

1 Jessica Ring Amunson (*pro hac vice*)
Tassity Johnson (*pro hac vice* forthcoming)
2 JENNER & BLOCK LLP
1099 New York Avenue NW Ste 900
3 Washington, DC 20001
jamunson@jenner.com
4 tjohnson@jenner.com
Attorneys for the DKT Liberty Project,
5 *Cato Institute, and Reason Foundation*

6
7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 United States of America,

10 Plaintiff,

11 v.

12 Michael Lacey, *et al.*,

13 Defendants.

No. CR-18-422-PHX-SRB

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15 **UNCONTESTED MOTION FOR**
16 **LEAVE TO FILE BRIEF OF AMICI**
17 **CURIAE THE DKT LIBERTY**
18 **PROJECT, CATO INSTITUTE, AND**
19 **REASON FOUNDATION**

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21 The DKT Liberty Project, Cato Institute, and Reason Foundation (“*Amici*”), move
22 this Court for an order allowing the filing of a proposed brief, which *Amici* have lodged
23 concurrently with this Motion, concerning the issues raised by Defendants’ Motion to
24 Dismiss the Indictment. Counsel for the United States has stated that the United States
25 has no objection to the filing of the proposed brief from *Amici*. Defendants likewise have
26 no objection to the filing.

27 The decision to grant, or deny, *amicus* briefing lies solely within a district court’s
28 jurisdiction, *Center for Biological Diversity v. United States Bureau of Land*
Management, No. 09–CV–8011–PCT–PGR, 2010 WL 1452863, at *2 (D. Ariz. Apr. 12,
2010), but “[a]n *amicus* brief should normally be allowed when . . . the *amicus* has unique
information or perspective that can help the court beyond the help that the lawyers for the
parties are able to provide,” *Cnty. Ass’n for Restoration of Env’t (CARE) v. DeRuyter*
Bros. Dairy, 54 F. Supp. 2d 974, 975 (E.D. Wash. 1999) (internal citations omitted).
Amici curiae often assist in cases “of general public interest, supplementing the efforts of

1 counsel, and drawing the court’s attention to law that escaped consideration.” *Miller-*
2 *Wohl Co. v. Comm’r of Labor & Indus. of Mont.*, 694 F.2d 203, 204 (9th Cir. 1982). As
3 further explained below, *Amici* are nonprofit organizations dedicated to protecting
4 individual liberties, and especially those liberties guaranteed by the Constitution of the
5 United States, against all forms of government interference. They submit that their
6 expressed views may assist the Court in its task of deciding the Motion to Dismiss the
7 Indictment.

8 The DKT Liberty Project was founded in 1997 to promote individual liberty
9 against encroachment by all levels of government. The Liberty Project is committed to
10 defending privacy, guarding against government overreach, and protecting every
11 American’s right and responsibility to function as an autonomous and independent
12 individual. The Liberty Project espouses vigilance over regulation of all kinds, but
13 especially those that restrict individual civil liberties. The Liberty Project’s founder has a
14 unique perspective on the issues before this Court because he was the subject of a similar
15 prosecutorial campaign to silence his First Amendment rights approximately three
16 decades ago. *See United States v. PHE, Inc.*, 965 F.2d 848 (10th Cir. 1992). The Liberty
17 Project has filed several briefs as *amicus curiae* in the United States Supreme Court and
18 the courts of appeals on issues involving the First Amendment.

19 The Cato Institute was established in 1977 as a nonpartisan public policy research
20 foundation dedicated to advancing the principles of individual liberty, free markets, and
21 limited government. Cato’s Robert A. Levy Center for Constitutional Studies was
22 established to restore the principles of limited constitutional government that are the
23 foundation of liberty. Toward those ends, Cato publishes books and studies, conducts
24 conferences and forums, and produces the annual *Cato Supreme Court Review*.

25 Reason Foundation is a national, nonpartisan, and nonprofit public policy think
26 tank, founded in 1978. Reason’s mission is to advance a free society by applying and
27 promoting libertarian principles and policies—including free markets, individual liberty,
28 and the rule of law. Reason supports dynamic market-based public policies that allow

1 and encourage individuals and voluntary institutions to flourish. Reason advances its
2 mission by publishing *Reason* magazine, as well as commentary on its websites, and by
3 issuing policy research reports. To further Reason’s commitment to “Free Minds and Free
4 Markets,” Reason participates as *amicus curiae* in cases raising significant constitutional
5 or legal issues.

6 The proposed brief reflects *Amici*’s extensive experience with the jurisprudence
7 on the First Amendment’s presumptive protection of speech—including unpopular,
8 sexually oriented speech—against government infringement. The proposed brief also
9 details *Amici*’s arguments that criminal liability cannot be imposed absent the requisite
10 *mens rea*, particularly where criminal statutes touch and concern protected sexually
11 oriented speech, to preserve the finely-drawn lines between protected and unprotected
12 speech the Supreme Court has established. *Amici* submit that their experience with the
13 Supreme Court’s precedent on these issues will assist the Court in deciding Defendants’
14 Motion to Dismiss the Indictment.

15 DATED this 28th day of May, 2019.

16 JENNER & BLOCK LLP

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18 By: /s/ Jessica Ring Amunson
19 Jessica Ring Amunson (*pro hac vice*)
20 *Counsel of Record*
21 Tassity Johnson (*pro hac vice* forthcoming)
22 1099 New York Ave., NW, Suite 900
23 Washington, DC 20001

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28 *Attorneys for The DKT Liberty Project, Cato
Institute, and Reason Foundation*

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2019, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants.

s/ Jessica Ring Amunson