

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UPSOLVE, INC. and REV. JOHN UDO-OKON,

Plaintiffs,

-v-

Case No. 22-cv-00627 (PAC)

LETITIA JAMES, in her official capacity
as Attorney General of the State of New York,

Defendant.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THE NATIONAL CENTER
FOR ACCESS TO JUSTICE FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

The National Center for Access to Justice at Fordham University School of Law (“NCAJ”), a non-profit, non-partisan institution dedicated to increasing access to justice in America, has a special interest in this litigation and is able to offer its unique perspective to the Court.

ARGUMENT

District courts have discretion whether to grant leave to file an *amicus* brief. *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *see also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (noting that non-parties have the option to file *amicus* briefs in district court proceedings and that such *amici* “often make useful contributions to litigation”).

There is no Federal Rule of Civil Procedure that applies to motions for leave to appear as *amicus curiae* in district court, so district courts exercising this discretion often look for guidance to Federal Rule of Appellate Procedure 29, which applies to *amicus* briefs in federal appellate cases. *See, e.g., Am. Humanist Ass'n v. Md.- Nat'l Capital Park & Planning Comm'n*, 147 F. Supp. 3d 373, 389 (D. Md. 2015). Rule 29 provides that prospective *amici* must file along with the proposed brief, a motion that states “the movant’s interest” and “the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. Proc. 29(a)(3).

I. INTEREST OF THE NCAJ

NCAJ is a non-profit organization that brings rigorous research and analysis to the task of expanding access to justice in America. We work to secure access to justice: the basic freedom of people to learn about their rights, assert their legal claims and defenses, obtain a fair resolution under the rule of law, and enforce the result. We have studied and long supported the importance of making counsel available to those who cannot afford it when fundamental rights are at stake. We have also studied and support alternate means for providing some measure of access when, as is all too often the case, counsel is unavailable.

Our flagship project, the Justice Index, <https://ncaj.org/state-rankings/2021/justice-index>, analyzes and ranks states on their adoption of select best policies for assuring access to justice. We use the Justice Index to advocate that governments throughout the country establish these policies in order to make access to justice a reality for people with low incomes. For example, the Justice Index reports each state’s count of civil legal aid lawyers, and identifies a set of best policies for “civil right to counsel laws” and for providing pro bono legal services. Recognizing that more civil legal aid lawyers are needed and that the aspiration for a broad civil right to

counsel is not yet a reality, NCAJ also supports the freedom of people to obtain basic civil legal advice from individuals other than lawyers: in reports and testimony NCAJ has encouraged a substantial rethinking of the scope and application of unauthorized practice of law (UPL) laws to ensure that these laws do not prevent individuals from obtaining the basic legal advice they need to protect their legal rights. See <https://ncaj.org/tools-for-justice/legal-empowerment>.

To promote access to justice, NCAJ advocates for policies such as instructing judges and clerks to educate civil litigants about their rights, requiring use of plain language in courts, assuring quality interpreting and translating services, providing notice of the right to accommodations for disabilities, and deploying innovative technologies like e-filing. To that end, NCAJ collects, analyzes and publishes data, researches and writes reports, convenes experts across the field, and engages with reformers and regulators, including through formal comment on proposed regulatory and legislative reform.

II. THE MATTERS ASSERTED IN THE *AMICUS* BRIEF ARE USEFUL AND RELEVANT TO THE COURT'S REVIEW

NCAJ submits its proposed brief as *amicus curiae* to offer its perspective as an organization dedicated to promoting access to justice for low-income communities. In that capacity, NCAJ recognizes that Plaintiff Upsolve's approach – which would train nonlawyer professionals to provide legal advice to community members being pursued by debt collectors – addresses the urgent needs of communities whose concerns are at the heart of NCAJ's mission. NCAJ's research shows that librarians, social workers, and other social services professionals are commonly approached by community members with limited legal questions but must turn those individuals and their questions away because of the UPL laws. New York's UPL laws currently forbid – and would criminalize – Rev. Udo-Onkon's potential conversations with community

members about their debt collection proceedings and would do so despite the training and instruction from AJM to assure competent advice.

NCAJ's proposed *amicus* brief explains that the UPL laws thereby infringe the First Amendment rights not only of Plaintiffs Upsolve and Rev. Udo-Okon, but also of their community members and thousands of other New Yorkers who find themselves similarly pursued in consumer litigation. These debt collection defendants, whose financial survival is often at stake, have a pressing need for the basic legal advice Plaintiffs would provide to help respond to their debt collection claims, many of which are invalid or inflated. New York's UPL laws interfere with the provision and the receipt of this advice and are not narrowly tailored to promote a compelling state objective. By leaving these defendants entirely uncounseled, the UPL laws harm the very consumer interests those laws are supposed to protect. (The full substance of NCAJ's observations and arguments are set forth in the proposed *Amicus* brief attached as Exhibit 3 to the Declaration of David Udell filed herewith.)

CONCLUSION

For the foregoing reasons, the NCAJ respectfully asks that this Court grant the Motion for Leave to File *Amicus Curiae* Brief.

Dated: March 1, 2022

Respectfully submitted,

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