

**No. 17-30117**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA

*Plaintiff–Appellee,*

v.

DAVID TIPPENS,

*Defendant–Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE**

Pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Ninth Circuit Rule 29(a)(3), the American Civil Liberties Union (“ACLU”) and the ACLU of Washington (together, “Movants”) respectfully move for leave to file the accompanying Brief of *Amici Curiae* in support of Defendant-Appellant. Defendant-Appellant consents to and Plaintiff-Appellee does not oppose the filing of this brief. Movants state the following in support of the instant Motion:

1. The ACLU is a nationwide, non-profit, non-partisan organization of more than 1 million members dedicated to defending the civil liberties guaranteed by the Constitution. The ACLU of Washington is a state affiliate of the ACLU.

2. Among the rights that *amici* vigorously seek to protect is the Fourth Amendment right to be free from unreasonable searches and seizures, which includes the government’s duty to fully disclose all material facts in its warrant applications. In addition to providing direct representation to protect this and other constitutional rights, *amici* frequently file briefs of *amicus curiae* in this Court, as well as in other state and federal courts. *See, e.g., Payne v. Peninsula Sch. Dist.*, 623 F. App’x 846, 847 (9th Cir. 2015) (listing ACLU of Washington as *amicus curiae* in Fourth Amendment case). Through their work, *amici* have been at the forefront of numerous state and federal cases addressing the right of privacy as

guaranteed by the Fourth Amendment. *See, e.g., Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1231 (9th Cir. 2017) (addressing Fourth Amendment claim of intervenors-plaintiffs-appellants represented by ACLU).

3. The proposed brief of *amici curiae* will aid the Court's consideration of this case by providing additional argument about the serious Fourth Amendment concerns raised by incomplete or misleading warrant applications. Furthermore, the brief of proposed *amici curiae* is both relevant and desirable. *See* Ninth Cir. L.R. 29(a)(3)(b). The proposed brief is relevant because it focuses on the central issue before the Court—the constitutionality of the NIT warrant at issue—and the brief is desirable because of *amici*'s experience and long-term interest in this constitutional issue.

WHEREFORE, Movants respectfully request that this Court enter an Order granting leave to file the Brief of *Amici Curiae* that accompanies this Motion.

Respectfully submitted this 20th day of October, 2017.

s/ Jennifer S. Granick (via email  
authorization)

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20th day of October, 2017, the foregoing Motion for Leave to File Brief of *Amici Curiae* American Civil Liberties Union, et al., was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

*s/ Karin D. Jones* \_\_\_\_\_

9th Circuit Case Number(s) 17-30117

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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

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Signature (use "s/" format) s/ Karin D. Jones

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