

ACLU: Supreme Court decision undermines Fourth Amendment and privacy rights in digital data

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MADISON — The ACLU of Wisconsin today said that this week's Wisconsin Supreme Court ruling in the case of *State of Wisconsin v. Burch*, which allows unconstitutionally obtained cell phone data to be used as evidence in a criminal proceeding, undermines digital privacy rights and Fourth Amendment protections in Wisconsin.

The ACLU, along with the Electronic Frontier Foundation, the Electronic Privacy Information Center submitted a [friend of the court brief](#) in this case.

Larry Dupuis, legal director of the ACLU of Wisconsin, stated:

“While George Burch, who was investigated for possible involvement in a crime, gave the Green Bay Police consent to collect his text messages, he did not consent to a different agency, the Brown County Sheriff's department, later rummaging through the entire downloaded contents of his phone without a warrant looking for evidence of a different crime.

As at least four justices acknowledged, Brown County's second search without a

warrant and beyond the scope of Burch's consent violated the Fourth Amendment's protection against unreasonable searches. The Supreme Court nonetheless allowed evidence obtained in this unconstitutional search to be used in Mr. Burch's trial. The fact that the highest court in the state seems willing to sidestep the constitution and permit illegally obtained evidence to be heard in a trial is disappointing and troubling. However, law enforcement agencies in the future should be on notice from this decision that if they want to access data seized in a separate investigation, at the very least they need a warrant."

Jennifer Granick, a senior staff attorney with the ACLU's Speech Privacy & Technology Project added:

"The Fourth Amendment can and must effectively limit searches and seizures in the digital age. As the U.S. Supreme Court has noted, 'Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "'the privacies of life.'" Indeed, 'a cell phone search would typically expose to the government far more than the most exhaustive search of a house.'

The government should not take advantage of its investigatory powers to build permanent digital dossiers just in case. To retain this information is a moral hazard, putting privacy and other civil rights and civil liberties at risk of an all-seeing government eye."

This release is available online:

<https://www.aclu-wi.org/en/news/aclu-wisconsin-says-supreme-court-decision--undermines-fourth-amendment-and-privacy-rights>