

No. 20-2371

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Elizabeth Panzarella; Joshua Panzarella,
Individually and on behalf of all others similarly situated,

Plaintiffs-Appellants

v.

Navient Solutions, LLC,

Defendant-Appellee

Appeal from the United States District Court for
the Eastern District of Pennsylvania
No. 2:18-cv-03735
The Honorable Petrese B. Tucker

**DEFENDANT-APPELLEE NAVIENT SOLUTIONS, LLC'S
RESPONSE TO MOTION OF ELECTRONIC PRIVACY
INFORMATION CENTER AND
NATIONAL CONSUMER LAW CENTER FOR LEAVE TO
FILE LETTER BRIEF AS AMICI CURIAE IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

Lisa M. Simonetti
Greenberg Traurig, LLP
1840 Century Park East Suite 1900 Los
Angeles CA 90067
Phone: 310-586-7700
simonettl@gtlaw.com

Counsel for Defendant-Appellee

Lindsay N. Aherne
1144 15th Street, Suite 3300
Greenberg Traurig, LLP
Denver, Colorado 80202
Phone: 303-572-6500
ahernel@gtlaw.com

Counsel for Defendant-Appellee

Defendant-appellee Navient Solutions, LLC hereby submits this response to the Motion of Electronic Privacy Information Center (“EPIC”) and National Consumer Law Center (“NCLC”) for Leave to File Letter Brief as Amici Curiae in Support of Plaintiffs-Appellants (“Motion”), and states as follows:

All amicus briefs (aside from those filed by the government) require leave of court to file. F.R.A.P. 29(a)(2). Specifically, “[a]n amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed.” F.R.A.P. 29(a)(6).

After several extensions, plaintiffs-appellants Elizabeth Panzarella and Joshua Panzarella (“Panzarellas”) filed their opening brief on September 2, 2021. Any motion for leave to file an amicus brief from EPIC and NCLC (filed in support of the Panzarellas’ position) therefore was due on September 9, 2021. Accordingly, EPIC and NCLC are 146 days (or 4 months, 24 days) too late in seeking amicus status. Moreover, EPIC and NCLC make their submission only 9 days before oral argument (set for February 11, 2022). It is fundamental that the procedural rules exist to protect parties and avoid the prejudice that would result if the

parties were not able to respond to the arguments presented in an amicus submission. That is precisely the circumstance here. NSL would have addressed any properly submitted amicus arguments in its responding brief. Accordingly, motions for leave to file late amicus briefs violate due process and are properly denied. *See, e.g., Terra Partners v. Rabo Agrifinance, Inc.*, 504 F. App'x 288, 290 at fn 1 (5th Cir. 2012) (noting denial of “months late” amicus brief); *see also Laborers' Int'l Union of N. Am., AFL-CIO v. Foster Wheeler Energy Corp.*, 26 F.3d 375, 398 (3d Cir. 1994) (An “issue is waived unless a party raises it in its opening brief[.]”); *B.C. v. Att'y Gen. United States*, 12 F.4th 306, 319 (3d Cir. 2021) (same).

Neither F.R.A.P. 29 nor any other rule allows for amicus briefing/submissions after the deadline set forth in F.R.A.P. 29(a)(6). EPIC and NCLC do not claim otherwise, nor do they attempt to comply with the substantive requirements set forth in F.R.A.P. 29. Instead, they purport to base their submission on the Clerk’s letter dated January 20, 2022, requesting supplemental briefing *from the parties* on two narrow questions. *See* 01/20/22 Clerk’s Letter (the Court “hereby invites supplemental briefing from Plaintiffs-Appellants and Defendant-

Appellee.”) However, even if the amicus letter brief was somehow properly submitted under that letter, it was late, too. The Clerk’s letter made clear that supplemental submissions were due no later than January 27, 2022, and the submission from EPIC and NCLC was made 7 days later.

The prejudice to NSL in allowing leave to file and considering the letter brief are obvious. For this reason and those detailed above, NSL respectfully requests that the Court deny the Motion.

Respectfully submitted February 3, 2022

/s/ Lisa M. Simonetti

Lisa M. Simonetti (#165996 CA)
GREENBERG TRAUERIG, LLP
1840 Century Park East, Suite
1900
Los Angeles, California 90067
Telephone: 310-586-7700
simonettl@gtlaw.com

Lindsay N. Aherne (#48391 CO)
GREENBERG TRAUERIG, LLP
1144 15th Street, Suite 3300
Denver, Colorado 80202
Telephone: 303-572-6500
ahernel@gtlaw.com

Counsel for Defendant-Appellee

CERTIFICATE OF SERVICE

I hereby certify that, on this 3rd day of February, 2022, I filed an electronic copy of the foregoing C using the CM/ECF system, and that service of said document on Plaintiffs-Appellants has been accomplished by utilizing the CM/ECF system.

s/ Lisa M. Simonetti

Lisa M. Simonetti
Lindsay N. Aherne
Attorney for Appellees