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Attorneys for Defendant and Appellee

**IN THE SUPREME COURT OF THE STATE OF MONTANA
DA 19-0510**

JAMES REAVIS)	
)	
Plaintiff and Appellant,)	
)	
v.)	RESPONSE IN OPPOSITION
)	TO MOTION FOR LEAVE
PENNSYLVANIA HIGHER)	TO FILE <i>AMICUS CURIAE</i>
EDUCATION ASSISTANCE AGENCY)	BRIEF
d/b/a FEDLOAN SERVICING)	
)	
Defendant and Appellee.)	

Appellee Pennsylvania Higher Education Assistance Agency (“PHEAA”) hereby responds in opposition to the Motion for Leave to File *Amicus Curiae* Brief (“Motion for Leave”) filed by Student Borrower Protection Center (“SBPC”),

National Consumer Law Center (“NCLC”), and Montana Legal Services Association (“MLSA”).

PHEAA has already consented to the appearance of three *amici*, who have filed or will file three separate *amicus curiae* briefs in support of the appellant. Now, after the Appellant has already filed his principal brief, SBPC, NCLC, and MLSA seek leave to appear and file a fourth amicus brief in support of Appellant. As discussed below, PHEAA believes the present Motion for Leave to be irregular in several respects, and accordingly objects.

The merits of the Plaintiff/Appellant James Reavis’ claims are not at issue in this appeal, because the District Court found that the Appellant’s claims were preempted by federal law, specifically the Higher Education Act (“HEA”), 20 U.S.C. §§ 1001–1155, and dismissed the matter pursuant to Rule 12(b)(6), M.R.Civ.P. The district court never reached or discussed the merits of Reavis’ grievances against PHEAA. Thus, the only issue before this Court on appeal is preemption.

The stated purpose of SBPC, NCLC, and MLSA’s proposed *amicus curiae* brief is to give the Court “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 and effectively depriving injured Montanans of a remedy." *See* Motion for Leave, pp. 2-3.

Based on SBPC, NCLC and MLSA's description of their proposed brief and its purpose, PHEAA anticipates they are likely to focus on the merits of Reavis' claims – *i.e.*, the alleged "problems experienced by borrowers" like Mr. Reavis, "who are eligible for and/or enrolled in these programs." Motion for Leave, p. 3. The District Court never reached the merits of Reavis' claims relating to any "problems" he or other borrowers claim to have experienced, and those issues are irrelevant to the singular issue in this appeal. Likewise, the types of income-driven repayment plans that Reavis or other borrowers were enrolled in, or the details of those plans, are irrelevant. Such issues might potentially bear on the merits of any claims that PHEAA did not correctly account for Reavis' payments, but they have nothing to do with preemption.

"[T]he theories and arguments in the case should not be changed by *amici* at the expense of the litigants by injecting new and extraneous issues in the case." *Richert v. State ex rel. McCulloch*, 2012 MT 111, ¶ 25, 365 Mont. 92, 278 P.3d 455 (quoting *Crabtree v. Mont. State Lib.*, 204 Mont. 398, 409, 665 P.2d 231, 237 (1983) (Haswell, C.J., specially concurring)). Based on their motion, it appears NCLC and SBPC's brief will focus largely on extraneous issues the District Court

never reached, which are therefore of no value to the Court. Allowing SBPC, NCLC and MLSA to inject new issues is inappropriate and accordingly, PHEAA respectfully asks that the Motion for Leave be denied.

Additionally, the request for PHEAA's consent to the proposed amicus brief came through attorney Benjamin Roesch, who will apparently be participating in preparation and filing of the proposed amicus brief. *See* Exh. A (December 11, 2019 e-mail exchange re: consent to amicus brief). Mr. Roesch also worked with *amicus curiae* Veterans Education Success ("VES") (which has already appeared) and helped to coordinate VES's brief. *Id.* Given that the same attorney would be participating in the preparation of two amicus briefs, and presumably coordinating arguments between those briefs, PHEAA is concerned that the proposed additional amicus brief may be used to avoid the word limits on brief under Rule 11(4)(a), M. R. App. P. As noted above, PHEAA has already consented to three *amicus* briefs in this case, but is unwilling to consent to a fourth amicus brief which will apparently be prepared by, or with the assistance of, the same attorney who participated in another *amicus* brief that is already filed.

Finally, the Motion for Leave to file an additional brief supporting Appellants' position comes late, after the Appellants' brief has already been filed and after the clock on Appellee's response time is already running. Therefore,

PHEAA respectfully objects and ask the Court to deny SBPC, NCLC, and
MLSA's Motion for Leave.

Alternatively, if the Court grants the Motion for Leave, PHEAA respectfully
requests an opportunity to file a separate response to SBPC, NCLC and MLSA's
brief, so that PHEAA may have a fair opportunity to address the various amici's
arguments and any extraneous issues they may raise.

DATED: December 17, 2019.

CROWLEY FLECK PLLP

By /s/ Kenneth K. Lay
Kenneth K. Lay
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CERTIFICATE OF SERVICE

I, Kenneth K. Lay, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 12-17-2019:

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Electronically signed by Cathy Uda on behalf of Kenneth K. Lay
Dated: 12-17-2019