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NCLA Amicus Brief Exposes Fatal Constitutional Flaws in SEC’s Illegal Mass Data Collection Regime

American Securities Association and Citadel Securities LLC v. U.S. Securities and Exchange Commission

Washington, DC (February 15, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *American Securities Association v. Securities and Exchange Commission*, urging the U.S. Court of Appeals for the Eleventh Circuit to set aside an SEC [order](#) requiring financial industry broker-dealers to fund a “Consolidated Audit Trail” (CAT) that Congress never authorized. Unless the Court intervenes to stop it, these costs will be passed on to the investing American public as an unlegislated tax.

SEC’s CAT is an unprecedented mass confiscation of personal financial data in blatant violation of the Fourth Amendment’s restrictions on unreasonable searches and seizures. Without statutory authority, SEC is forcing brokers, exchanges, clearing agencies and alternative trading systems to capture and send detailed information on every investor’s U.S. market trades to a centralized database, which SEC, self-regulatory organizations and outside contractors could access forever. The CAT program is creating the largest securities database on the planet and the most massive government database of any kind outside the National Security Agency. The database puts every American’s financial data and security at grave and needless risk from cybersecurity breaches.

SEC’s CAT regime seizes American investors’ financial data without a warrant and without due process of law, violating their Fourth and Fifth Amendment rights by searching and seizing financial records without following any constitutionally sufficient procedures, or even articulating a suspicion, let alone probable cause, that any particular investor broke the law. The CAT also violates investors’ First Amendment freedoms of association and expression, prying into each investment decision and turning over their proprietary strategies to the government.

No law passed by Congress gives SEC authority to set up a data collection and surveillance system. By creating one on its own authority, SEC wielded legislative power, violating the first clause of Article 1 in the Constitution, which vests all lawmaking authority in Congress alone. SEC also violated the Administrative Procedure Act.

SEC funds CAT by self-appropriating billions from self-regulatory organizations like the Financial Industry Regulatory Authority (FINRA). Such appropriation without representation ignores the Constitution and statutes that exclusively reserve taxation and appropriations powers for Congress. An agency cannot fund an unauthorized program by raising money from self-regulatory organizations under its regulatory thumb. SEC knows and intends that those costs will be fully passed on to American investors as a multi-billion dollar “fee,” SEC’s doublespeak for an unlegislated tax. All of this leads to an inescapable conclusion: SEC’s order and CAT should not survive.

NCLA released the following statements:

“The CAT is an illegal SEC power grab that violates ordinary Americans’ basic constitutional rights. The courts should strike down the entire program as unconstitutional.”

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

“How does this violate the Constitution? Let me count the ways. The CAT strips away Fourth, Fifth and First Amendment guarantees of civil liberties that would invalidate any Act of Congress that tried this unconstitutional power grab. It also violates the separation of powers that place lawmaking, taxing and appropriating powers in the legislative branch alone—so that we might be a representative government of laws, not men.”

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

“Hollywood movies joke about law enforcement rounding up the usual suspects, but the SEC’s CAT would round up every single American investor into one giant database before a crime has even occurred, just in case someone later violates securities laws. This Leviathan-sized dragnet is absurd, risky, and utterly unlawful.”

— **Mark Chenoweth, President and Chief Legal Officer, NCLA**

For more information visit the *amicus* 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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