In the
Supreme Court of Ohio

SAMUEL VOSS,	:	Case No. 2024-0257
	:	
Appellee,	:	On Appeal from the
	:	Hamilton County
v.	:	Court of Appeals,
	:	First Appellate District
QUICKEN LOANS, LLC and	:	
MORTGAGE ELECTRONIC	:	Court of Appeals
REGISTRATION SYSTEMS, INC.,	:	Case No. C 2300065
	:	
Appellants.	:	

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INTRODUCTION

This case is about the separation of powers. It involves a challenge to the General Assembly's long-recognized power to confer statutory standing independent of common-law standing requirements. This Court should not import federal constitutional limits on Congress into Ohio's Constitution, depriving the State of its pre-founding authority to open her courts to litigants who lack a federal injury-in-fact.

This case also invites this Court to opine unnecessarily on whether a trial court considering a motion to certify a class action can take into account an already-enacted but not-yet-effective statutory amendment that prohibits the class. Rather than address that question of trial-court discretion, this Court should reaffirm that statutory standing provides an alternative to common-law standing, clarify that the now-effective statutory amendment applies prospectively to future proceedings in ongoing cases, and allow the trial court to sort out the rest.

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law enforcement officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. This case is of great interest to Ohio because it concerns the General Assembly's authority to create legal rights and empower citizens to vindicate those rights in Ohio courts. It also involves the

effectiveness of a duly enacted statutory amendment. The Attorney General has a duty to ensure that the General Assembly's lawmaking power is not unduly constrained.

STATEMENT OF THE CASE AND FACTS

I. Ohio's mortgage-satisfaction statute encourages lenders to record mortgage satisfactions promptly by allowing mortgagors to collect statutory damages for delays.

Ohio's General Assembly has decided that, when people satisfy their mortgages, mortgage lenders should promptly record as much. It is easy to understand why: prompt recording removes the cloud of a mortgage from a property's title, making the property more valuable and easier to transfer.

To incentivize prompt recording, Ohio law subjects mortgage lenders to statutory damages for failing to promptly record mortgage satisfactions. Specifically, the mortgage-satisfaction statute at issue in this case gives mortgage lenders "ninety days from the date of the satisfaction of a mortgage" to "record a release of the mortgage … in the appropriate county recorder's office[.]" R.C. 5301.36(B). If the mortgagee fails to do so, "the mortgagor of the unrecorded satisfaction and the current owner of the real property … may recover, in a civil action, damages of two hundred fifty dollars." R.C. 5301.36(C)(1). The statute further specifies that this cause of action "does not preclude or affect any other legal remedies or damages that may be available to the mortgagor." *Id.* In brief, when a property owner pays off a mortgage, and the lender fails to record as much within 90 days, the mortgagor and property owner are entitled to $250 each from

the lender. And that holds true regardless of whether the mortgager or property owner suffered any independent injury because of the lender's delay.

II. Plaintiffs who are entitled to recovery under the statute bring a class action.

Samuel Voss paid off a mortgage on his property in early February 2020, but the lender, Quicken Loans, did not record the satisfaction until May 26, 2020, more than 90 days later. *Voss v. Quicken Loans, LLC*, 2024-Ohio-12, ¶¶4–5 (1st Dist.) ("App.Op."). But Voss suffered no injury from the delay: it did not affect his ability to live in or rent the house, nor did he try to sell it. *Id.* at ¶25. In June 2022, Voss sued Quicken Loans in the Hamilton County Court of Common Pleas under the mortgage-satisfaction statute, and then moved to certify a class of mortgagors and successors-in-interest whose mortgage satisfactions Quicken Loans did not record within 90 days, from August 19, 2014 through August 19, 2020. *Id.* at ¶11. Voss's motion for class certification was still pending in January 2023.

III. The General Assembly amends the statute to prevent class actions arising from COVID-19's disruption of business operations.

On January 6, 2023, the General Assembly amended the mortgage-satisfaction statute, apparently to account for the disruption that COVID-19 shutdowns caused to standard recording practices. In particular, the General Assembly added a new subsection to the mortgage-satisfaction statute:

> A mortgagor or current owner of the real property shall not be eligible to collect the damages described in … this section via a class action for violations … that occurred in calendar year 2020. This division does not preclude or affect any other

> legal remedies or damages that may be available to the mortgagor or current owner.

R.C. 5301.36(C)(2); 2022 Am.Sub. H.B. No. 45. Simply put, property owners aggrieved in 2020 must proceed through individual lawsuits, not class actions.

This amendment did not take effect until April 6, 2023. That is because the Ohio Constitution delays most laws' effective dates for 90 days to allow time for referenda, should the People choose to revisit the legislature's work. Ohio Const. art. II, §1(c).

IV. The trial court certifies the class before the amendment takes effect, and the First District affirms.

While this legislative process was ongoing, Voss's case continued. And, in February 2023, the trial court certified the class. App.Op. at ¶13. The trial court declined to consider the soon-to-be-effective amendment to the mortgage-satisfaction statute because it believed doing so would constitute "retroactive application of the statute[.]" *Voss v. Quicken Loans, LLC*, No. 2002899, 2023 WL 1883124 at *1 n.2 (Hamilton C.P. Feb. 8, 2023).

Quicken Loans appealed class certification, arguing that the trial court abused its discretion for two reasons relevant here. First, Quicken Loans argued that Voss and others lack standing because they suffered no actual injury from the late recordings. App.Op. at ¶25. Second, Quicken Loans argued that certification was improper because the amendment would take effect before final adjudication and inevitably bar recovery for all but the few class members whose claims did not arise in 2020. *Id.* at ¶¶16, 20.

Earlier this year, the First District affirmed. It first held that plaintiffs have statutory standing under the mortgage-satisfaction statute. *Id.* at ¶¶30–31. It noted that Ohio law recognizes both common-law and statutory standing. *Id.* at ¶27. While common-law standing requires an injury that is traceable to the defendant's conduct and redressable by a court, the First District explained, "[c]ommon-law standing principles do not apply when standing is authorized by statute." *Id.* at ¶28 (quoting *Cool v. Frenchko*, 2022-Ohio-3747, ¶29 (10th Dist.)).

The First District continued that the Ohio Constitution permits the General Assembly to grant statutory standing because Article IV, §4(B) vests common pleas courts with "jurisdiction over all justiciable matters … *as may be provided by law*." *Id.* at ¶¶26, 28 (citing *Middletown v. Ferguson*, 25 Ohio St. 3d 71, 75–76 (1986) and quoting Ohio Const. art. IV, §4(B) (emphasis added)). But the Legislature must express an "intention to abrogate the common-law requirements for standing." *Id.* at ¶28 (quoting *Smith v. Ohio State Univ.*, 2017-Ohio-8836, ¶13 (10th Dist.)).

The First District held that the mortgage-satisfaction statute's language confers standing. It stressed the statute's categorical statement that persons "may recover, in a civil action, damages of two hundred fifty dollars" if their mortgage lender does not record a satisfaction within 90 days. *Id.* at ¶29 (quoting R.C. 5301.36(C)(1)). The First District found more evidence that this language grants a cause of action in another part of the mortgage-satisfaction statute, which states expressly that "[a] current owner may

combine the *civil actions described in divisions (C)* and (E) … *or may bring separate actions*." *Id.* (quoting R.C. 5301.36(G)) (emphasis added). And finally, the First District found further confirmation that the mortgage-satisfaction statute creates legislative standing because the statutory damages provision "is not tied to any actual losses" but instead "exacts an arbitrary sum[.]" *Id.* at ¶30 (quoting *Radatz v. Fannie Mae*, 2016-Ohio-1137, ¶¶26, 28).

Having found that Voss and the class members had standing, the First District went on to affirm the trial court's certification of the proposed class. It agreed that the 2023 amendment, between the time of its enactment and effective date, did not bar courts from certifying class-action claims arising from 2020. *Id.* at ¶¶21–23. The First District further held that, to decide the motion for certification in February 2023 based on the not-yet-effective amendment would have violated the 90-day effectiveness delay in Article II, §1(c) of the Ohio Constitution. *Id.* at ¶23.

Quicken Loans appealed on February 20, 2024, Notice of Appeal at 1, raising two assignments of error. The first involves whether class certification was proper notwithstanding the anti-class-action amendment that would be in effect by the time litigation concludes. Jur.Mem. at i, 9–12. The second asks whether a statute can abrogate the common-law standing requirement of injury-in-fact. *Id.* at ii, 12–14. This court accepted jurisdiction on both propositions. *05/08/2024 Case Announcements*, 2024-Ohio-1720. This brief will address them in reverse order, beginning with the logically

antecedent standing question before ending with the statutory amendment's effect on the propriety of class certification.

ARGUMENT

Amicus Curiae Ohio Attorney General's First Proposition of Law:

> *The General Assembly may create statutory causes of action that confer standing on plaintiffs who have suffered no injury-in-fact.*

Ohio's mortgage-satisfaction statute creates a cause of action for mortgagors and property owners when a lender delays recording the satisfaction of a mortgage. R.C. 5301.36(C)(1). The statute does not require that mortgagors and property owners pursuing such actions suffer any actual injury from the delay. The question presented is whether the General Assembly may confer standing in this manner. See Jur.Mem. at i. It can.

The Ohio Constitution allows the General Assembly to confer statutory standing on individuals who lack an injury-in-fact by passing a statute that expresses a clear intent to do so. Middletown v. Ferguson, 25 Ohio St. 3d 71, 75–76 (1986). Some might argue that allowing plaintiffs to bring cases based on statutory standing, without establishing a separate injury in fact, exceeds "the judicial power" described in Ohio Constitution Article IV, §1. See Opp.Jur. at 13; *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 422–23 (2021). But history and this Court's precedent refute that argument. Because the mortgage-satisfaction statute permissibly removes the injury-in-fact requirement for

standing, this Court should affirm the lower courts' holding that Voss and the class members have standing to seek statutory damages under it.

I. The Ohio Constitution allows the General Assembly to confer standing on uninjured persons by statute.

Since 1802, Ohio's Constitution has "vested" "[t]he judicial power" of Ohio in its courts. Ohio Const. art. IV, §1; *Id*. (1851); *Id.* at art. III, §1 (1802). That is fundamentally power to decide a "legal controversy between parties with standing." *State ex rel. Lorain Cty. Bd. of Commrs. v. Lorain Cty. Court of Common Pleas*, 2015-Ohio-3704, ¶21. A second constitutional provision reiterates the standing requirement for common-pleas courts in particular. Article IV, §4(B) limits their "original jurisdiction" to "justiciable matters," and "[a] matter is justiciable only if the complaining party has standing to sue," *ProgressOhio.org, Inc. v. JobsOhio*, 2014-Ohio-2382, ¶11. Since before the Founding of this State and nation, standing derived from two sources: the common law and statutes, both of which determined who could sue by defining what counted as a justiciable dispute.

Over the intervening centuries, however, common-law standing so completely overtook statutory standing in federal court that it eventually became the exclusive basis for federal standing. Common-law standing requires the familiar showing of "an injury in fact, causation, and redressability." *State ex rel. Walgate v. Kasich*, 2016-Ohio-1176, ¶23 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Since statutory standing's federal demise, the U.S. Supreme Court has recognized these "three elements" as "the irreducible constitutional minimum of standing," rather than just the components of one

type of standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 341 (2016) (quotation omitted); *TransUnion*, 594 U.S. at 422–29. There is no basis in history for similarly mandating an injury-in-fact for standing in state court. History instead reveals that the General Assembly can confer standing to recover statutory damages on persons who have no injury-in-fact.

A. Standing was historically a matter of whether a plaintiff's suit fit into a cause of action.

What everyone knows as "standing" today—an individual's eligibility to seek a particular judicial remedy—was, at the Founding, about the existence of a viable cause of action. Specifically, state courts considered whether a plaintiff "could fit his case into an established form of action" for seeking a judicial writ, "by pleading sufficient facts to demonstrate that he was entitled to the writ in question." Anthony J. Bellia Jr. & Bradford Clark, *The Original Source of the Cause of Action in Federal Courts: The Example of the Alien Tort Statute*, 101 Va. L. Rev. 609, 631 (2015). If he could, he had a cause of action and could assert it in court by pleading the requisite form of action. *Id*. at 632.

Thus, historically speaking, the existence of a cause of action was the whole game. There was no separate injury-in-fact requirement because "the forms of proceeding [themselves] strictly limited the ability of non-injured-in-fact persons to bring causes of action[.]" Anthony J. Bellia Jr., *Article III and the Cause of Action*, 89 Iowa L. Rev. 777, 837 (2004). "Standing did not emerge as a question distinct from whether the plaintiff had a cause of action … until the merger of law and equity in the federal system and the

adoption of the Federal Rules of Civil Procedure" abolished the forms—and their strict limits on who could sue—in federal courts. *Id*. at 826, 827–28; *see also Bond v. United States*, 564 U.S. 211, 218 (2011) (citing *id*. at 826–30). And even then, the injury-in-fact requirement emerged as a *prudential* requirement, not a constitutional doctrine, the U.S. Supreme Court's invocation "of its traditional equitable discretion to refuse a remedy where the plaintiff suffered no direct injury." Bellia, 89 Iowa L. Rev. at 826–27 (discussing *Massachusetts v. Mellon*, 262 U.S. 447 (1923)). In other words, injury-in-fact began as something that federal courts could, but need not, employ when law left them discretion; it certainly did not bind state courts.

State courts, for their part, long recognized common-law forms of action that did not require an injury-in-fact. *Id.* at 832 & n.250 (listing scholars who have collected examples). For example, common-law forms typically allowed plaintiffs to obtain writs of trespass without pleading injury. *TransUnion*, 594 U.S. at 447 (Thomas, J., dissenting). That was the case in Ohio, as this Court explained in 1832:

> [u]pon the commission of an unlawful act, the person injured may have an action; and this, although the injury complained of is ideal, not real or substantial. Every entry upon the land of another, without right, is unlawful, and for such entry, the owner of the soil may have trespass, and shall recover damages, if for nothing else, for the treading down his grass. The damages may be merely nominal, but inasmuch as the rights of the person trespassed upon have been violated; and this, too, by an unlawful act, his right of action is complete.

Cooper v. Hall, 5 Ohio 320, 322, 1832 WL 7, at *1 (1832) (emphasis in original); *accord Tootle v. Clifton*, 22 Ohio St. 247 (1871). So, in Ohio in 1802 and thereafter, "the judicial power" was understood to allow courts to entertain causes of action even if the cause included only injury-in-ideal. It did not require that the plaintiff suffer an injury-in-fact.

That matched the understanding across the nation during the founding era that state legislatures could create new causes of action by statute. *See* Bellia Jr. & Clark, 101 Va. L. Rev. at 635. State legislatures often exercised this power to depart significantly from common-law forms. *Id*. A few years before the Constitutional Convention, for example, Pennsylvania's legislature created an "act of Assembly directing the mode of proceeding, upon mortgages, [e]ntirely different from the modes prescribed in *England*." *Id*. at 637 (quoting *Dorrow's Assignee v. Kelly*, 1 U.S. (1 Dall.) 142, 144–45 (Pa. Com. Pl. 1785) (emphasis in original)). Because legislatures could create forms of action that departed from the common law and the common law did not invariably require an injury-in-fact to begin with, an informed observer in 1802 would not have viewed "injury-in-fact" as a prerequisite for asserting a statutory cause of action that did not purport to require actual injury.

This historical understanding held sway in 1968 when Ohio voters added a standing requirement to their Constitution by restricting common-pleas courts to "justiciable matters." art. IV, §4(B). They incorporated the "tradition[]" that a right to sue, which had by then become known as "standing[,] may … be conferred by a specific statutory

grant of authority" that expressly authorizes uninjured persons to sue for defined relief. *Middletown*, 25 Ohio St. 3d at 75. Indeed, at that time, this view paralleled federal standing doctrine, which permitted Congress to create legislative standing with no injury-in-fact. *See Sierra Club v. Morton*, 405 U.S. 727, 731–32 (1972). Against that background, any judicial attempt to impose an immutable injury-in-fact requirement would violate the separation of powers because "an 'injury in fact' requirement" applied to defeat statutory standing "operates as a limitation on the power normally exercised by a legislative body … the power … to create causes of action." William A. Fletcher, *The Structure of Standing*, 98 Yale L.J. 221, 233 (1988).

Consistent with that historical view, many States still recognize that their constitutions create no limits on standing and rely instead on prudential doctrines to limit suits by non-interested parties. Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 Ky. J. Equine, Agric., & Nat. Resources L. 349 (2015). To give a few examples, the constitutions of Alaska, Arizona, and Connecticut all vest "the judicial power" of the State in a judiciary, Ala. Const. art. IV, §1; Ariz. Const. art. VI, §1; Conn. Const. art. V, §1, but none of those States understand that language to impose an injury-in-fact requirement on plaintiffs, *Bowers Office Prod., Inc. v. Univ. of Alaska*, 755 P.2d 1095, 1096 (Alaska 1988); *Biggs v. Cooper ex rel. Cty. of Maricopa*, 341 P.3d 457, 460 (Ariz. 2014); *Fort Trumbull Conservancy, LLC v. Alves*, 815 A.2d 1188, 1194, 1197 (Conn. 2003).

This Court's precedent also aligns with the historical view. In *Middletown*, this Court reaffirmed "that standing may also be conferred by statute" upon persons whose "rights have not been adversely affected by the ordinance." 25 Ohio St. 3d at 75. That is correct as a matter of history, even though the Court cited only the now-superseded federal case, *Sierra Club v. Morton*, 405 U.S. 727, 731–32 (1972), for support. *Id.* at 76. This Court has thus far resisted the temptation to lockstep with federal courts by distorting the Ohio Constitution to create an ahistorical restraint on legislative power. It should not succumb now.

B. Federal courts' reasons for departing from the cause-of-action view of standing do not apply to Ohio courts.

The federal judiciary's reasons for constitutionalizing the prudential doctrine of standing do not apply to Ohio. Differences in the federal and state constitutional grants of judicial power prevent the U.S. Supreme Court's textual justification for constitutionalizing standing from mapping onto this State. And the federal separation of powers concerns that gave rise to federal standing doctrine, *TransUnion*, 594 U.S. at 422–23, do not exist at the state level. On the contrary, mimicking the federal courts' immutable injury-in-fact requirement would unsettle important areas of Ohio law.

First and foremost, the United States and Ohio Constitutions use different language to create their respective judiciaries. As a result, "the judicial power" of the United States is more restricted than that of Ohio. The United States Constitution "specif[ies] that [the federal version of] this power extends only to 'Cases' and 'Controversies,'" *Spokeo, Inc. v.*

Robins, 578 U.S. 330, 337 (2016) (quoting U.S. Const. art. III, §2), but no such limit appears in the Ohio Constitution. It states without reservation that "[t]he judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law." Ohio Const. art. IV, §1. And it allows common-pleas courts to hear "all justiciable matters." *Id.* at §4(B). That difference is meaningful. Anti-Federalists' fears that a federal judiciary would destroy the State courts forced the Framers to create a weak judiciary tightly bound down by common-law notions of what a "Case" or "Controversy" looked like. The "Federal Farmer," for example, complained that "the constitution" would "by no means secure[]" a federal court system "organized on the common law principles of the country." Federal Farmer No. III, *Letters to the Republican* (Oct. 10, 1787). And "Brutus" stirred fears that, because the "constitution does not direct the mode in which an individual shall commence a suit … but it gives the legislature full power … . An individual of one state will then have a legal remedy against a state for any demand he may have against a state to which he does not belong." Brutus No. XIII, *New York Journal* (Feb. 21, 1788). The States' own long-established and locally controlled court systems inspired no similar fears.

History therefore justifies the Supreme Court's reading of "Cases" and "Controversies" to restrict Congress's power to create statutory standing to instances where "plaintiffs have identified a close historical or common-law analogue for their

asserted injury." *TransUnion*, 594 U.S. at 424. And it equally well justifies this Court's precedent independently interpreting Ohio's judicial-power vesting and jurisdiction clauses, which omit these limits, to permit legislative standing. *Middletown*, 25 Ohio St. 3d at 75.

As *Middletown* recognizes, the General Assembly's power to confer standing without actual injury does not amount to a power to vest Ohio courts with non-judicial power or permit common-pleas courts to hear nonjusticiable cases. Other safeguards ensure that Ohio's courts act only as courts. For example, the legislature may not authorize courts to grant non-judicial relief such as advisory opinions, *see, e.g.*, *State v. Harrison*, 2021-Ohio-4465, ¶17; *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 2008-Ohio-6254, ¶43; *State ex rel. White v. Koch*, 2002-Ohio-4848, ¶18, or "declar[ations of] principles or rules of law which cannot affect the matter at issue in the case before it," *Travis v. Pub. Util. Comm.*, 123 Ohio St. 355, 359 (1931). Nor may courts reach outside the justiciable matter before them by granting temporary restraining orders or preliminary injunctive relief to non-plaintiffs. *See* R.C. 2727.02–.03; Civ.R. 65. These limits suffice to keep legislative and judicial power where each belongs.

Imposing the additional limit of an immutable injury-in-fact requirement would unsettle important areas of Ohio law. Ohio's open-meetings law, for example, allows "[a]ny person" to bring an action to enforce its provisions by injunction and receive $500, costs, and attorney's fees as a reward, even if the person has no interest in the meeting's

subject matter. R.C. 121.22(I)(1), (2)(a). Similarly, Ohio's public-records law allows a requester who does not receive a prompt response to bring "a mandamus action to recover statutory damages [of $100 per day of undue delay], up to a maximum of one thousand dollars," even if the requester has no interest in the records. R.C. 149.43(C)(2), (B)(1), (C)(1)(b). If the General Assembly may not grant standing without requiring an injury-in-fact, then these good-governance enforcement mechanisms are likely unconstitutional. More likely, this Court has been right all along to recognize statutory standing as an exception to common-law standing requirements.

II. The General Assembly conferred statutory standing on uninjured plaintiffs by creating a new cause of action in the mortgage-satisfaction statute and extending that cause of action to a group that includes uninjured persons.

As the above discussion illustrates, Ohio's Constitution allows the General Assembly to expand standing beyond common-law limits by statutorily creating a new cause of action with no injury-in-fact requirement. *Middletown*, 25 Ohio St. 3d at 75. But the question remains whether the General Assembly has done so through the mortgage-satisfaction statute. It has. The language in the mortgage-satisfaction statute, on its face and in light of precedent, expresses that intention because it creates a cause of action and extends it to a group that includes uninjured persons.

A. This Court's precedents already recognize that a statute confers standing without injury when it creates a cause of action and declares that a group comprised of some uninjured persons is eligible to bring suit.

Precedent establishes that the General Assembly may confer statutory standing on uninjured persons, thus abrogating the common-law injury-in-fact requirement. *Middletown*, 25 Ohio St. 3d at 75. Ohio courts, however, will not read a statute as abrogating that common-law standing requirement unless "the statutory language clearly expresses or imports that intention." *JobsOhio*, 2014-Ohio-2382 at ¶22. Three of this Court's decisions—*Middletown*, *JobsOhio*, and *Ohioans for Concealed Carry, Inc. v. Columbus*, 2020-Ohio-6724—demonstrate that statutory language creates legislative standing when it creates a cause of action that extends to a group comprised of persons who are not all injured.

In *Middletown*, this Court held that then-R.C. 133.71(B) created statutory standing by stating that an issuer of securities "may … commence an action for the purpose of obtaining an adjudication of its authority to issue the securities and the validity of the proceedings taken … in connection therewith … ." Sub. H.B. No. 347, 141 Ohio Laws, Part I, 1760, 1956; *Middletown*, 25 Ohio St. 3d at 75. When the city of Middletown attempted to use this provision ahead of a municipal bonds issue and its citizen's objected that the city had suffered no injury, this Court found that "the city has standing … pursuant to a special statutory grant of authority" that "authorizes judicial review, at the behest of the city, of the validity of all proceedings taken in connection with the bonds it

proposes to issue and the city's authority to do so." *Id.* at 76. That statute, like the mortgage-satisfaction statute, conferred standing by stating that a group comprised of some uninjured persons may bring an action.

This statutory feature—declaring that a group, which includes some uninjured persons, is entitled to sue—sets the statutes at issue here and in *Middletown* apart from statutes that this Court has found do not confer statutory standing. For example, in *JobsOhio*, this Court held that R.C. 187.09(B) does not abrogate common-law standing requirements. That statute provides that "any claim asserting that [the JobsOhio Act] violates any provision of the Ohio Constitution shall be brought in the court of common pleas of Franklin county within ninety days after the effective date … of this section … ." *JobsOhio*, 2014-Ohio-2382 at ¶20 (quoting R.C. 187.09(B)). Because that language "is silent as to who has standing to maintain a constitutional challenge to the legislation," it does not expressly grant anyone standing to sue. *Id.* at ¶22. It simply states that those who already have standing must pursue their claims in a particular manner. Its failure to create a cause of action and identify a group of persons entitled to use it contrasts sharply with the mortgage-satisfaction statute, which states that a "mortgagor … and the current owner… may recover, in a civil action, damages of two hundred fifty dollars." R.C. 5301.36(C)(1).

Again, in *Ohioans for Concealed Carry*, this Court held that no statutory standing flows from language that does not identify a group of persons entitled to sue. There, appellants

argued that the legislature conferred statutory standing on them to challenge a city gun ordinance via R.C. 9.68(B), which then read, "[i]n addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section." 2020-Ohio-6724, ¶15 (quoting Sub. H.B. No. 347, 151 Ohio Laws, Part IV, 8138, 8140). This Court disagreed, pointing to the "statute's silence" on *who* could bring an action to challenge an ordinance. *Id.* at ¶17. The statute merely said that anyone who had common-law standing to seek substantive relief could get fees and costs.

B. The mortgage-satisfaction statute confers statutory standing by creating a new cause of action and making it available to a group that includes persons who have suffered no injury-in-fact.

Under *Middletown*, *JobsOhio*, and *Ohioans for Concealed Carry*, the mortgage-satisfaction statute creates statutory standing for uninjured "mortgagor[s]" and "current owner[s]" to "recover … damages of two hundred fifty dollars" because it says they "may" do so "in a civil action." R.C. 5301.36(C)(1). It defines a group, not all of whom will have been actually injured, and says that members of that group are entitled to bring an action. Because Voss and the proposed class members are part of that group, they have standing to bring their claims under the mortgage-satisfaction statute.

If the contested provision were not clear enough on its own, another provision of the mortgage-satisfaction statute would end all doubt. Under R.C. 5301.36(G), "[a] current owner may combine the civil actions described in divisions (C) [the contested provision]

and (E) of this section … or may bring separate actions." That language further demonstrates that the contested provision creates an independent cause of action that needs no additional claim of actual injury for support. The statute grants a cause of action for $250 to *all* mortgagors and current owners who experience a 90-day recording delay. That same degree of specificity—granting a cause of action to a group that included some uninjured persons—was enough to abrogate the injury-in-fact requirement in *Middletown*. 25 Ohio St. 3d at 75. It has the same effect in the mortgage-satisfaction statute. This Court should stand by its earlier recognition that the General Assembly may create standing without injury by statute, hold that Voss and the plaintiff class members have standing to sue under the mortgage-satisfaction statute, and reject Quicken Loans' contrary second proposition of law.

***Amicus Curiae* Ohio Attorney General's Second Proposition of Law:**

> *The amendment to the mortgage-satisfaction statute applies to all court proceedings that occur after its effective date.*

The trial court certified Voss's class after the mortgage-satisfaction statute amendment barring class recovery passed, but before it took effect, *see Voss*, No. 2002899, 2023 WL 1883124. The First District affirmed, holding that the trial court would have violated the Ohio Constitution's 90-day delay on the effective date of statutes had it considered the amendment at that time, App.Op. at ¶23. Quicken Loans's first proposition of law argues the opposite: the trial court *had* to consider that the amendment would soon take effect to bar class recovery, and the trial court had to deny certification

on that basis. Jur.Mem. at i. This Court, however, should exercise restraint by guiding the trial court to answer itself how the amendment applies to Voss's class—a question that no court has yet answered.

Specifically, this Court should only clarify that the amendment applies to all future proceedings in Voss's class action and allow the trial court to apply the amendment in the first instance. If the Court gives that meaningful but limited guidance, then the trial court will have to revisit its initial certification decision either sua sponte or in response to a motion to decertify from Quicken Loans. *See* Civ.R. 23(C)(1)(c). The initial certification decision, then, will have had no practical impact on the outcome of the case, and this Court will have avoided issuing an opinion that will likely be mooted by a future decertification of the class. That path would follow the "cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more." *State v. Corp. for Findlay Mkt.*, 2013-Ohio-1532, ¶25. (citations omitted).

I. The amendment to the mortgage-satisfaction statute applies to all future proceedings in this case.

Applying the procedural amendment at issue to future proceedings in this case is prospective, so, it does not violate the Ohio Constitution's clause that denies the general assembly power "to pass retroactive laws," art. II, §28. This Court's decision in *EPI of Cleveland, Inc. v. Limbach* explains why. In *Limbach*, the General Assembly passed two amendments to a sales tax liability statute after EPI's tax liability case was heard, but before it was decided. 42 Ohio St. 3d 103, 104 (1989) (per curiam). This Court held the

amendments were "procedural changes" that, as such, "should have been applied to [EPI's] case." *Id.* at 105. The statute made vendors liable for sales tax they failed to collect, but only if the vendor did not produce evidence that the sales were tax-exempt within 60 days of being notified of the commissioner's intent to impose liability. *Id.* at 106. The amendments allowed for a 30-day extension for vendors to submit additional evidence. *Id.* at 105. The Court held that the "amendment may be applied prospectively to a pending case even though it relies on" some "antecedent fact[s] … as a factor in its operation." *Id.* at 106.

That holding requires application of the mortgage-satisfaction statute amendment to the class here. Voss filed suit before the amendment barring class recovery for 2020 violations of the mortgage-satisfaction statute was enacted, and his proposed class was certified before the amendment took effect. Above at 2–3. The class has not yet collected any damages though, and the now-effective amendment states that the class members whose claims date to 2020 "shall not be eligible to collect the damages … via a class action." R.C. 5301.36. When they attempt to do so in further proceedings, the amendment will prevent it. It will not reverse a prior monetary award or deprive any plaintiff of a vested right to statutory damages of $250. Each plaintiff can assert their cause of action in an individual suit. The only reason the amendment seems retroactive is that the amendment "relies" on the "antecedent fact" that the plaintiffs' claims arose in

2020 "as a factor in its operation." *Limbach*, 42 Ohio St. 3d at 106. That does not make it retroactive for constitutional purposes. *Id.*

This Court put it well in an earlier case. "Laws of a remedial nature providing … courses of procedure … are applicable to any proceedings conducted after the adoption of such laws." *State ex rel. Holdridge, v. Indus. Comm.*, 11 Ohio St.2d 175, syl. ¶1 (1967). The amendment here is a remedial measure that only sets courses of procedure for plaintiffs to assert their substantive rights to a $250 recovery—it requires them to bring individual actions. But even if there were a "substantive" aspect of proceeding as a member of a class (there is not), the amendment would then be "a procedural matter with substantive effects" that "applies prospectively to all [proceedings] occurring after its effective date, regardless of when the underlying … [wrongful] conduct occurred." *State v. Brooks*, 2022-Ohio-2478, ¶¶16, 23. Thus, this Court should hold that the amendment to the mortgage-satisfaction statute applies to all future proceedings in this case, including any future motion to decertify the class.

II. This Court should allow the trial court to decide in the first instance whether the amendment requires decertification of the class.

If this Court follows this brief's recommendation to decide only that the amendment applies to future proceedings in this case, Quicken Loans can move for decertification, and the trial court can assess whether class certification is still appropriate. *See, e.g.*, Civ.R. 23(C)(1)(c); *State ex rel. Ford Motor Co. v. Corrigan*, 2011-Ohio-354, ¶5 (8th Dist.) (recognizing that Civ.R.23(C)(1) permits motions to decertify); *Strickler v. First Ohio Banc*

& Lending, Inc., 2018-Ohio-3835, ¶15 (9th Dist.) (same); *Ralston v. Chrysler Credit Corp.*, No. L-98-1312, 1998 WL 852581, at *3 (6th Dist. Nov. 25, 1998) (same). The trial court could also reexamine its pre-amendment certification sua sponte. *See* Civ.R.23(C)(1)(c). And because the amendment will never implicate any other case, *see* Jur.Mem. at 4; Opp.Jur. at 3–4, this Court has no broader institutional reason to decide the amendment's impact on the class in the first instance. It should only clarify that Ohio's Constitution does not prevent the amendment's application to Voss's class going forward. *See generally, e.g.*, *Est. of Fleenor v. Ottawa Cty.*, 2022-Ohio-3581, ¶1; *Lycan v. Cleveland*, 2016-Ohio-422, ¶20.

CONCLUSION

For the foregoing reasons, the Court should affirm the First District's holding that the mortgage-satisfaction statute gives Voss standing to sue and explain that the statute's amendment applies to future proceedings in this case.

Respectfully submitted,

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