XVIII. The Student Loan Crisis: Would Preempting State Actions Against Student Loan Servicers Worsen the Problem?

A. Introduction

As of Fiscal Year 2020, the United States' student loan debt is at a record high and continues to soar, constituting over $1.5 trillion that is dispersed amongst more than 44 million borrowers.[1] Around ten percent of the student loan debt is over ninety days delinquent or in default, "equating to one in four student loan borrowers who are struggling to repay their debt or are already in default."[2] Currently, "the volume of outstanding student loan debt outweighs the total volume of credit card and automobile debt combined."[3] Federal student loan servicers have been hired by the United States Department of Education with the intention of working with student loan borrowers to place them into the best repayment plan for their specific needs;[4] however, many students are unable to pay off their student debt because of unclear and misleading repayment plans.[5]

In 1965, Congress enacted the Higher Education Act (the Act) in order to "keep the college door open to all students of ability,

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[1] *Federal Student Aid Portfolio Summary*, U.S. DEP'T OF EDUC., https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/library/PortfolioSummary.xls [http://perma.cc/6HPX-Z23V].

[2] Jeffrey P. Naimon et al., *School of Hard Knocks: Federal Student Loan Servicing and the Looming Federal Student Loan Crisis*, ADMIN. L.J. AM. U. 259, 260–61 (2020) (highlighting the severity of the student loan crisis).

[3] Teddy Nykiel, *2019 Student Loan Debt Statistics*, NERDWALLET (Dec. 20, 2019), https://www.nerdwallet.com/articl e/loans/student-loans/student-loan-debt [https://perma.cc/7KX9-NGYE]; *Policy Basics: Top Ten Facts about Social Security*, CTR. BUDGET & POLICY PRIORITIES (Aug. 14, 2019), https://www.cbpp.org/research/social-security/policy-basics-top-ten-facts-about-social-security [http://perma.cc/B7R2-79SM]; CTR. FOR MICROECONOMIC DATA, FED. RSRV. BANK OF N.Y., QUARTERLY REPORT ON HOUSEHOLD DEBIT AND CREDIT (2019), https://www.newyorkFed.org/medialibrary/interactives/householdcredit/data/pdf/HHDC_2019Q2.pdf.

[4] *Id.* at 262 (introducing the role of the U.S. Department of Education in student loan servicing).

[5] Ian Elijah Calhoun, *Assessing the Efficacy of the CFPB's Regulation of Student Loan Companies*, 52 GA. L. REV. 913, 913 (2019) (introducing the issue of students trying to navigate student repayment plans).

regardless of socioeconomic background."[6] The Act set up the Direct Loan Program and the Federal Family Education Loan Program to assist students in pursuing a school of their choice.[7] To collect student loan debt, the Department of Education has contracted with several student loan servicers, however, a large majority of its portfolio is allocated to Navient Corporation (Navient).[8] Under its contract with the Department of Education, Navient is required to work closely with the Department of Education in collecting debt and protecting federal funds.[9] Navient predominately does this through borrower assistance programs.[10] Although there are some variations within these programs, they have primarily been formed as repayment plans, deferment and forbearance programs, or forgiveness and cancellation plans.[11] Over the course of the past few years, Navient has been in hot water with the Consumer Financial Protection Bureau (CFPB) over their alleged misrepresentations to student loan borrowers to steer them towards forbearance rather than more affordable repayment options.[12] State attorney generals across the country have also taken it upon themselves to pursue their own litigations against Navient to seek further remedies for student loan borrowers.[13]

This Article aims to provide an overview of the legal landscape of this student loan crisis and whether states should have the

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[6] Bible v. United Student Aid Funds, Inc., 799 F.3d 633, 640 (7th Cir. 2015).

[7] Commonwealth of Pa. v. Navient Corp., 967 F.3d 273, 278 (3d Cir. 2020).

[8] Naimon et al., *supra* note 2, at 272 (mentioning that Navient Corporation, Nelnet, Inc. and Pennsylvania Higher Education Assistance Agency are the three predominant student loan servicers).

[9] *Id*. (listing Navient's contractual obligations to the Department of Education).

[10] *Id*. at 270 (citing 20 U.S.C. ch. 28, subchapter IV, pt. G to show that federal law mandates the creation of borrower assistance programs).

[11] *Id.* ("These programs have taken three primary forms, with several variations within each: (1) repayment plans, which focus on reducing borrowers' monthly payments to ensure that borrowers are able to stay current; (2) deferment and forbearance programs, which provide for the temporary cessation of payments altogether due to unstable financial conditions; and (3) forgiveness and cancellation plans, which terminate any outstanding student loan balance after a certain repayment period.").

[12] *See* Consumer Fin. Protection Bureau v. Navient, 3:17-CV-101, 2017 WL 3380530.

[13] *See* Commonwealth of Pa. v. Navient Corp., 967 F.3d 273 (3d Cir. 2020); Lawson-Ross v. Great Lakes Higher Educ. Corp., 955 F.3d 908 (11th Cir. 2020); Chae v. SLM Corp., 593 F. 3d 936, 949–50 (7th Cir. 2010).

ability to pursue their own legal actions against companies like Navient. First, Part B gives an overview of the conflict between student loan borrowers and Navient and the claim that is currently being brought by the Consumer Financial Protection Bureau, arguing that Navient has steered borrowers into forbearance. Second, Part C dives into the state action claims against Navient, with a particular focus on the current case that has been brought by the Commonwealth of Pennsylvania's state attorney general. This part will delve into the Third Circuit's rationale in denying Navient's motion to dismiss and a compare the Court's rationale to other circuits that have presided over this ongoing issue. Third, Part D will provide a policy discussion about the implication of the potential outcome of the Third Circuit's decision and whether states should be able to bring their own enforcement actions or if this is better left to the Consumer Financial Protection Bureau to set up a uniform national standard.

B. Navient's Misrepresentations and the Consumer Financial Protection Bureau's Lawsuit

Currently, Navient has found itself in the center of the student loan crisis and is facing the brunt of the harm in several lawsuits brought against the servicing company. The legal actions were kick-started by the federal government against the servicing company in 2017. The focus of these lawsuits is on Navient's practice of steering borrowers into forbearance rather than more affordable repayment options like income-driven repayments.[14] The lawsuits claim Navient acted in bad faith by intentionally steering customers into more costly assistance programs because those programs were more profitable and time-efficient for Navient.

The plaintiffs in these lawsuits have pointed towards the incentives that Navient has to steer borrowers towards forbearance. First, it has been argued that Navient has done this because steering borrowers towards forbearance saves representatives time and is more profitable. A Navient representative can enroll a borrower in forbearance in a matter of minutes without having to fill out any paperwork, whereas enrolling borrowers into plans like income-driven repayments requires submitting paperwork and annual recertification.[15] Also,

[14] *Commonwealth of Pa.*, 967 F.3d at 280.

[15] Consumer Fin. Protection, 3:17-CV-101, 2017 WL 3380530, at *2 (M.D. Penn. Aug. 4, 2017) ("While a Navient Solutions customer service representative can put a borrower's loan into forbearance quickly over the phone,

Navient's representatives are paid a higher compensation by keeping their average call times shorter which makes a swift process like forbearance more of an attractive option to advertise to borrowers.[16] Second, payment plans like income-driven repayments are costlier for Navient. Because setting up income-driven repayment plans involves more work on behalf of Navient, continuing to do so would result in the servicing company to increase its staff size to handle the increase in their borrowers switching over to this plan.[17]

With these incentives in mind, there is reason to believe that Navient has intentionally steered borrowers into forbearance without mentioning more affordable repayment options. For years, Navient has consistently had more borrowers enrolled in forbearance than income-driven repayment plans which has resulted in financial burdens on millions of Americans who are unable to repay their loans.[18] Navient has also financially burdened their borrowers who have enrolled in income-driven repayment plans on several occasions. Navient is legally obligated to send a written notice to borrowers under this repayment plan detailing the process to annually renew their income-driven repayment plan.[19] Oftentimes, these written notices were not detailed in properly assisting borrowers enrolled in this plan in how to recertify which led to these borrowers' loans being automatically transferred to a forbearance payment plan.[20]

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generally without filling out any paperwork, entering a borrower into an income-driven repayment plan involves lengthy conversations about different plans, helping a borrower fill out the initial application, and possessing both the initial and annual renewal paperwork.").

[16] *Id.* ("Additionally, taking the time to enter a borrower into an income-driven repayment plan is less appealing to Navient Solutions' customer service representatives because they are compensated, in part, based on how short they can keep their average call.").

[17] *Id.*

[18] *Commonwealth of Pa.*, 967 F.3d at 281 ("For instance, between January 2010 and March 2015, Navient enrolled more than 1.5 million borrowers in multiple consecutive forbearances instead of helping them enroll in an IDR plan. During the same time period, the number of borrowers that Navient enrolled in forbearance generally exceeded the number of borrowers enrolled in IDR plans. Navient representatives would sometimes place borrowers in voluntary forbearance even though they would have qualified for $0 per month payments in an IDR plan.").

[19] *Consumer Fin. Protection Bureau*, WL 33805830, at *2.

[20] *Id.*

In 2017, the CFPB alleged that Navient committed various violations of the Consumer Financial Protection Act, the Fair Debt Collection Practices Act, and Regulation V of the Fair Credit Reporting Act.[21] Some of the specific actions that the CFPB stated that Navient allegedly committed included: failing to inform borrowers enrolled in income-driven repayment plans that their annual recertification was available, giving borrowers either incomplete or no information about income-driven repayment plans, and engaging in unfair or deceptive acts or practices.[22] In 2019, Navient's motion to dismiss the CFPB's claims was denied, finding that the CFPB adequately pleaded falsity, scienter, and loss causation.[23] The following year, Navient and the CFPB filed a Motion for Summary Judgment.[24] Navient claims that the CFPB lacks evidence to support their allegations and asked the Court to reject the CFPB's "truly extraordinary" bid for summary judgment.[25] Currently, the suit is still in the Summary Judgment phase before the United States District Court for the Middle District of Pennsylvania; however, state attorney generals have taken it upon themselves to bring additional suits against Navient which have the potential to lead towards a groundbreaking decision about federal preemption and the future of state action claims against student loan servicers.

C. Commonwealth of Pennsylvania v. Navient

In the same year that the CFPB filed its suit against Navient, the Pennsylvania attorney general also filed a suit against Navient claiming that the company repeatedly steered borrowers into forbearance, constituting "unfair, deceptive, and abusive practices in violation of both the Consumer Protection Act and the PA Protection Law."[26]

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[21] *Id.*, at *1.

[22] *Id.*, at *17, *18, *20 ("failing to adequately notify borrowers who were enrolled in income-driven repayment plans that their annual recertification notice was available," "giving borrowers who called them incomplete or, on other occasions, no information about income-driven repayment plans and instead pushed borrowers into forbearances, and "engaged in deceptive acts or practices.").

[23] *See id.*

[24] *See* Defendant's Memorandum of Law in Opposition, Consumer Fin. Protection Bureau v. Navient Corp., No. 3:CV-17-00101 (filed July 16, 2020).

[25] *Id.* at 12, No. 3:CV-17-00101 (filed July 16, 2020).

[26] Commonwealth of Pa. v. Navient, 967 F.3d 273, 274 (3d Cir. 2020).

Similar to the current lawsuit between the CFPB and Navient, in this case and other state action claims brought against the servicing company, Navient sought to dismiss the attorney general's claims on two grounds: (1) states are unable to bring a parallel enforcement action against Navient under the Consumer Financial Protection Act of 2010 after the CFPB has already filed suit, and (2) the Act preempts the Commonwealth of Pennsylvania's claims.[27]

For the first claim, the Third Circuit disagreed with Navient's interpretation of the Consumer Financial Protection Act and held that the plain language of the legislation allows states to file concurrent lawsuits against student loan servicing companies.[28] Navient also argued that permitting the state attorney general's claims to go to trial would be a "waste of judicial resources" because they are essentially bringing a copycat claim that has already been filed by the CFPB.[29] The Court disagreed with this assessment on three grounds: (1) the state attorney general can potentially achieve outcomes that go further than what the CFPB can achieve, (2) states have a fundamental right to protect their citizens and prevent harmful conduct from occurring in their jurisdictions, and (3) the interests of the state and the CFPB may not be aligned.[30]

For the second claim, Navient argued that Section 1098g of the Act both expressly and impliedly preempted the attorney general's claims.[31] To succeed on the express preemption argument, Navient had to show that Congress "explicitly preempted the state law in the statutory language."[32] Here, Navient pointed to the language of § 1098g which provides that, "loans made, insured, or guaranteed pursuant to a program authorized by Title IV of the HEA … shall not be subject to any disclosure requirements of any State law."[33] Specifically, Navient argues that the attorney general is ultimately making a failure to

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[27] *Id*. at 277.

[28] *Id*. at 284 ("Here, the plain meaning of § 5552 is that the Pennsylvania attorney general may bring an action to enforce the Consumer Protection Act. Other provisions of the Consumer Protection Act do expressly prohibit concurrent claims, but not § 5552.").

[29] *Id*. 286 ("Navient also argues that allowing Pennsylvania's concurrent claims will be a waste of judicial resources because they, "by definition, cannot achieve anything that the [Bureau's] own lawsuit cannot achieve, no matter how well the state litigates its … claims.").

[30] *Id*.

[31] *Id*. at 287.

[32] *Id*. at 274.

[33] *Id*. at 288; 20 U.S.C. § 1098g.

disclose claim that comes in direct conflict with the statutory language.[34] The Third Circuit Court disagreed with Navient's assessment of their characterization of the attorney general's claims and found that these claims were not failures to disclose, but rather affirmative misrepresentations.[35] The Court pointed out that the attorney general "cannot fault Navient for failing to provide consumers with more information about IDR plans or recertification, but it can fault Navient for providing misinformation."[36]

Under Navient's implied preemption claim, Navient argued that the principles of conflict preemption and field preemption prohibited the attorney general from bringing a claim.[37] To succeed on a conflict preemption argument, Navient would have to show that Pennsylvania's law conflicts with federal law such that "compliance with both state and federal regulations is impossible, or when a challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of a federal law."[38]

Navient relied on the Ninth Circuit's conclusion in *Chae v. SLM Corporation* on this issue and argued that, in creating the Act, Congress intended uniformity and allowing fifty separate state laws governing this issue would conflict with the purpose of the Act.[39] In that case, the plaintiffs argued that Sallie Mae employed "unfair" and "fraudulent" business practices in its billing statements and coupon books and failed to disclose key information, such as loan terms and repayment requirements.[40] In finding the Act preempted the state action, the Ninth Circuit reasoned that the plaintiffs were essentially

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[34] *Commonwealth of Pa.*, 967 F. 3d at 288 ("Navient argues that Commonwealth's Complaint fall squarely within § 1098g's prohibition because they target the sufficiency of the disclosures Navient allegedly made to borrowers and expressly fault it for failing to make 'disclosures' or provide 'notice' that state law required Navient to provide.").

[35] *Id.* ("Section 1098g does not expressly preempt claims to the extent they are alleging affirmative misrepresentations rather than failures of disclosure. Turning to our case, we are not convinced that all, or even most, of the Commonwealth's claims are based on failures of disclosure.").

[36] *Id.* at 291.

[37] *See id.*

[38] *Id.* at 275.

[39] *See id.*; Chae v. SLM Corp., 593 F. 3d 936, 949–50 (7th Cir. 2010) ("The DOE made clear that the imposition of fifty sets of state law governing the calculation of interest would threaten its ability to carry out the congressional objectives of ensuring uniformity and stability within the program.").

[40] *Chae*, 593 F. 3d at 942.

making an improper-disclosure claim and seeking to impose additional disclosure requirements under state law.[41] The Ninth Circuit concluded that conflict preemption prevented the plaintiffs claim because it was directly adverse the congressional purposes of the Act.[42]

Two other cases, however, cut the other way. In *Nelson v. Great Lakes Educational Loan Services, Inc*, the plaintiffs alleged that Great Lakes steered student loan borrowers into forbearance rather than more affordable repayment options.[43] The Seventh Circuit made an important distinction with the Ninth Circuit case and reasoned that steering borrowers into forbearance is a fraudulent and deceptive practice, unlike improper disclosures in billing statements.[44] Also, in *Lawson-Ross v. Great Lakes Higher Education Corporation*, the plaintiffs argued that Great Lakes made affirmative misrepresentations by stating that the borrowers were on their way to having their student loans forgiven based on their public service employment, but in actuality their loans were not eligible for the forgiveness program.[45] The Eleventh Circuit disagreed with the Ninth Circuit's conclusion that uniformity was an intended purpose of the Act. Also, the Court, like the Seventh Circuit, found that *Chae's* issues of assessing late fees, establishing repayment start dates, and calculating interest were separate than the issue at hand dealing with personalized advice about loan forgiveness.[46]

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[41] *Id*.

[42] *Id*. at 950 ("In conclusion, the plaintiffs' allegations that Sallie Mae makes fraudulent misrepresentations in its billing statements and coupon books are expressly preempted by the HEA, and conflict preemption prohibits the plaintiffs from bringing their remaining claims because, if successful, they would create an obstacle to the achievement of congressional purposes.").

[43] Nelson v. Great Lakes Educ. Loan Servs., 928 F.3d 639, 650 (7th Cir. 2020) ("Instead, Nelson contends, Great Lakes steered borrowers into repayment plans that were to Great Lakes' advantage and to borrowers' detriment.").

[44] *Id*. at 650 ("*Chae* limited the reach of some of its broader language by holding that other state-law claims, focusing on the 'use of fraudulent and deceptive practices *apart from the billing statements*,' are *not* preempted by § 1098g.").

[45] Lawson-Ross v. Great Lakes Higher Educ. Corp., 955 F.3d 908, 911 (11th Cir. 2020).

[46] *Id*. at 922 ("The claims in *Chae* concerned assessment of late fees, establishing repayment start dates, and interest calculations—core administrative aspects of the FFELP that arguably require more nationwide consistency than

The Third Circuit disagreed with the Ninth Circuit and instead relied on the outcomes of both the Seventh and Eleventh Circuits.[47] The Court reasoned that uniformity was not a goal of the Act and, even if it was, allowing state attorney generals to bring actions against student loan servicing companies for affirmative misrepresentations would not conflict with the legislative purpose.[48]

For Navient to succeed on the field preemption claim, it would have to show that "federal law leaves no room for state regulation and that Congress had a clear and manifest intent to supersede state law in that field."[49] The Third Circuit raised and dismissed this claim and pointed out that the circuit courts have uniformly denied these claims and found that the Act does not field preempt the regulation of student loans.[50] Thus, the Third Circuit denied Navient's motion to dismiss the attorney general's claims on preemption grounds and continued the fight for state rights to bring actions against student loan servicing companies that are not expressly or impliedly preempted by the Act.

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the subject of the claims at issue here, personalized advice about loan forgiveness provided to individual student loan borrowers.").

[47] *See id.* ("When a loan servicer holds itself out to a borrower as having experts who work for her, tells her that she does not need to look elsewhere for advice, and tells her that its experts know what options are in her best interest, those statements, when untrue, cannot be treated by courts as mere failures to disclose information. Those are affirmative misrepresentations. A borrower who reasonably relied on them to her detriment is not barred by § 1098g from bringing state-law consumer protection and tort claims against the loan servicer."); *Nelson*, 928 F.3d at 639 ("When a plaintiff alleges a defendant's actionable failure to disclose, it is easy to understand how that claim implies a 'disclosure requirement,' to use the language of § 1098g. But when a plaintiff alleges a defendant's false affirmative misrepresentation, recasting the claim as imposing a 'disclosure requirement' is not necessary and may not even be appropriate. If the claim is that the defendant said something false that it was not required to say in the first place, the claim does not necessarily imply a disclosure requirement.").

[48] *Commonwealth of Pa.*, 867 F.3d at 283.

[49] Sikkelee v. Precision Airmotive Corp., 822 F.3d 680, 688 (3d Cir. 2016) ("Where congress expresses an intent to occupy an entire field, States are foreclosed from adopting any regulation in that area, regardless of whether that action is consistent w/ federal standards.").

[50] *Commonwealth of Pa.*, 867 F.3d at 294 (citing *Lawson-Ross*, 955 F.3d at 923; *Nelson*, 928 F.3d at 651–52; *Chae*, 593 F.3d at 941–42; Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 168 F.3d 1362, 1369 (D.C. Cir. 1999); Keams v. Tempe Tech. Inst., Inc., 39 F.3d 222, 226 (9th Cir. 1994)).

The Third Circuit's decision has the potential to be a trailblazer to narrow the student loan crisis or, as the Ninth Circuit warned, could potentially have detrimental effects on student loan borrowers and the student loan industry as a whole.[51]

D. Policy Discussion

The ongoing legal debate of whether the Act preempts state laws intending to regulate servicers of federal student loans has serious implications for the future of litigation efforts to protect the interests of student loan borrowers. The Ninth Circuit and the Department of Education (ED) would argue that the Act should (and does) preempt state servicing regulations because a uniform standard would prevent servicers like Navient to have to utilize more resources and undergo "administrative and financial burden[s]" to become knowledgeable of fifty state-specific laws regulating their actions.[52] However, the federal law that is intended to protect student loan borrowers has shown otherwise. Recent data has shown that 99% of borrowers who applied for loan forgiveness through the Public Service Loan Forgiveness have been denied, 80% of borrowers who are delinquent on a federal student loan are not enrolled in an income-driven repayment plan, and the ED has put their foot on the brakes when it comes to overseeing the student loan market that it controls.[53]

Another argument for preempting state servicing regulations was posed in a footnote in the Ninth Circuit in which the Court stated that if borrowers are seeking a remedy to alleged affirmative misrepresentations on behalf of student loan servicers, it would be adequate for them to reach out to the federal government to ask them to

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[51] *Chae*, 593 F.3d at 945–46 ("Permitting varying state law challenges across the country, with state law standards that may differ and impede uniformity, will almost certainly be harmful to the FFELP. The costs of the program would go up and either there would be fewer loans made or loans made for lesser amounts or for higher interest, making it harder for students to gain the loan funds they need to get the education they want.").

[52] Gracia v. Volvo Europa Truck, N.V., 112 F.3d 291, 298 (7th Cir. 1997) (stating that when state law claims are "not preempted," regulated parties may "be placed in a position where they could be subject to varying standards from state to state, which could not all be complied with simultaneously").

[53] *See* U.S. Dep't Educ., *Secretary DeVos Announces Intent to Enhance FSA's Next Generation Processing and Servicing Environment* (Aug. 1, 2017).

intervene and file a suit against the servicer.[54] In this scenario, whenever future issues such as those posed in these lawsuits arise, borrowers should reach out to the CFPB to best represent their personal interests. However, under the Trump administration, the CFPB removed student loan servicing under its rulemaking agenda, nullifying the Ninth Circuit's proposition that the CFPB would provide adequate oversight of student loan servicers to protect borrowers' best interests.[55] Also, according to a report from the ED's Office of Inspector General, the ED had "insufficient procedures and policies for detecting systemic industry wrongdoing" and "even when industry noncompliance was detected, ED rarely used available contract provisions to hold the offending loan servicers accountable."[56] Based on this evidence if courts adopt the Ninth Circuit approach that the Act preempts state servicing regulations, there would be very little (if any) oversight over student loan servicers to deceive, mislead, and lie to student loan borrowers.[57] Thus, it would seem that the Third Circuit's rationale was correct and allows state and private enforcement efforts to best represent student loan borrowers where the ED has taken a more laissez-faire approach to the student loan crisis.[58]

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[54] Chae v. SLM Corp., 593 F. 3d 936, 943 (7th Cir. 2010) ("The plaintiffs argue that our holding will leave them without a means to remedy Sallie Mae's alleged misrepresentations. We disagree. The DOE has the power to institute informal compliance procedures against a third-party servicer who is the subject of a complaint. When stronger medicine is required, the DOE may file suit against the servicer, impose civil penalties, and terminate the servicer's participation in the program. If Sallie Mae's disclosures are misleading, the plaintiffs' remedy is to complain about Sallie Mae to the DOE and to ask the agency to intervene.").

[55] Seth Frotman, *The Student Loan Market Is Broken: Preempting State Law Would Make It Worse*, 44 ADMIN. & REG. LAW NEWS 4, 4 (2019) ("Furthermore, the only federal agency with jurisdiction over the entire student loan servicing industry—the Consumer Financial Protection Bureau (CFPB)—has repeatedly signaled its intent to abstain from overseeing the student loan market.").

[56] *See* U.S. Dep't Educ. Off. of Inspector Gen., Federal Student Aid: Additional Actions Needed to Mitigate the Risk of Servicer Noncompliance with Requirements for Servicing Federally Held Student Loans (Feb. 12, 2019).

[57] Frotman, *supra* note 46, at 5 ("If correct, this interpretation would leave student loan servicers free to deceive, mislead, and lie to borrowers without fear of accountability under state law.").

[58] *Id*. ("But where the federal government has stepped away, state and private enforcement efforts have stepped in.").

E. Conclusion

The rising student loan debt in the United States is an issue that is impacting millions of lives across the country. The cases being brought against Navient have the potential to pave the way for not only seeking justice for those who have been wronged by student loan servicers and the federal government, but also have the chance to change the landscape of student loan servicing to ensure that borrowers are being put at ease and fully informed when they are undergoing a plan that has serious implications. The battle between the state attorneys general and the federal government has been a long one and is currently ongoing, however, the case is paving the way towards state regulatory regimes to avoid federal preemption and seek justice for student loan borrowers where the enforcement of federal regulatory laws have not gone far enough to protect them. As states and individuals continue to attempt to revolutionize the student loan servicing legal landscape, the issue of state consumer protection law and federal preemption will be an important question in current and future lawsuits that could potentially be the force needed to solve the student loan crisis in America.

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