

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No. 13-cr-10176-EFM
v.)	
)	
WALTER ACKERMAN,)	
)	
Defendant.)	
_____)	

UNOPPOSED MOTION OF UNITED STATES JUSTICE FOUNDATION,
DOWNSIZEDC.ORG, DOWNSIZE DC FOUNDATION, GUN OWNERS FOUNDATION,
GUN OWNERS OF AMERICA, INC., AND 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 Rule 7 of 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 Plaintiff and Defendant have consented to this Motion and to the filing of the attached brief *amicus curiae*. This brief is being filed timely within the time allowed for Defendant’s response, pursuant to this Court’s minute order of November 21, 2016.

Movants U.S. Justice Foundation, Gun Owners Foundation, Downsize DC Foundation, and Conservative Legal Defense and Education Fund are exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code (“IRC”). Movants DownsizeDC.org and Gun Owners of America, Inc. are exempt from federal income taxation under IRC Section 501(c)(4). Each organization participates actively in the public policy process, and has filed numerous *amicus curiae* briefs in federal and state courts.

Movants are organizations which defend U.S. citizens' Fourth Amendment rights against government overreach. Several of the movants filed two *amicus curiae* briefs¹ in 2011, in the U.S. Supreme Court's case United States v. Jones, 132 S.Ct. 945 (2012), which reestablished the property basis of the Fourth Amendment.

I. THIS CASE PRESENTS A CONSTITUTIONAL MATTER AND STATUTORY ISSUE OF GREAT IMPORTANCE.

The Supreme Court's decision in United States v. Jones found that the placing of a GPS tracking device on a vehicle without a warrant constituted a trespass and violated the foundational principles of the Fourth Amendment.

The present case involves a warrantless search of an email that these *amici* believe should be protected by the Fourth Amendment property principle reaffirmed in Jones. On appeal of this Court's ruling on the Defendant's motion to suppress, the Tenth Circuit acknowledged Jones as "another and distinct line of authority." 831 F.3d 1292, 1307. The Government's supplemental memorandum on remand discusses Jones, and *amici* believe the analysis in their brief will be helpful to the Court.

II. THE *AMICUS CURIAE* BRIEF RAISES RELEVANT ISSUES NOT ADDRESSED ADEQUATELY IN THE GOVERNMENT'S SUPPLEMENTAL RESPONSE.

The movants' *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 Supplemental Response. The *amicus* brief argues that the Tenth

¹ See Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.*, in Support of Respondent (merits) (Oct. 3, 2011), http://www.lawandfreedom.com/site/constitutional/USvJones_Amicus_Merits.pdf. See also Brief *Amicus Curiae* of Gun Owners of America, Inc., *et al.* in Support of Neither Party (petition) (May 16, 2011), http://www.lawandfreedom.com/site/constitutional/USvJones_amicus.pdf.

Circuit's decision provides the tools necessary for this Court to decide the pending motion applying property principles. Finally, the *amicus* brief demonstrates that Defendant has a privacy interest in his email even using the Katz v. United States, 389 U.S. 347 (1967), line of cases.

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). Indeed, the Tenth Circuit noted in this case that “*Amici* briefs often serve valuable functions....” 831 F.3d at 1299. 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 who use email, movants respectfully request leave to file the accompanying brief *amicus curiae* in support of Defendant's Motion to Suppress.

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