

Firm Team Authors Amicus Brief in Important First Amendment Case on Behalf of Former US Magistrate Judges

News

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A firm team represented a group of former US magistrate judges as amici curiae in urging the Supreme Court to take up the case *American Civil Liberties Union v. United States*, which asks whether there is a qualified right of access under the First Amendment to significant legal opinions issued by the Foreign Intelligence Surveillance Court (FISC). The FISC decides critical questions about electronic surveillance and other government investigative actions for foreign intelligence purposes, yet despite their treatment of fundamental constitutional and statutory issues, FISC opinions usually are not shared with the public.

The amicus brief argues that the Court should grant certiorari to decide on the existence of a qualified First Amendment right of access. The team drew upon magistrate judges' history of safely providing public access to opinions on emerging surveillance technology while accommodating national security interests – a legacy that extends to FISC judges, who are also well suited to ordering appropriate disclosures. The team also argued that a qualified right of access to significant FISC opinions would provide magistrate judges with crucial guidance on emerging surveillance law issues and reduce the impact of prosecutorial discretion in shaping the underlying law.

The firm team represented several former magistrate judges, including Hon. James Orenstein, who has authored published decisions on location tracking, non-disclosure orders under the Stored Communications Act, and the compelled decryption of mobile devices. The underlying cert petition was filed by the Knight First Amendment Institute and the American Civil Liberties Union.

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