

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 2:17-cr-67
v.)	
)	
GREGORY KYLE SEERDEN,)	
)	
Defendant.)	
)	

**MOTION OF CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND
FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF
DEFENDANT’S MOTION TO SUPPRESS**

On the grounds and for the reasons set forth below, movants, through undersigned counsel, pursuant to F.R.Civ.P. 7 and the local rules of this Court, move this Court for leave to file a brief *amicus curiae* in support of Defendant’s motion to suppress.

Counsel for Defendant has consented to this motion and to the filing of the attached brief *amicus curiae*. Counsel for Plaintiff has objected to the filing of this motion. Movant learned of this case and the pending motion to suppress only recently, and endeavored to file the motion and *amicus* brief as soon as it could before the motion hearing scheduled for July 11, 2017.

NATURE OF MOVANT CLDEF

Movant Conservative Legal Defense and Education Fund is exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (“IRC”), is a public

charity, participates actively in the public policy process, and has filed numerous *amicus curiae* briefs in federal and state courts. See www.cldef.org.

Movant defends U.S. citizens' Fourth Amendment rights against government overreach. Movant has filed *amicus curiae* briefs in three other cases involving the Fourth Amendment's protection of cell phone information, including:

1. United States v. Wurie, 134 S.Ct. 2473 (2014), U.S. Supreme Court, [Brief Amicus Curiae of Downsize DC Foundation, et al.](#) (Apr. 9, 2014). Note: Wurie was the companion case to Riley v. California, 134 S.Ct. 2473 (2014);
2. United States v. Graham, U.S. Court of Appeals for the Fourth Circuit Docket No. 12-4659, [Brief Amicus Curiae of DownsizeDC.org, et al.](#) in Support of Defendants-Appellants on Rehearing *En Banc* (Jan. 22, 2016); and
3. Graham v. United States, U.S. Supreme Court, Docket No. 16-6308, [Brief Amicus Curiae of U.S. Justice Foundation, et al.](#) in Support of Petition for Certiorari (Nov. 3, 2016). Note: this Petition for Certiorari is currently pending the decision in Carpenter v. U.S. (No. 16-402).

Additionally, movant filed two *amicus* briefs in the United States Supreme Court in United States v. Antoine Jones, 132 S.Ct. 945 (2012), at both the petition stage and the merits stage which directly bear on this issue:

- [Brief Amicus Curiae of Gun Owners of America, Inc., et al.](#) in Support of Neither Party, On Petition for Writ of Certiorari (May 16, 2011); and
- [Brief Amicus Curiae of Gun Owners of America, et al.](#), in support of Respondent, On Writ of Certiorari (Oct. 3, 2011).

I. THIS CASE PRESENTS A CONSTITUTIONAL MATTER OF GREAT IMPORTANCE.

This case presents important questions of Fourth Amendment law. Particularly the search in this case raises issues related to the Fourth Amendment's textual and historical property baseline as recently affirmed by the United States Supreme Court in United States v.

Jones, 132 S.Ct. 945 (2012), and Florida v. Jardines, 133 S.Ct. 1409 (2013). Courts across the country are grappling with how the resurgent property principle applies to cell phones and other electronic devices.¹ *See also* Carpenter v. United States, Supreme Court Docket No. 16-402 (cert. granted June 5, 2017 to decide “Whether the warrantless seizure and search of historical cell phone records revealing the location and movements of a cell phone user over the course of 127 days is permitted by the Fourth Amendment.”).

II. THE *AMICUS CURIAE* BRIEF RAISES RELEVANT ISSUES NOT ADDRESSED ADEQUATELY IN THE PARTIES’ MOTION AND RESPONSE.

The movant’s *amicus curiae* brief submitted with this Motion supports the position of Defendant. However, it makes arguments based on the Jones case that may not be fully developed by Defendant’s Motion and the Government’s Response. The *amicus* brief argues that the Jones property baseline provides greater protection than a Katz expectation of privacy analysis, and that Jones requires a strict application of the probable cause requirement and the rule that only the local commander may issue a Command Authorization for Search and Seizure.

III. THE ACCEPTANCE OF BRIEFS *AMICUS CURIAE* HAS BEEN FOUND USEFUL IN CASES SUCH AS THIS.

District courts have inherent power to grant leave to file briefs *amicus curiae*, as they often “provide helpful analysis of the law[,] they have a special interest in the subject matter of the suit[,] or existing counsel is in need of assistance.” Bryant v. Better Business Bureau of Greater Maryland, Inc., 923 F.Supp. 720, 728 (D. Md. 1996). *See also* Tafas v. Dudas, 511

¹ *See, e.g.*, [Brief Amicus Curiae of DownsizeDC.org](#), United States v. Zodiates, U.S. Court of Appeals for the Second Circuit (July 5, 2017).

F. Supp. 2d 652, 659 (E.D. Va. 2007). For the reasons stated above, it is believed, particularly in bringing to the attention of the Court important principles and binding authorities not fully addressed by the parties, that this *amicus* brief will inform the Court's effort to resolve the question before it.

Given the nationwide significance of this case, and its profound implications for all Americans and servicemembers, movant respectfully requests leave to file the accompanying brief *amicus curiae* in support of Defendant's Motion to Suppress.

This 7th day of July 2017.

Respectfully submitted,

/s/ William J. Olson

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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July, 2017, I will electronically file the foregoing Motion for Leave to File Brief *Amicus Curiae* in Support of Defendant's Motion to Suppress with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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