under-reported his income or failed to pay taxes. The Supreme Court should take the opportunity to fix the third-party doctrine, which the government has relied on to strip away the Fourth Amendment rights of millions of Americans who share data, such as internet browsing histories and medical records, with third-party companies.

In August 2022, a three-judge panel of the U.S. Court of Appeals for the First Circuit unanimously ruled that Mr. Harper could take IRS to federal court for gathering private financial information about his use of virtual currency from third-party exchanges without a lawful subpoena. However, the U.S. District Court for the District of New Hampshire dismissed Mr. Harper’s subsequent lawsuit against IRS in May 2023, incorrectly ruling that he had failed to state a claim. The First Circuit invoked the third-party doctrine to uphold that dismissal last September.

The Supreme Court must revisit the third-party doctrine to recognize Fourth Amendment protection for Mr. Harper’s cryptocurrency data and other digital records, which Americans now routinely store with third-party service providers. Digital records are a modern-day individual’s “papers” and “effects” that the Fourth Amendment explicitly safeguards against government’s prying eyes. Justice Sonya Sotomayor has observed that the third-party doctrine is “ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.”

The government obtained financial records of Mr. Harper and more than 14,000 other Americans without individualized suspicion that any of them broke the law. But the key Supreme Court decisions that created the third-party doctrine involved targeted investigations of a single individual and never justified warrantless mass surveillance. The Justices should return the doctrine to that focused, limited foundation. The Supreme Court also has the chance to address the third-party doctrine as applied to future-looking surveillance. As the First Circuit recognized, the nature of cryptocurrency technology means the records IRS seized allow the agency to “track [Mr. Harper’s] future transactions,” even after he stopped using Coinbase in 2016. Storing some cryptocurrency transactions records with Coinbase could not have eliminated Mr. Harper’s expectation of privacy in *all* his cryptocurrency transactions—including those in the future and those unrelated to Coinbase.

NCLA released the following statements:

“The judge-made third-party doctrine was ill-conceived from the start, with dozens of States repudiating it over the past half century. The doctrine has become even less defensible in the modern age, where sharing confidential information with third-party companies such as internet, healthcare, and even cryptocurrency companies, has become an increasingly common part of American life.”

— **Sheng Li, Litigation Counsel, NCLA**

“The Constitution promises security to Americans in their ‘papers and effects.’ Until the Supreme Court clarifies its rulings for the digital age, that promise is unfulfilled.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) and watch the case video [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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