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**IN THE SUPREME COURT OF THE STATE OF MONTANA**

**Cause No. DA 19-0510**

JAMES REAVIS,

Appellant,

vs.

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

Appellee.

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

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ON APPEAL FROM THE MONTANA FIRST JUDICIAL DISTRICT COURT,  
LEWIS AND CLARK COUNTY

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Montana Legal Services Association, the National Consumer Law Center and the Student Borrower Protection Center, by and through counsel, hereby move this Court for leave to file to appear as amici curiae for the purpose of filing a brief in the above entitled matter, pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure. If this motion is granted, Amici's brief will be filed within two court days of the Court's order granting leave. Amici support the position of the Appellant.

## **I. STATEMENT OF INTEREST AND IDENTITY OF AMICI**

Amici are non-profit entities that protect and defend the rights of consumers through education, research, and litigation. Amici's interest in this case is in ensuring that injured Montana student loan borrowers, and particularly those seeking to discharge their federal student loans through the Public Service Loan Forgiveness ("PSLF") Program, can maintain traditional state consumer protection law claims, particularly where federal law does not provide a remedy. The preemption issues raised by this case are of great importance to Montana student loan borrowers and their counterparts across the country. Amici's interest is to ensure that the decision in this case provides a sound legal basis for adjudicating this and future cases considering these issues.

Amici also have a strong interest in ensuring that the Court analyzes the preemption issues raised in this case with a complete understanding of (a) the

essential features of the PSLF Program and related Income-Driven Repayment (“IDR”) Plans for federal student loan borrowers, (b) the problems experienced by borrowers eligible for and/or enrolled in these programs, and (c) the consequences for individual Montanans and the state’s economy of upholding the District Court’s ruling. Amici believe that this information is critical to and will assist in the Court’s analysis. Amici’s proposed brief addressing these issues is attached hereto as Appendix A.

Amicus Curiae Montana Legal Services Association (MLSA) is a statewide nonprofit law firm which provides legal information, advice and representation to thousands of Montanans each year. Among the services MLSA provides is to prevent and seek redress for Montana consumers who are the victims of fraudulent or abusive business practices. A brief by Amicus MLSA, in conjunction with other amici, is desirable as it will provide input and context on consumer rights in general and consumer rights in the context of banking and payments law issues from a statewide and national context. MLSA selects cases focused on issues adversely impacting many people. Based upon the number of Montanans affected by this litigation, MLSA believes that hundreds or even thousands of the putative class in this matter would be MLSA-eligible clients. Amicus MLSA was granted leave to appear as amicus curiae in the case of *Kapor v. RJC Investment*, 2019 MT 41, 393 Mont. 311 (Mont. 2019).

Amicus Curiae the National Consumer Law Center (NCLC) is a non-profit national research and advocacy organization, founded in 1969, focusing on the legal needs of low-income consumers. NCLC provides legal and technical assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC attorneys also have provided extensive testimony to Congressional committees and state legislatures.

NCLC staff attorneys write and publish twenty treatises on consumer protection law, including *Student Loan Law* (6th ed. October 2019), a comprehensive review of important federal and state laws that has particular relevance to issues in this case. NCLC also operates the Student Borrower Assistance Project,<sup>1</sup> which serves as a resource for student loan borrowers across the nation.

NCLC treatises have been cited with approval by many courts, including this Court, see *WLW Realty Partners, LLC v. Continental Partners VIII, LLC*, 2015 MT 312, ¶ 33, 333 Mont. 343 (Mont. 2015), and the federal district court in Montana. *McCollough v. Johnson, Rodenburg & Lauinger*, 610 F. Supp.2d 1247, 1252 (D. Mont. 2009), *aff'd in part sub nom. McCollough v. Johnson, Rodenburg*

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<sup>1</sup> See <https://www.studentloanborrowerassistance.org/> (last accessed December 12, 2019).

*& Lauinger, LLC*, 637 F.3d 939 (9<sup>th</sup> Cir. 2011); *Kunda v. CBB Collections, Inc.* 2008 WL 11349863, at \*2 (D. Mont. Aug. 15, 2008).

This Court previously granted NCLC leave to appear as amicus curiae in the recent case of *Kapor v. RJC Investment*, 2019 MT 41, 393 Mont. 311 (Mont. 2019). Similarly, the U.S. Court of Appeals for the Seventh Circuit granted NCLC leave to appear as amicus in *Nelson v. Great Lakes*, 928 F.3d 639 (7<sup>th</sup> Cir. 2019), which, like this case, addressed preemption under the Higher Education Act.

Amicus Curiae the Student Borrower Protection Center (SBPC) is a non-profit organization focused on alleviating the burden of student debt for Americans by engaging in advocacy and policymaking to protect borrowers' rights and advance economic opportunity for the next generation of students. SBPC was founded by former Assistant Director and Student Loan Ombudsman of the Consumer Financial Protection Bureau ("Bureau") Seth Frotman, who remains its executive director.<sup>2</sup> While at the CFPB, Mr. Frotman

was charged with overseeing consumer protection in the nation's student loan market, chaired the cross-Bureau policymaking body focused on student loans, and led the staff of the Bureau's Office for Students and Young Consumers. Appointed by the Secretary of the Treasury, Mr. Frotman was the principal liaison between the Bureau and [the Department of Education] on student loan matters.

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<sup>2</sup> See <https://protectborrowers.org/our-team/> (last accessed December 12, 2019).

See Appendix B, p. 6. Mr. Frotman also “led the internal policy process in response to President Obama’s 2015 directive to study the effects of student debt, address industry abuses, and strengthen borrower protections.” *Id.* SBPC is staffed by policy analysts, attorneys, and others with deep expertise in student loan servicing and applicable statutes and regulations. SBPC has been granted leave to appear as amicus in the pending case of *Commonwealth of Pennsylvania v. Navient Corp.*, et al., Case No. 19-2116 in the U.S. Court of Appeals for the Third Circuit, which addresses similar preemption issues under the Higher Education Act.

## **II. REASONS THAT AN AMICUS BRIEF IS DESIRABLE IN THIS CASE**

Because of their years of experience and expertise dealing with consumer and student loan issues, NCLC and SBPC are in a unique position to explain Congressional intent for income-driven repayment plans and the PSLF Program, to explain the impact this case will have on Montana student loan borrowers (including prosecutors, elder care workers, and others seeking discharge under the PSLF Program), and to analyze the issues from a broader national perspective.

## **III. AMICI WILL FILE A BRIEF IN SUPPORT FOR PLAINTIFF/APPELLANT**

Accordingly, Amici respectfully request that the Court grant this motion and permit Amici to appear in support of the position of James Reavis.

Plaintiff/Appellant. Amici propose to file their brief within two (2) days of the Court's order granting leave; or on any other date for such filing established by the Court.

#### **IV. PARTIES' OBJECTIONS**

Counsel has contacted counsel for Defendant/Appellee Pennsylvania Higher Education Assistance Agency, who indicated that Defendant/Appellee intends to oppose this motion.

Plaintiff/Appellant does not object to Amicus' motion.

Dated: December 17, 2019

By: /s/ John Heenan  
John Heenan  
Heenan & Cook, PLLC

## **CERTIFICATE OF SERVICE**

I, John C. Heenan, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus - Leave to Participate to the following on 12-17-2019:

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Electronically Signed By: John C. Heenan  
Dated: 12-17-2019