

IN THE SUPREME COURT OF THE STATE OF MONTANA

NO. DA 19-0357

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CHERYL BRATTON, individually and on behalf of a class of similarly situated Montanans,

Plaintiff and Appellant,

v.

SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC. d/b/a SCL  
HEALTH,

Defendants and Appellees.

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**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF ON BEHALF OF MONTANA  
BANKERS ASSOCIATION, AMERICAN BANKERS ASSOCIATION, AND  
CONSUMER BANKERS ASSOCIATION**

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On Appeal from the Montana Thirteenth Judicial District Court, Yellowstone County

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KENNETH K. LAY  
CROWLEY FLECK, P.L.L.P.  
900 North Last Chance Gulch, Suite 200  
Helena, Montana 59601  
(406) 457-2037  
klay@crowleyfleck.com

Counsel for *Amici Curiae*

The Montana Bankers Association (“MBA”), the American Bankers Association (“ABA”), and the Consumer Bankers Association (“CBA”) respectfully move this Court for leave to file an *amici curiae* brief in this matter pursuant to Rule 12(7) of the Montana Rules of Appellate Procedure. This Motion is uncontested.

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

The *amici curiae* are trade organizations in the financial-services field that, together, represent a broad array of institutions both locally and nationally whose businesses may be affected by the outcome of this lawsuit. As set forth in further detail below, the *amici* are knowledgeable and experienced in terms of the practical impact of legal developments on the consumer-financial-services sector and have historically devoted significant resources to appearing as *amici curiae* in matters that may be significant to the industry, its employees, and its customers.

The **Montana Bankers Association** (“MBA”) is a local non-profit corporation based in Helena, Montana. It is a member-driven organization comprised of dozens of community banks across all parts of Montana. The MBA represents its members by advocating for the continued strength of community banks as providers of capital, credit, financial services, asset management, intermediaries, and employment, and as corporate citizens. The MBA carries out this mission through efforts such as supporting state and federal legislative and regulatory activities and engaging in legal action, communications, research, and education.

The **American Bankers Association** (“ABA”) is the principal national trade association of the financial services industry in the United States. Founded in 1875, the ABA is the voice for the nation’s \$13 trillion banking industry and its million employees. ABA members are located in each of the fifty States and the District of Columbia, and include financial institutions of all sizes and types. The ABA, whose members hold a substantial majority of domestic assets of the banking

industry of the United States and are leaders in all forms of consumer financial services, often appears as *amicus curiae* in litigation that affects the banking industry.

The **Consumer Bankers Association** (“CBA”) is the only national financial trade group focused exclusively on retail banking and personal financial services—banking services geared toward consumers and small businesses. As the recognized voice on retail banking issues, CBA provides leadership, education, research, and representation for its members. CBA members include the nation’s largest bank holding companies as well as regional and super-community banks that collectively hold two-thirds of the total assets of depository institutions.

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

This lawsuit arises from claims of the Plaintiff/Appellant that she, and other similarly situated consumers, were injured by receiving refunds from the Defendant/Appellee in the form of prepaid debit cards that can be used just like credit cards, rather than in the form of personal checks. The District Court of the Thirteenth Judicial District, Yellowstone County (Hon. Gregory R. Todd, presiding) entered summary judgment in favor of the Appellee because, among other grounds, it discerned no difference between the Appellee’s authorizing its bank to transfer money to Appellant in the form of a prepaid debit card versus authorizing the same bank to transfer money to Appellant in the form of a wire transfer or check. Naturally, if Appellant were to prevail in her challenge to the lawfulness of this service, it would affect not only the parties to this case but also every Montana consumer who avails themselves of modern financial conveniences. The member institutions of the *amici curiae* service their customers by offering a variety of innovative methods of transferring money and making payments with less paperwork, less hassle, and cheaper transaction costs. Appellant’s position that cash and checks are the only acceptable mediums of exchange aims to limit these options and thus limit Montanans’ access to technological innovations

that facilitate modern commerce. It also aims to limit the ability of banks and other consumer financial institutions to adapt to a modern economy that is becoming less dependent on cash and checks.

The *amici* respectfully submit that they can provide a unique perspective to the Court about these issues and how they will affect banking institutions and the consumers who are served by those institutions. Indeed, the organizations who sought and obtained leave of this Court to make an *amicus* submission in support of the Appellant stated that *amicus* briefing was desirable here to address the potential impact of this case on “Montana consumers and to analyze the issues from a broader national perspective.” The undersigned *amici* likewise can speak to these matters and broaden the perspective offered to the Court.

**III. AMICI WILL FILE A BRIEF IN SUPPORT OF DEFENDANT/APPELLEE**

Accordingly, the undersigned *amici* respectfully request that the Court grant this motion and permit them to appear in support of the position of the Sisters of Charity of Leavenworth Health System, Inc., Defendant/Appellee. *Amici* propose to file their brief on or before Monday, November 4, 2019, the date upon which Defendant/Appellee’s response brief is to be filed; or on any other extended date for such filing established by the Court.

**IV. PARTIES’ OBJECTIONS**

Counsel has contacted counsel for Plaintiff/Appellant and Plaintiff/Appellant does not object to the *amici*’s motion.

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Dated: October 3, 2019

By: /s/ Kenneth K. Lay  
Kenneth K. Lay  
Crowley Fleck, P.L.L.P.  
900 North Last Chance Gulch  
Helena, Montana 59601  
klay@crowleyfleck.com  
Phone: (406) 457-2037  
Fax: (406) 449-5149

## CERTIFICATE OF SERVICE

I, Kenneth K. Lay, hereby certify that I have served true and accurate copies of the foregoing motion to the following on October 3, 2019:

John C. Heenan (Attorney)  
1631 Zimmerman Trail, Suite 1  
Billings, MT 59102  
Representing: Cheryl Bratton  
Service Method: eService

Robert C. Lukes (Attorney)  
Garlington, Lohn & Robinson, PLLP  
P.O. Box 7909  
Missoula, MT 59807  
Representing: Sisters of Charity of Leavenworth Health Systems,  
Service Method: eService

David Kim Wilson (Attorney)  
401 North last Chance Gulch  
Helena, MT 59601  
Representing: Montana Legal Services Association, National Consumer Law Center, National Association of Consumer Advocates  
Service Method: eService

Michael P. Manning (Attorney)  
Ritchie Manning Kautz PLLP  
175 North 27<sup>th</sup> Street, Suite 1206  
Billings, MT 459101  
Representing: Cheryl Bratton  
Service Method: eService

Kathryn Ann Reilly (Attorney)  
370 Seventeenth Street, Ste 4500  
Denver, CO 80202-5647  
Representing: Sisters of Charity of Leavenworth Health Systems,  
Service Method: Conventional

Joseph Patrick Cook (Attorney)  
1631 Zimmerman Trail, Suite I  
Billings, MT 59102  
Representing: Cheryl Bratton  
Service Method: Conventional

By: /s/ Kenneth K. Lay

## CERTIFICATE OF SERVICE

I, Kenneth K. Lay, hereby certify that I have served true and accurate copies of the foregoing Motion - Unopposed - Amicus - Leave to Participate to the following on 10-03-2019:

John C. Heenan (Attorney)  
1631 Zimmerman Trail, Suite 1  
Billings MT 59102  
Representing: Cheryl Bratton  
Service Method: eService

Robert C. Lukes (Attorney)  
Garlington, Lohn & Robinson, PLLP  
P.O. Box 7909  
Missoula MT 59807  
Representing: Sisters of Charity of Leavenworth Health Systems,  
Service Method: eService

Michael Manning (Attorney)  
175 N. 27th St., Suite 1206  
Billings MT 59101  
Representing: Cheryl Bratton  
Service Method: eService

David Kim Wilson (Attorney)  
401 North Last Chance Gulch  
Helena MT 59601  
Representing: Montana Legal Services Association, National Association of Consumer Advocates,  
National Consumer Law Center  
Service Method: eService

Kathryn Ann Reilly (Attorney)  
370 Seventeenth Street, Ste 4500  
Denver CO 80202-5647  
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Service Method: Conventional

Joseph Patrick Cook (Attorney)  
1631 Zimmerman Trail, Suite 1  
Billings MT 59102  
Representing: Cheryl Bratton

Service Method: Conventional

Electronically Signed By: Kenneth K. Lay  
Dated: 10-03-2019