

IN THE SUPREME COURT OF FLORIDA

CASE NO: 20-1419

THE STATE OF FLORIDA,

Petitioner,

vs.

JONATHAN DAVID GARCIA,

Respondent.

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MOTION FOR LEAVE TO FILE AMICUS BRIEF

Harvey J. Sepler, Esq., pursuant to Florida Rule of Appellate Procedure 9.370 (a), respectfully requests this Court for leave to file an amicus brief in this case in support of Respondent, Jonathan David Garcia. As grounds therefor, amici states:

Mr. Sepler has been a practicing member of The Florida Bar for over 35 years and concentrates his practice on appellate law. He was an Assistant Public Defender in the Appellate Division of the Public Defender's Office of the 11th Judicial Circuit for more than 30 years wherein he handled appeals in cases ranging from DUI to 1st-degree murder and in all Florida district courts of appeal, this Honorable Court, and the Supreme Court of the United States. He has been adjunct teaching at the University of Miami School of Law for more than 20 years, and has also taught at the Shephard

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Broad Law Center at Nova University and St. Thomas School of Law. Finally, he is Fellow in the American Academy of Appellate Law.

The issue in this case is whether the Respondent can be compelled to disclose the passcode to his cell phone as part of a criminal investigation, despite his self-incrimination objections. Florida district courts of appeal are in disagreement about the issue and have issued conflicting decisions on the subject. Federal appellate courts have also issued conflicting decisions and one party has filed a Petition for Writ of Certiorari to the United States Supreme Court. No decision has yet been issued indicating whether or not the Court will accept certiorari review.

This Court has accepted jurisdiction in the instant case to resolve a certified decisional conflict among district courts of appeal. The Petitioner has filed its Initial Brief on the Merits and the Respondent's Brief on the Merits is due to be filed by May 13, 2021.

Interest of Amicus Curiae: The sponsoring entities for this amicus brief are the Due Process Institute, the Independence Institute, and the National Police Accountability Project. Each has extensive experience in the constitutional law area and has filed amicus briefs in the United States Supreme Court and in state and federal appellate courts. Their members

have a strong interest in preserving individual liberties, generally, and as they relate to the manner of law enforcement investigations.

Issues Amicus Curiae Will Address: In this action, the Petitioner claims that it has the right to compel the Respondent to disclose the passcode to his cell phone in order to access the contents of that phone. The Petitioner has obtained a search warrant to search the contents of the phone but because it is password-protected, is unable to execute that warrant. The action has not yet gone to trial.

The Respondent has consistently argued that the self-incrimination protections of the 5th Amendment to the United States Constitution apply and that he cannot constitutionally be forced to disclose the password -- particularly where doing so could potentially expose him to liability.

One particular concern is the relationship between the 5th Amendment of the United States Constitution and Article I, Section 9 and Article 23 of the Florida Constitution.

The sponsoring entities all have a perspective that will assist this Court's consideration of the issues as they relate to the instant parties and to similarly situated litigants in Florida and around the country. Because this issue will continue to recur in state and federal courts across the

country, the impact of this Court's decision will be wide and the perspective of the amici will help in framing the decision.

Certificate of Consultation: The undersigned has consulted with the Petitioner and Respondent and is authorized to represent that neither has an objection to the filing of this amicus brief.

WHEREFORE, the Due Process Institute, the Independence Institute, and the National Police Accountability Project respectfully request that this Court grant their motion to appear as amicus curiae in this proceeding.

Respectfully submitted,

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By: */s/ Harvey J. Sepler*

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*Attorney for Amicus Curiae for the
above entities*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 9, 2021, a true and correct copy of the forgoing was furnished by e-mail to all parties listed below.

By: */s/ Harvey J. Sepler*
HARVEY J. SEPLER

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