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**In NCLA *Amicus* Win, Eleventh Circuit Vacates SEC Order Used to Fund Its Illegal Collection of Data**

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

**Washington, DC (July 28, 2025)** – The U.S. Court of Appeals for the Eleventh Circuit has issued a [decision](#) in *American Securities Association v. SEC* that will vacate a 2023 SEC order requiring financial industry broker-dealers to fund the agency’s “Consolidated Audit Trail” (CAT), which Congress never authorized. The New Civil Liberties Alliance filed an *amicus curiae* [brief](#) showing how this unlawful order passes costs on to the investing American public as an unlegislated tax. The Eleventh Circuit held that the 2023 funding order is arbitrary and capricious in violation of the Administrative Procedure Act but stayed its decision to vacate the Rule for 60 days.

Without statutory authority, SEC’s CAT forces 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, to which SEC, self-regulatory organizations, and outside contractors have access in perpetuity. As NCLA points out in our [Davidson, et al. v. Atkins](#) lawsuit against the CAT program, the CAT is the largest securities database on the planet and the most massive government database of any kind outside that of the National Security Agency.

Congress never authorized SEC to construct such a surveillance scheme, nor did it appropriate funds to the agency to build it. The CAT violates American investors’ Fourth and Fifth Amendment rights by seizing the financial records of ALL Americans to search them any time in the future, without following any constitutionally sufficient procedures, or even articulating a suspicion, let alone probable cause, that any particular investor broke the law. The program also violates investors’ First Amendment freedoms of association and expression, prying into each investor’s proprietary investment decisions and strategies and turning that information over to the government.

SEC funds the 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 surveillance 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 investors as a multi-billion-dollar exaction that constitutes an unlegislated tax. The Eleventh Circuit’s ruling did not reach the question of whether the CAT itself is unlawful, but NCLA looks forward to convincing a court of that inescapable conclusion in [Davidson, et al. v. Atkins](#).

**NCLA released the following statements:**

“Congress never authorized SEC to build this unconstitutional panopticon for which the people most harmed—innocent American investors—must pay. Nor would Congress ever pass such intrusive legislation costing ‘hundreds of millions of dollars’ more than SEC’s top estimate. This kind of excess is why the Founders placed the power of the purse in the legislature, and the legislature alone. Decisions about government surveillance and financial exaction first must not violate the Constitution and second may only be made after open debate in Congress by accountable representatives and following bicameral passage and presentment to the President.”

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

“The Eleventh Circuit’s admirable decision makes a good start on putting paid to the SEC’s unlawful CAT regime. Now we just need the *Davidson* court in Texas to recognize that this database lacks any statutory support.”  
— **Mark Chenoweth, President, 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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