

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA *ex rel.* SCOTT ROSE; MARY AQUINO;
MITCHELL NELSON; LUCY STEARNS

Plaintiff-Appellees,

v.

STEPHENS INSTITUTE, DBA ACADEMY OF ART UNIVERSITY,

Defendant-Appellant.

Appeal from a Decision of the U.S. District Court for the
Northern District of California
Case No. 09-cv-05966 (Hamilton, J.)

**MOTION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF ON
BEHALF OF VETERANS EDUCATION SUCCESS**

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Pursuant to Federal Rules of Appellate Procedure 27 and 29(a)(3), Applicant, Veterans Education Success, Inc., seeks leave to file a brief as amicus curiae supporting Plaintiffs-Appellees. The grounds for this Motion are as follows:

- 1. Veterans Education Success has a unique interest in the resolution of the legal issues in this case.**

Pursuant to Federal Rule of Appellate Procedure 29(a)(3)(A), Veterans Education Success's interests in filing an amicus curiae brief in this matter are many. As explained more fully in Veterans Education Success's proposed amicus curiae brief, veterans and service members have a particular interest in this Court's resolution of the legal issues in this case because veterans are, for reasons explained below, uniquely targeted by proprietary colleges for enrollment. Because the False Claims Act has proven to be an effective tool in reining in fraud and abuse by proprietary colleges, veterans have a special interest in ensuring the proper application of the False Claims Act to proprietary colleges.

While many proprietary colleges try hard to provide a high-quality education, unfortunately some do not. A credible threat of False Claims Act liability—along with other enforcement actions—helps to ensure that all institutions meet their minimum obligations to students and, if they do not, provides a way for whistleblowers with knowledge of fraud, waste, and abuse to report that information to the U.S. Department of Education.

Proprietary colleges are inadvertently incentivized by a loophole in the Higher Education Act to view service members and veterans “as nothing more than dollar signs in uniform, and to use aggressive marketing to draw them in” because the loophole permits the schools to use GI Bill and other military student aid to offset the cap the schools otherwise face on federal funds. Holister K. Petraeus, *For-Profit Colleges, Vulnerable GIs*, N.Y. Times, Sept. 21, 2011. It is well documented that for-profit schools target veterans for this very reason. *See* S. Comm. on Health, Education, Labor, and Pensions, 112th Cong., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (Comm. Print July 30, 2012). The U.S. Department of Education published an analysis in 2016 showing that many proprietary colleges were actively exploiting this loophole. U.S. Dep’t of Education, *New Analysis Finds Many For-Profits Skirt Federal Funding Limits* (Dec. 21, 2016).

Veterans therefore have a particular interest in ensuring that the education and job opportunities promised by the schools—and paid for with their hard-earned education benefits—comply with the law. Robust enforcement at all levels, including through whistleblower suits under the False Claims Act, is necessary to hold accountable those institutions that are defrauding students and the government.

2. An amicus curiae brief from Veterans Education Success is desirable because it provides additional relevant perspective about the legal issues at issue in this case.

Pursuant to Federal Rule of Appellate Procedure 29(a)(3)(B), the proposed amicus curiae brief from Veterans Education Success concisely recounts additional background information and regulatory context shedding light on the importance of the Incentive Compensation Ban (ICB) to the overall regulatory scheme, to students and taxpayers, and to the Department of Education. Such additional information further bolsters the conclusion that the ICB is material under the Supreme Court's decision in *Universal Health Servs., Inc. v. U.S. ex rel. Escobar*, 136 S. Ct. 1989 (2016).

The proposed brief also discusses how this Court's ruling in this case could shape and impact an evolving and developing field of law. Veterans Education Success believes that such additional perspective on the relevant legal issues is vital for this Court to understand when it rules in this case, which could have lasting impacts for tens of thousands of veterans.

Veterans Education Success is a non-profit organization founded in collaboration with the nation's major veterans' leaders to, among other things, help veterans avoid abusive and fraudulent practices by proprietary colleges. Veterans Education Success has heard from thousands of veterans and service members who were defrauded or deceived by predatory college recruiters who misled them on key facts about the colleges, from the colleges' tuition,

accreditation, transferability of credits, graduation rates, and job prospects for graduates, to the quality of education and materials and how much the GI Bill would cover. Veterans Education Success has also heard from whistleblowers at several major proprietary colleges, who allege their colleges' recruiters engage in profound deception and fraud targeting veterans and service members. These whistleblowers often allege the colleges violate the ICB. Given that veterans and service members are disproportionately affected by the fraudulent practices of proprietary colleges, Veterans Education Success's proposed amicus brief is desirable because it provides the unique perspective of those most at risk in this very important case.

3. Veterans Education Success was misinformed about the parties' consent to file its amicus curiae brief.

Veterans Education Success timely submitted its amicus curiae brief on August 7, 2017, under the mistaken belief that the parties had consented to the filing of all amicus briefs. Veterans Education Success submits this Motion because it appears that Appellant did not consent to the filing of all amicus curiae briefs, as Veterans Education Success was originally informed.

Veterans Education Success formally requested consent to file the brief from Appellant's counsel but has so far received no response to that request.

For the foregoing reasons, Veterans Education Success respectfully requests that this Motion be granted and that the Clerk be directed to file the proposed amicus curiae brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing Motion for Permission to File Brief *Amicus Curiae* of Veterans Education Success in Support of Plaintiffs-Appellees with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

To the best of my knowledge all other participants in the case are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

/s/ Brandon J. Mark

Brandon J. Mark

*Attorneys for Amicus Curiae
Veterans Education Success*

9th Circuit Case Number(s) 17-1511

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