

12/13/2019

Bowen Greenwood  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Case Number: DA 19-0510

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ATTORNEYS FOR PROPOSED  
AMICUS CURIAE

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 19-0510

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JAMES REAVIS,

Plaintiff and Appellant,

v.

PENNSYLVANIA HIGHER EDUCATION  
ASSISTANCE AGENCY, d/b/a  
FEDLOAN SERVICING

Defendant and Appellee.

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**UNOPPOSED MOTION OF MONTANA ATTORNEY GENERAL  
TIMOTHY C. FOX FOR LEAVE TO FILE AMICUS  
CURIAE BRIEF SUPPORTING APPELLANT**

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Pursuant to Mont. R. App. P. 12(7), Montana Attorney General Timothy C. Fox moves for leave to file an amicus curiae brief supporting Appellant. The amicus brief would be filed on or before December 20, 2019. Counsel for Appellant and Appellee have been contacted and consent to the motion.

**I. INTEREST OF THE APPLICANT AND REASONS WHY AN AMICUS BRIEF IS DESIRABLE:**

Montana Attorney General Timothy C. Fox is the chief legal officer of the State and is authorized to prosecute or defend all causes in the Montana Supreme Court in which the State has an interest. Mont. Const. art. II, § 4; Mont. Code Ann. § 2-15-501(1).

The Attorney General has a significant interest in the outcome of this appeal concerning whether the Higher Education Act preempts Montana’s generally applicable consumer protection laws because consumer protection is mandated by the Montana Constitution and falls within the State’s historic police power. *See Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011) (observing that consumer protection claims “fall in an area that is traditionally within the state’s police powers to protect its own citizens.”); *see also*, Mont. Const, art. XIII, § 2 (“The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.”).

The Attorney General also has an interest in the correct application of preemption principles to state laws. The United States Constitution establishes a “system of dual sovereignty between the States and the Federal Government.” *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). As a sovereign, Montana has a strong interest in preserving the appropriate balance between federal and state authority.

An amicus brief from the Attorney General is desirable and would be helpful to the Court because of the Attorney General’s unique role as the State’s legal officer. Additionally, the Attorney General is responsible for enforcing the Montana Unfair Trade Practices and Consumer Protection Act. Mont. Code Ann. tit. 13, ch. 14. That is significant to this case because the district court’s order dismissed claims brought under the Consumer Protection Act.

An amicus from the Attorney General would also be helpful to the Court because of the Attorney General’s customary role in defending state statutes. This Court is well aware of the Attorney General’s obligations to defend Montana’s laws. *See e.g., Western Tradition Partnership v. Attorney General of the State of Montana*, 2012 MT 271, ¶ 17, 367 Mont. 112, 291 P.3d 545. And while this case does not present a constitutional challenge to a state law, the effect of the district court’s preemption decision is that, for student loan borrowers, Montana’s Consumer Protection Act is “without effect.” *See Cipollone v. Liggett Group, Inc.*,

505 U.S. 504, 516 (1992) (“state law that conflicts with federal law is without effect”). Granting this motion would provide the Attorney General an opportunity to defend the Consumer Protection Act.

Moreover, ensuring the proper balance between federal and state authority is a recurring issue, and one on which the Attorney General has previously represented the State of Montana’s interests. Notably, the Attorney General filed an amici brief on behalf of Montana and twenty other states in the United States Supreme Court defending state laws against claims of preemption. *See* Brief of Montana, *Coventry Health Care of Missouri, Inc. v. Nevils*, 137 S. Ct. 1190 (2017).<sup>1</sup>

### **CONCLUSION**

For the reasons set forth above, this Court should grant the Attorney General’s motion to file an amicus brief on or before December 20, 2019.

Respectfully submitted this 13th day of December, 2019.

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By: /s/ Matthew T. Cochenour  
MATTHEW T. COCHENOUR  
Acting Solicitor General

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<sup>1</sup> Available at: [https://www.scotusblog.com/wp-content/uploads/2017/02/16-149\\_amicus\\_resp\\_montana.pdf](https://www.scotusblog.com/wp-content/uploads/2017/02/16-149_amicus_resp_montana.pdf)

## **CERTIFICATE OF SERVICE**

I, Matthew Thompson Cochenour, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 12-13-2019:

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Electronically signed by Rochell Standish on behalf of Matthew Thompson Cochenour  
Dated: 12-13-2019