

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL M. MILES,

Petitioner.

---

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

---

DOUGLAS B. KLUNDER, WSBA #32987  
705 2nd Avenue, Suite 300  
Seattle, WA 98104  
(206) 624-2184

*Attorney for Amicus Curiae*  
American Civil Liberties Union of Washington

The American Civil Liberties Union of Washington (“ACLU”) respectfully moves, pursuant to RAP 10.1(e) and 10.6, to file a brief as *Amicus Curiae* regarding whether it is constitutional for a state regulatory agency to obtain bank records for an investigation through a subpoena, with no judicial oversight or notice to the subject of the records. In support of this motion, the ACLU offers the following information:

**I. IDENTITY AND INTEREST OF AMICUS**

The ACLU is a statewide, nonpartisan, nonprofit organization with over 20,000 members, dedicated to the preservation and defense of constitutional and civil liberties, including privacy. The ACLU strongly supports adherence to the provisions of Article 1, Section 7 of the Washington State Constitution, prohibiting unreasonable interference in people’s private affairs. It has participated in numerous constitutional and privacy-related cases as *amicus curiae*, as counsel to parties, and as a party itself.

**II. FAMILIARITY WITH ISSUES**

*Amicus* has obtained copies of, and is familiar with, the briefing submitted by the parties to this Court, the opinion of the lower court and the proceedings below. *Amicus* is familiar with the scope of the argument presented by the parties and will not unduly repeat arguments raised by any of the parties.

**III. ISSUE TO BE ADDRESSED BY AMICUS**

Whether Article 1, Section 7 of the Washington State Constitution allows a state regulatory agency to obtain bank records for an

investigation through a subpoena, with no judicial oversight or notice to the subject of the records.

#### **IV. WHY AMICUS BRIEFING WILL ASSIST THE COURT**

The Court's decision on the issue in this case will have a significant impact on the use of administrative subpoenas by regulatory agencies, and the privacy protections afforded to personal records kept by a third party. In modern society, more and more of the most intimate types of information about individuals is held by others: financial records, medical records, reading records, etc. It is necessary to clearly establish the privacy protections retained by individuals under those circumstances. A fully informed decision is essential, and the additional argument provided by the ACLU *amicus* brief will be helpful to the Court. RAP 10.6(a). The ACLU can provide a wider perspective than the parties, helping in the establishment of a rule that goes beyond the needs of the specific clients in this case.

#### **V. CONCLUSION**

For the foregoing reasons, the ACLU respectfully requests that the Court grant leave to file the attached *amicus* brief.

Respectfully submitted this 10th day of October 2006.

By

---

Douglas B. Klunder, WSBA #32987

Attorney for *Amicus Curiae*  
American Civil Liberties Union of  
Washington

