
SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN NICHOLAS RODEN,

Petitioner.

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

TRAVIS STEARNS, #29335
Washington Defender Association
110 Prefontaine Pl. S, Suite 610
Seattle, WA 98104
(206) 623-4321

LILA J. SILVERSTEIN, #38394
WACDL Amicus Committee
Co-Chair
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101
(206) 587-2711

SARAH A. DUNNE, #34869
NANCY L. TALNER, #11196
DOUGLAS B. KLUNDER, #32987
ACLU of Washington Foundation
901 Fifth Avenue, Suite 630
Seattle, WA 98164
(206) 624-2184

Attorneys for Amici Curiae
American Civil Liberties Union of Washington
Washington Association of Criminal Defense Lawyers
Washington Defender Association

The American Civil Liberties Union of Washington (“ACLU”), Washington Association of Criminal Defense Lawyers (“WACDL”), and Washington Defender Association (“WDA”) respectfully move, pursuant to RAP 10.1(e) and 10.6, to file a brief as *Amici Curiae* regarding the protection afforded by the Privacy Act to conversations conducted via text messages. In support of this motion, the ACLU, WACDL, and WDA offer the following information:

I. IDENTITY AND INTEREST OF AMICI

The ACLU is a statewide, nonpartisan, nonprofit organization of over 20,000 members, dedicated to the preservation of civil liberties, including privacy. The ACLU strongly supports the Privacy Act, chapter 9.73 RCW, protecting private conversations against interception, wiretapping, eavesdropping, and recording. It has participated in numerous privacy-related cases as *amicus curiae*, as counsel to parties, and as a party itself.

WACDL is a nonprofit association of over 1100 attorneys practicing criminal defense law in Washington State. As stated in its bylaws, WACDL’s objectives include “to protect and insure by rule of law those individual rights guaranteed by the Washington and Federal Constitutions, and to resist all efforts made to curtail such rights.” WACDL has filed numerous *amicus* briefs in the Washington appellate courts.

WDA is a statewide non-profit organization with 501(c)(3) status. WDA has more than a thousand members and is comprised of public defender agencies, indigent defenders, and those who are committed to

seeing improvements in indigent defense. One of WDA's primary purposes is to improve the administration of justice and remedy inadequacies and injustices in substantive and procedural law. WDA advocates on issues of constitutional effective assistance of counsel and professional norms and standards under the laws of the State of Washington and the United States. WDA and its members have previously been granted leave to file *amicus* briefs on issues relating to these and other criminal defense issues.

II. FAMILIARITY WITH ISSUES

Amici have obtained copies of, and are familiar with, the briefing submitted by the parties to this Court, the opinion of the lower court and the proceedings below. *Amici* are 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 AMICI

Whether police impersonation of a participant in a text message conversation in order to intercept those text messages without the consent of either the sender or intended recipient violates the Privacy Act.

IV. WHY AMICI BRIEFING WILL ASSIST THE COURT

The Court's decision on the issue in this case will significantly impact how Washingtonians choose to communicate with each other in the future, using modern technologies. It is necessary to clearly establish the privacy protections afforded to individuals under these circumstances. A fully informed decision is essential, and the additional argument provided

by the *amici* brief, discussing the applicability of the Privacy Act to text messages and interceptions, will be helpful to the Court. RAP 10.6(a). The parties are naturally most interested in establishment of a rule that addresses the particular facts of this case and provides a favorable result to their clients. *Amici* can provide a wider perspective, 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, WACDL, and WDA respectfully request that the Court grant leave to file the attached *amici* brief.

Respectfully submitted this 5th day of April 2013.

By



Douglas B. Klunder, WSBA #32987
ACLU of Washington Foundation

Attorney for *Amici Curiae*
American Civil Liberties Union of Washington
Washington Association of Criminal Defense Lawyers
Washington Defender Association