

IN THE SUPREME COURT OF WISCONSIN

STATE OF WISCONSIN

Plaintiff-Respondent,

Appeal No.

2019-AP-1404-CR

v.

GEORGE STEVEN BURCH,

Defendant-Appellant.

FILED**FEB 16 2021****CLERK OF SUPREME COURT
OF WISCONSIN**

MOTION OF *AMICI* AMERICAN CIVIL LIBERTIES UNION FOUNDATION,
AMERICAN CIVIL LIBERTIES UNION OF WISCONSIN FOUNDATION,
ELECTRONIC FRONTIER FOUNDATION, AND ELECTRONIC PRIVACY
INFORMATION CENTER FOR AN ENLARGEMENT OF TIME TO FILE
A NON-PARTY BRIEF

The American Civil Liberties Union Foundation, the American Civil Liberties Union of Wisconsin Foundation, the Electronic Frontier Foundation, and the Electronic Privacy Information Center (collectively, “*amici*”), by undersigned counsel, respectfully move this Court pursuant to Wisconsin Statute § 809.82(2)(a) for an enlargement of time to file their non-party brief on March 4, 2021.

As grounds for this motion, *amici* state as follows:

1. Under Wisconsin Statutes §§ 809.19(7)(c) and 809.63, non-parties may move this Court for permission to file a non-party brief up to fourteen days after the Respondent’s brief is filed. The deadline for Respondent to file its brief is February 19, 2021. Thus, the

statutory deadline for *amici* to file their motion for leave to file would normally be March 4, 2021.

2. *Amici* filed their motion for leave to file a non-party brief early, on February 4, 2021, twenty-eight days before the statutory deadline.

3. *Amici* did this because, contemporaneous with asking for leave to file, they moved the Court to permit a brief in excess of the statutory limit of 3000 words. Drafting the brief required knowing the Court's decision on that motion early, before March 4.

4. On February 9, 2021, the Court granted *amici*'s motion for leave and motion for additional words. At the same time, the Court set a deadline for *amici*'s brief to be filed by February 23, 2021, two weeks later, instead of on or after the statutory deadline for a motion for leave of March 4, 2021. Ct. Order of 2/9/21, *State v. Burch* (Wis. Feb. 9, 2021). *Amici* had expected that their brief would be due sometime after March 4, 2021 per Wis. Stat. § 809.19(7)(b).

5. Under Wisconsin Statute § 809.82(2), this Court may enlarge the time prescribed by statute upon good cause shown by motion. This Court may also amend its previous orders.

6. Having complied with their statutory deadline, and for good cause set forth below, *amici* they now respectfully ask the Court to grant an enlargement of time to file their non-party brief on March 4, 2021.

7. As *amici* set forth in their amended motion for leave, Am. Mot. to File Amicus/Non-Party Br., *State v. Burch*, No. 2019AP1404-CR (Wis. Feb. 4, 2021), each of the six questions now before the Court requires careful consideration and thorough

briefing. Specifically, establishing what the appropriate warrant standard is and the parameters of permissible digital searches under the Fourth Amendment are doctrinally complex questions. An extension of time would facilitate clear, concise, and detailed briefing, which *amici* hope to offer this Court.

8. Additionally, *amici* would like to ensure that they will have adequate time to address arguments made in Respondent's brief. Under the current schedule, *amici* will only have two business days between Respondent's deadline and their own to comment on Respondent's brief and prepare and deliver all copies of the brief to the Court.

9. To most effectively answer the questions presented in this case, *amici* will be coordinating across four organizations with extensive expertise litigating matters at the intersection of digital technology and civil liberties. Thoughtful coordination requires time and attention, slowing the briefing process.

10. Further, compliance with this Court's procedures requires admitted and *pro hac* counsel to provide "wet signatures" to briefs and to ensure that the Clerk's Office receives the correct number of properly-bound paper copies. In addition to being located in four different cities and three different time zones, *amici*'s attorneys are working from home due to the public health emergency. Preparing the brief will accordingly take more time than usual.

11. Additionally, in the days leading up to this Court's ordered briefing deadline of February 23, 2021, *amici*'s offices will all be closed in observance of President's Day, a national holiday, and some will be closed for Lincoln's Birthday, a statewide holiday in New York.

For the foregoing reasons, *amici* respectfully request that this Court grant their motion for an enlargement of time and set a new briefing deadline of March 4, 2021.

Dated this 11th of February, 2021

Respectfully submitted,



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