

In the
Supreme Court of Ohio

SAMUEL VOSS, individually and on
behalf of others similarly situated, :
 : **Case No. 2024-0257**
 :
 Appellees, : On Appeal from the Hamilton County
 : Court of Appeals,
 v. : First Appellate District
 :
 :
 QUICKEN LOANS LLC, & : Court of Appels Case No. C-2300065
 MORTGAGE ELECTRONIC :
 REGISTRATION SYSTEMS, INC., :
 :
 Appellants. :

MERIT BRIEF OF *AMICUS CURIAE*
ADVOCATES FOR BASIC LEGAL EQUALITY, INC., LEGAL AID SOCIETY OF
SOUTHWEST OHIO, LLC, AND PRO SENIOR, INC.
IN SUPPORT OF APPELLEES

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TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES..... i

I. INTERESTS OF AMICUS CURIAE 1

II. STATEMENT OF CASE..... 2

III. LAW & ARGUMENT 2

A. PROPOSITION OF LAW No. 1: THE OHIO GENERAL ASSEMBLY HAS THE AUTHORITY TO ABROGATE THE REQUIREMENTS OF COMMON-LAW STANDING AND CONFER STATUTORY STANDING...... 2

(1) THE LEGISLATURE, AS THE ARBITER OF PUBLIC POLICY, HAS AUTHORITY TO ELEVATE THE HARM ASSOCIATED WITH LENDERS’ DELAYED FILING OF MORTGAGE SATISFACTIONS TO A CONCRETE INJURY BY CONFERRING STATUTORY STANDING. . 4

(2) OHIO REV. CODE ANN. § 5301.36 CONTAINS AN EXPRESS ABROGATION OF COMMON LAW STANDING REQUIREMENTS. 8

B. PROPOSITION OF LAW No. 2: DEPARTING FROM OHIO’S WELL-SETTLED LAW ON STANDING INVITES CHALLENGES TO LONG-STANDING PRECEDENT AND STATUTES THAT WILL UNDERMINE PUBLIC POLICY OBJECTIVES..... 10

(1) POTENTIAL TO OVERTURN SOUND PRECEDENT APPLYING OHIO LAW & IMPLICITLY RECOGNIZING THE CONFERENCE OF STATUTORY STANDING. 10

(2) POTENTIAL TO IMPEDE THE OPERATION OF NUMEROUS OHIO STATUTES..... 11

(3) POTENTIAL USURPATION OF LEGISLATIVE PREROGATIVES. 13

(4) RESTRICTING CLASS ACTIONS...... 14

IV. CONCLUSION..... 15

CERTIFICATE OF SERVICE..... 17

TABLE OF AUTHORITIES

CASES

Arbino v. Johnson & Johnson, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420..... 4

Bresnik v. Beulah Park Ltd. Partnership, Inc., 67 Ohio St.3d 302, 1993 Ohio 19, 617 N.E.2d 1096 (1993) 11

Cleveland Elec. Illum. Co. v. Cleveland, 37 Ohio St.3d 50, 524 N.E.2d 441 (1988) 8

Cope v. Metro. Life Ins. Co., 82 Ohio St.3d 426, 696 N.E.2d 1001 (1998) 14, 15

Cuspide Properties, Ltd. v. Earl Mechanical Servs., 6th Dist. Lucas No. L-14-1253, 2015-Ohio-5019..... 7

Groch v. GMC, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377..... 4, 10, 14

<i>Huff v. Telecheck Servs.</i> , 923 F.3d 458 (6th Cir.2019)	6
<i>In re Consol. Mtge. Satisfaction Cases</i> , 97 Ohio St.3d 465, 2002-Ohio-6720, 780 N.E.2d 556....	10, 14, 15
<i>McClure v. Fischer Attached Homes</i> , 145 Ohio Misc.2d 38, 2007-Ohio-7259, 882 N.E.2d 61 (C.P.).....	7
<i>McNichols v. Gouge Quality Roofing, LLC</i> , 2022-Ohio-3294, 195 N.E.3d 1119 (4th Dist.).....	12
<i>Middletown v. Ferguson</i> , 25 Ohio St.3d 71, 495 N.E.2d 380 (1986)	2
<i>Pinchot v. Charter One Bank</i> , 99 Ohio St.3d 390, 2003-Ohio-4122, 792 N.E.2d 1105.....	4, 10
<i>ProgressOhio.org, Inc. v. JobsOhio</i> , 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101	2, 9
<i>Rosette v. Countrywide Home Loans, Inc.</i> , 105 Ohio St.3d 296, 2005-Ohio-1736, 825 N.E.2d 599	3, 11
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330, 136 S.Ct. 1540, 1549, 194 L.Ed.2d 635 (2016).....	6, 11
<i>State ex rel. Cincinnati Enquirer v. Dupuis</i> , 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163	4
<i>State ex rel. Johnson v. Ohio State Senate</i> , 168 Ohio St.3d 640, 2022-Ohio-1912, 200 N.E.3d 107.....	13
<i>Stetter v. R.J. Corman Derailment Services, L.L.C.</i> , 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092	10
<i>Thomas v. Toms King (Ohio II), LLC</i> , 997 F.3d 629 (6th Cir.2021).....	6
<i>Toledo v. State</i> , 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257.....	13
<i>Tootle v. Clifton</i> , 22 Ohio St. 247 (1871)	8
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413, 434, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021)	11, 12
<i>Uzuegbunam v. Preczewski</i> , 592 U.S. 279, 141 S.Ct. 792, 209 L.Ed.2d 94 (2021).....	8
<i>Ward v. Nat’l Patient Acct. Servs. Sols., Inc.</i> , 9 F.4th 357, 362 (6th Cir. 2021).....	13

STATUTES

Ohio Rev. Code Ann. § 1321.45	12
Ohio Rev. Code Ann. § 1345 et seq.....	12
Ohio Rev. Code Ann. § 1345.01	12
Ohio Rev. Code Ann. § 1345.02	12
Ohio Rev. Code Ann. § 1345.03	12
Ohio Rev. Code Ann. § 1345.09.....	12
Ohio Rev. Code Ann. § 149.43	12
Ohio Rev. Code Ann. § 187.09.....	2, 9
Ohio Rev. Code Ann. § 5301.23	5
Ohio Rev. Code Ann. § 5301.36.....	<i>Passim</i>
Ohio Rev. Code Ann. § 5303.01	7

OTHER AUTHORITIES

Erwin Chemerinsky, <i>What’s Standing After Transunion v. Ramirez</i> , 96 NYU L. Rev. 269, 271 (Oct. 2021)	12
<i>Legislative Service Commission Final Analysis of Am. Sub. H.B. 201</i>	5

RULES

Ohio Civ.R. 23	2, 14, 15
----------------------	-----------

CONSTITUTIONAL PROVISIONS

Ohio Const. Art. I, § 1.....	13
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I. INTERESTS OF AMICUS CURIAE

Advocates for Basic Legal Equality (ABLE) is a non-profit regional law firm that provides civil legal services to low-income individuals and groups in Ohio to help them achieve self-reliance, equal justice, and economic opportunity. Legal service organizations like ABLE and the Ohioans they serve have a substantial interest in this case, which raises questions regarding standing and class certification requirements under Ohio law. As the outcome of this case directly affects the rights and opportunities of low-income Ohioans to access and seek redress in Ohio's civil court system, the undersigned *Amici Curiae* have a particular interest in this case.

The Legal Aid Society of Southwest Ohio LLC (LASSO), an affiliate of the Legal Aid Society of Greater Cincinnati, provides a full range of civil legal services to persons and groups with low income in a seven-county area of Southwest Ohio. As part of the nonprofit law firm, LASSO's mission is to resolve serious legal problems of low-income people, to promote economic and family stability, and to reduce poverty through effective legal assistance. LASSO provides legal representation in housing and consumer issues, as well as family law and other common legal problems. Our client community has a substantial interest in this case, which raises questions regarding standing and class certification requirements under Ohio law. Because the outcome of this case will directly affect the rights and opportunities of low-income Ohioans to access and seek redress in Ohio's civil court system, LASSO has a particular interest in this case.

Pro Seniors, Inc. is a nonprofit civil legal service provider with the mission of providing legal assistance to seniors in southwest Ohio, as well as legal advice to any senior statewide.

II. STATEMENT OF CASE

This case stems from the certification of a class of mortgagors and property holders in a class action brought by Appellee under Ohio Rev. Code Ann. § 5301.36 against Quicken Loans, LLC, now known as Rocket Mortgage, LLC, and Mortgage Electronic Registration Systems, Inc. (collectively "Rocket Mortgage"). The mortgagors allege that Rocket Mortgage violated Ohio Rev. Code Ann. § 5301.36, which requires a lender to record the satisfaction of a mortgage with the appropriate county recorder within 90 days of the date of the satisfaction. R.C. 5301.36(B). It is a matter of record that during the class period, Rocket Mortgage failed to file a release within 90 days of satisfaction for 1,476 Ohio mortgages. *See Pls. Motion for Certification, Aff. of Terence R. Coates*, at ¶ 6. Based on said violations, each mortgagor seeks recovery of the \$250 in statutory damages authorized by Ohio Rev. Code Ann. § 5301.36(C).

Following proceedings in the Hamilton County Common Pleas Court, the First District Court of Appeals reviewed and affirmed the trial court's decision certifying a class pursuant to Civ.R. 23. On review, the First District properly concluded that Appellee had statutory standing to sue even in the absence of evidence that Appellee, the class representative, suffered a concrete injury in fact. For the reasons set forth herein and in the briefs of the other *Amici Curiae*, this Court should affirm the judgment under review.

III. LAW & ARGUMENT

A. PROPOSITION OF LAW NO. 1: THE OHIO GENERAL ASSEMBLY HAS THE AUTHORITY TO ABROGATE THE REQUIREMENTS OF COMMON-LAW STANDING AND CONFER STATUTORY STANDING.

Rocket Mortgage's claim that "a statute does not and cannot abrogate the need to prove standing" is meritless. The Ohio Supreme Court has expressly recognized the General Assembly's authority to confer statutory standing and implicitly done so in relation to Ohio Rev. Code Ann. §

5301.36. *Appellants Merit Br.*, p. 20; see *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101 (Discussing R.C. 187.09); *Middletown v. Ferguson*, 25 Ohio St.3d 71, 495 N.E.2d 380 (1986) (Discussing R.C. 133.71(B)); see also, *In re Consol. Mtge. Satisfaction Cases*, 97 Ohio St.3d 465, 2002-Ohio-6720, 780 N.E.2d 556; *Pinchot v. Charter One Bank*, 99 Ohio St.3d 390, 2003-Ohio-4122, 792 N.E.2d 1105; *Rosette v. Countrywide Home Loans, Inc.*, 105 Ohio St.3d 296, 2005-Ohio-1736, 825 N.E.2d 599.

The argument in the instant case is made in the context of Ohio Rev. Code Ann. § 5301.35, which authorizes a civil cause of action that does not exist in common law. Rather, a cause of action was *expressly* created by our General Assembly in Ohio Rev. Code Ann. § 5301.36 to provide an enforcement mechanism for the policy decisions advanced thereunder. Ohio Rev. Code Ann. § 5301.36 provides, in relevant part:

(B) Within ninety days from the date of the satisfaction of a mortgage, the mortgagee shall record a release of the mortgage evidencing the fact of its satisfaction in the appropriate county recorder’s office and pay any fees required for the recording. The mortgagee may, by contract with the mortgagor, recover the cost of the fees required for the recording of the satisfaction by the county recorder.

(C)

(1) Except as provided in division (C)(2) of this section, if the mortgagee fails to comply with division (B) of this section, the mortgagor of the unrecorded satisfaction and the current owner of the real property to which the mortgage pertains may recover, in a civil action, damages of two hundred fifty dollars. This division does not preclude or affect any other legal remedies or damages that may be available to the mortgagor.

Section (B) of the statute codifies the requirement that the mortgagee properly presents a mortgage satisfaction to the appropriate county recorder's office for record within 90 days. Subsection (C)(1), in turn, defines a justiciable dispute based upon the untimely recordation of satisfaction and enforceable by a private right of action. Because this section— like many others under the Ohio

Revised Code— provides for private enforcement of the statute, additional proof of damages is unnecessary.

(1) THE LEGISLATURE, AS THE ARBITER OF PUBLIC POLICY, HAS AUTHORITY TO ELEVATE THE HARM ASSOCIATED WITH LENDERS’ DELAYED FILING OF MORTGAGE SATISFACTIONS TO A CONCRETE INJURY BY CONFERRING STATUTORY STANDING.

As the “ultimate arbiter of public policy,” the General Assembly is responsible for “weighing [policy] concerns and making policy decisions.” *State ex rel. Cincinnati Enquirer v. Dupuis*, 98 Ohio St.3d 126, 2002-Ohio-7041, 781 N.E.2d 163, ¶21; *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, 880 N.E.2d 420, ¶ 113. “It necessarily follows that the legislature has the power to continually create and refine the laws to meet the needs of the citizens of Ohio.” *Arbino*, at ¶ 113. The adoption of federal standing in Ohio stands to limit the General Assembly’s power to define new harms proactively and guard against modern risks. It would usurp the legislature’s role and, therefore, violate the separation of powers enshrined in the Ohio Constitution. *See Groch v. GMC*, 117 Ohio St.3d 192, 2008-Ohio-546, 883 N.E.2d 377, ¶ 212 (“It is not this court’s role to establish legislative policies or to second-guess the General Assembly’s policy choices.”).

It has been more than forty years since the General Assembly authorized a private right of action for mortgagors to enforce the timely recordation of satisfactions and recover statutory damages. *See* 1984 Am. Sub. H.B. 707. By enacting Ohio Rev. Code Ann. § 5301.36, the General Assembly made a policy decision to create both rules pertaining to the recordation of mortgage satisfactions and rights to enforce those rules through private actions brought by mortgagors and property holders for the recovery of statutory damages. The intent was to address the frequent failure of lenders to promptly record mortgage satisfactions, causing clouds on title and decreases in the value that impair the marketability of the real property. *See Pinchot v. Charter One Bank*,

99 Ohio St.3d 390, 2003-Ohio-4122, 792 N.E.2d 1105, ¶ 58 ("R.C. 5301.36 is intended to promote efficiency and certainty in clearing and transferring title in residential real property transactions[.]"). Thus, lenders who race to record mortgages securing their interest, usually within twenty-four hours, are given ninety days to remove the very same mortgage. *See generally*, R.C. 5301.23.

The General Assembly has twice amended aspects of Ohio Rev. Code Ann. § 5301.36 during this time without diminishing the procedural right or concrete interests therein, demonstrating its continuing intent to authorize statutory standing for enforcement by private action for this purpose. In 2014, Am. Sub. H.B. 201 was passed with a majority by the Ohio legislature and signed by Governor Kasich, amending Ohio Rev. Code Ann. § 5301.36 to provide for *additional* damages and attorney fees if a previously satisfied mortgage remains unreleased. The *Legislative Service Commission Final Analysis* of Am. Sub. H.B. 201 explained the underlying policy decision:

When a person who holds a mortgage on residential property (mortgagor) sells the property, the deed is transferred to the buyer of the property (current owner) at closing. Continuing law requires the mortgagee to record the satisfaction of the mortgagor's mortgage with the county recorder within a certain period of time. [R.C. 5301.36]. If the mortgagee fails to record the satisfaction, and the current owner has a mortgage on the property, the county records will indicate that there are two mortgages on the property – the mortgagor's mortgage and the current owner's mortgage. However, the mortgagee's failure to record the satisfaction may be unknown because the recording takes place after closing of the sale of the property. If the current owner subsequently attempts to sell the property, the fact of the mortgagee's failure to record the satisfaction of the mortgagor's mortgage will be revealed and may complicate the transfer of the property to a subsequent owner. In this case, both the mortgagor and current owner are negatively affected by the failure of the mortgagee to record the satisfaction.

Id., at 2-3. Under Ohio Rev. Code Ann. § 5301.36 and Ohio law, there is judicial recourse for this specific injury without the need to allege any additional harm beyond the one the General

Assembly identified. This is because violation of the statute is directly tied to the concrete interest the statute was intended to protect, thus creating a redressable injury based on the risk of harm associated with its violation. *See generally, Thomas v. Toms King (Ohio II), LLC*, 997 F.3d 629, 635 (6th Cir.2021) ("the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact . . . [and] a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified."), quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340, 136 S.Ct. 1540, 1549, 194 L.Ed.2d 635 (2016); *Huff v. Telecheck Servs.*, 923 F.3d 458, 464 (6th Cir.2019) ("When Congress confers a procedural right to protect a plaintiff's concrete interests, a violation of that right may establish the requisite injury in fact.").

Ohio Rev. Code Ann. § 5301.36 is a statute so directly tied to a risk of real harm that a plaintiff need only show the statutory violation without pleading any other concrete injury. This is because any violation of Ohio Rev. Code Ann. § 5301.36 will, by definition, always involve the false impression that the mortgagor has not paid their debt and thereby do or risk harm. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 434, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021) (explaining that the plaintiffs whose credit reports had been disseminated to third parties had suffered an injury in fact sufficient to confer standing); *Spokeo*, 578 U.S. at 340 (citing the risk of real harm from slander *per se* as sufficiently concrete). A lender's delay in recording a mortgage satisfaction creates the false appearance that the borrower has not paid the underlying debt, making them appear more indebted and less creditworthy. This type of reputational harm—i.e., one that flows from the publication of false information—has long been held sufficiently concrete at common law. *See TransUnion*, at 2204 (explaining that intangible harms can be concrete and "[c]hief among them are injuries with a close relationship to harms traditionally recognized as

providing a basis for lawsuits in American courts"). There is no reason to suggest that in the context of Ohio Rev. Code Ann. § 5301.36, that interest is any less concrete.

In turn, a cloud on title due to the delay in presenting the certificates of satisfaction risks harm to the new owners of the properties, whose ownership is improperly encumbered. "A cloud on a title is a defect in title 'that has a tendency, even in the slight degree, to cast doubt upon the owner's title, and to stand in the way of a full and free exercise of [their] ownership.'" *Cuspide Properties, Ltd. v. Earl Mechanical Servs.*, 6th Dist. Lucas No. L-14-1253, 2015-Ohio-5019, ¶ 27, 53 N.E.3d 818, quoting *McClure v. Fischer Attached Homes*, 145 Ohio Misc.2d 38, 2007-Ohio-7259, 882 N.E.2d 61 (C.P.). Property holders may find their property unmarketable and have difficulty producing the requisite evidence and resources to rebut the invalid lien in the absence of the rights and regulations under review. Ohio Rev. Code Ann. § 5301.36 was thus enacted to protect specific concrete interests rather than purely procedural rights.

This is not a novel use of legislative power under Ohio law; the General Assembly has elsewhere recognized such interests as concrete and enacted a corresponding statutory right to sue. The intangible harm from the delayed filing of mortgage satisfactions is comparable to the harm redressed by actions to quiet title. R.C. 5303.01 ("[a]n action may be brought by a person in possession of real property, by himself or a tenant, against any person who claims an interest therein adverse to him, for the purpose of determining such adverse interest."). In Ohio, quiet title actions are statutory proceedings designed to resolve disputes over property interests. Historical and contemporary case law interpretations reinforce the legal framework provided by Ohio Rev. Code Ann. § 5303.01 and leave little doubt as to the legitimacy of such interests or their justiciability. Yet, the same interest in the prompt and conclusive determination of the allocation of property interests is being challenged here as insufficient to provide standing under Ohio Rev.

Code Ann. § 5301.36, despite the General Assembly plainly providing a clear remedy and damages for late presentation.

Similarly, just as an owner of land has the right to exclusive possession of their property and standing to sue anyone who trespasses, even where they suffer no monetary damage, plaintiffs under Ohio Rev. Code Ann. § 5301.36 have the right to unencumbered real property and credit upon the discharge of their debts. See *Brief for Ohio A.G. Dave Yost, as Amicus Curiae*, p. 10. Even when mortgagors and property holders suffer no monetary damage from the late recordation of satisfactions, the legal right recognized by Ohio Rev. Code Ann. § 5301.36 is nonetheless invaded. *Tootle v. Clifton*, 22 Ohio St. 247, 253 (1871) (“The act is wrongful. It is an invasion of the plaintiff’s right -- the right to manage his own farm according to his own notions of fitness and enjoyment, and therefore, the law presumes damage, although it be merely nominal or ideal.”).

(2) OHIO REV. CODE ANN. § 5301.36 CONTAINS AN EXPRESS ABROGATION OF COMMON LAW STANDING REQUIREMENTS.

As a straightforward matter of statutory construction, Ohio Rev. Code Ann. § 5301.36 contains a legislative grant of standing that abrogates common law standing rules. Rocket Mortgage’s presumption that abrogation lies within the authorization of \$250.00 in statutory damages for violations of Ohio Rev. Code Ann. § 5301.36 fails to give effect to all the statutory language. *Cleveland Elec. Illum. Co. v. Cleveland*, 37 Ohio St.3d 50, 53-54, 524 N.E.2d 441 (1988). As this Court long ago observed, “It is the right which the law regards more than the recompense which it undertakes to make; hence the many instances in which nominal damages only are awarded in order to maintain the right.” *Tootle*, 22 Ohio St. at 251; see also, *Uzuegbunam v. Preczewski*, 592 U.S. 279, 279, 141 S.Ct. 792, 209 L.Ed.2d 94 (2021) (Because every violation of a right imports damage, nominal damages can redress petitioner’s injury even if he cannot or chooses not to quantify that harm in economic terms.).

The plain language of the statute *expressly* creates a civil cause of action for statutory damages and unambiguously specifies who has standing to assert such a claim. R.C. 5301.36 (“...if the mortgagee fails to comply with division (B) of this section, the mortgagor of the unrecorded satisfaction and the current owner of the real property to which the mortgage pertains may recover, in a civil action, damages of two hundred fifty dollars.”). Unlike Ohio Rev. Code Ann. § 187.09 addressed in *ProgressOhio.org, Inc.*, this statute is not silent as to who has standing to sue. 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, at ¶ 22. Rather, Ohio Rev. Code Ann. § 5301.36(C) specifically confers standing upon “the mortgagor of the unrecorded satisfaction and the current owner of the real property to which the mortgage pertains,” thereby connecting the harm of the statutory violation to the specific class of plaintiffs authorized to bring suit. Beyond establishing a violation in fact, no additional showing of damages needs to be made to establish standing. Therefore, Ohio Rev. Code Ann. § 5301.36 is express in its intention to abrogate the common-law requirements for standing.

Here, Appellees have alleged a cognizable basis for statutory standing under Ohio Rev. Code Ann. § 5301.36. It is a matter of record that during the class period, Rocket Mortgage failed to file a release within 90 days of satisfaction for 1,476 Ohio mortgages during the relevant class period. *See Pls. Motion for Certification, Aff. of Terence R. Coates*, at ¶ 6. Appellee and members of the class, as mortgagors and property holders, fall within the zone of interests the statute was passed to protect. Thus, the record contains enough factual material to render plausible that which common sense suggests: that there exists a material risk of harm to a consumer who has satisfied a large debt but appears in public records not to have done so. This case, like the scores before it brought under Ohio Rev. Code Ann. § 5301.36, raises no genuine question as to the standing conferred upon mortgagors and property owners who can establish a violation of the statute.

Both history and the judgment of the General Assembly indicate recognition of the harm associated with a mortgagee's delayed filing of a mortgage satisfaction as a concrete injury. *Brief for Ohio A.G. Dave Yost, as Amicus Curiae*, p. 9-13. The court cannot curtail or second-guess the legislature's policy decisions in this regard, which long ago determined that the risk of harm caused by untimely recordation was sufficiently concrete to permit redress and recovery through civil action for violations of Ohio Rev. Code Ann. § 5301.36. *Stetter v. R.J. Corman Derailment Services, L.L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092, ¶ 35, quoting *Groch*, at ¶ 212.

B. PROPOSITION OF LAW NO. 2: DEPARTING FROM OHIO'S WELL-SETTLED LAW ON STANDING INVITES CHALLENGES TO LONG-STANDING PRECEDENT AND STATUTES THAT WILL UNDERMINE PUBLIC POLICY OBJECTIVES.

Rocket Mortgage's current challenge is based on federal standing law, which is inapplicable to Ohio courts and, thus, wholly spurious. *See Brief for Ohio A.G. Dave Yost, as Amicus Curiae*, p. 13 (“Federal courts' reasons for departing from the cause-of-action view of standing do not apply to Ohio courts.”). To make its argument, Rocket Mortgage eschews public policy established by the General Assembly and upheld by Ohio courts, citing cases that either do not apply Ohio precedent or are distinguishable on their face.

(1) POTENTIAL TO OVERTURN SOUND PRECEDENT APPLYING OHIO LAW & IMPLICITLY RECOGNIZING THE CONFERENCE OF STATUTORY STANDING.

The Ohio Supreme Court has already decided three cases in favor of enforcement of Ohio Rev. Code Ann. § 5301.36. In 2002, *In re Consol. Mtge. Satisfaction Cases*, 97 Ohio St.3d 465, 2002-Ohio-6720, 780 N.E.2d 556 was decided, holding that class certification is the superior method of handling controversies under Ohio Rev. Code Ann. § 5301.36. A year later, the Court heard *Pinchot v. Charter One Bank* and unanimously rejected the claim that Ohio Rev. Code Ann.

§ 5301.36 is preempted by federal law. In 2005, the Court decided in *Rosette v. Countrywide Home Loans, Inc.*, 105 Ohio St.3d 296, 2005-Ohio-1736, 825 N.E.2d 599, that Ohio Rev. Code Ann. § 5301.36 is a remedial statute and thus subject to the longer six-year statute-of-limitations.

In the foregoing cases, standing—a jurisdictional requirement that may be raised at any time during the pendency of proceedings, including by a reviewing court *sua sponte*—was never questioned. In these and every other case brought under Ohio Rev. Code Ann. § 5301.36 since its enactment, Ohio courts have implicitly recognized the statutory standing conferred therein. Against this backdrop, *stare decisis* weighs heavily against deviating from such a consistent history of interpretation and application to achieve the legislative intent of Ohio Rev. Code Ann. § 5301.36.

(2) POTENTIAL TO IMPEDE THE OPERATION OF NUMEROUS OHIO STATUTES.

Further, Rocket Mortgage neglects to consider the consequences that would result from abandoning Ohio’s well-settled law in favor of the federal approach to standing. The Supreme Court of Ohio has repeatedly affirmed the availability of statutory standing in a variety of contexts and defined the applicable standard under Ohio law. This standard is separate and distinct from Article III common law standing requiring injury-in-fact and instead looks to the statutory language for legislative intent to abrogate common-law standing. *Compare TransUnion*, 594 U.S. at 424, citing *Spokeo*, 578 U. S., at 341, with *Bresnik v. Beulah Park Ltd. Partnership, Inc.*, 67 Ohio St.3d 302, 304, 1993 Ohio 19, 617 N.E.2d 1096 (1993) (this court will not read a statute as abrogating the common law unless the statutory language clearly expresses or imports that intention). Departing from this clear standard in favor of an inquiry dependent upon common-law analogs jeopardizes the Ohio statutes and public policy initiatives our General Assembly has seen fit to enact.

Numerous statutes use statutory standing to address a range of policy concerns, including consumer protection claims, public disclosure laws, municipal disputes, challenges to administrative decisions, etc. Many of these statutes were enacted in response to modern challenges that have few historical common-law analogs. For instance, Ohio's Public Records Law, Ohio Rev. Code Ann. § 149.43, and the Sunshine Law, Ohio Rev. Code Ann. § 121.22, were enacted to ensure transparency and public access to government meetings and records and promote openness in government. It is unclear whether such statutes would survive a common-law-based standing inquiry as "there was neither a common-law right to access documents nor a tradition of such a right before [the federal Freedom of Information Act]." Erwin Chemerinsky, *What's Standing After Transunion v. Ramirez*, 96 NYU L. Rev. 269, 271 (October 2021). As a result, the democratic principle of open government would be restricted based on traditions that may not recognize a right to access government documents.

Similarly endangered would be Ohio consumer protection laws, which curb predatory and abusive practices that target consumers. *See, e.g.*, Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.*; R.C. 1321.45; R.C. 1345.02; R.C. 1345.03. Case in point, the Ohio Consumer Sales Practices Act, set forth in Ohio Rev. Code Ann. § 1345 *et seq.*, is "a remedial law which is designed to compensate for traditional consumer remedies and so must be liberally construed pursuant to R.C. 1.11." *McNichols v. Gouge Quality Roofing, LLC*, 2022-Ohio-3294, 195 N.E.3d 1119 (4th Dist.). The General Assembly provided in Ohio Rev. Code Ann. § 1345.09(A) a compensatory damages remedy for unfair, deceptive, or unconscionable practices in consumer transactions. R.C. 1345.09(A) ("Where the violation was an act prohibited by section 1345.02, 1345.03, or 1345.031 of the Revised Code, the consumer may, in an individual action, rescind the

transaction or recover the consumer’s actual economic damages plus an amount not exceeding five thousand dollars in noneconomic damages.”). The concrete harm defined by the General Assembly under the Act, however, does not strictly mirror common-law traditions. *See, e.g., Ward v. Nat’l Patient Acct. Servs. Sols., Inc.*, 9 F.4th 357, 362 (6th Cir. 2021) (concluding that alleged debt collector harassment and deceptive practices in violation of the federal FDCPA was not comparable to the common law “tort of intrusion upon one’s right to seclusion”). These statutes and the legislative policy decisions they represent are just some of the Ohio laws that stand to be impacted by the argument advanced by Rocket Mortgage in this case.

(3) POTENTIAL USURPATION OF LEGISLATIVE PREROGATIVES.

What Rocket Mortgage seeks is precedent to undermine what it considers an unfavorable legislative scheme. In so doing, it risks Ohio's governmental structure and separation of powers by suggesting that the General Assembly does not have authority to confer standing by statute and enlisting the judiciary as a gatekeeper to the enforcement of public policy. Ohio courts are tasked with construing statutes, while legislative power is vested in a General Assembly and cannot be delegated to or encroached upon by the other branches of government. *Id.*, citing *Toledo v. State*, 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257, ¶ 26. Were courts to limit the General Assembly’s power to define harms and address challenges faced by Ohioans, as is Ohio Rev. Code Ann. § 5301.36, it would usurp the legislature’s role and violate the Ohio Constitution’s implicit separation of powers. Ohio Const. Art. I, § 1; see *State ex rel. Johnson v. Ohio State Senate*, 168 Ohio St.3d 640, 2022-Ohio-1912, 200 N.E.3d 1077, ¶ 7.

Construing Ohio Rev. Code Ann. § 5301.36 to require Article III standing, where it does not, usurps the legislative prerogatives advanced therein. Should courts refuse to enforce the statute without proof of injury in fact, those persons who are entitled to the benefits and protection of the

law have no remedy. Invalid liens could exist in perpetuity as mortgagors and property holders wait with encumbered creditworthiness and titles for an injury to manifest itself. This is precisely the circumstance the General Assembly enacted Ohio Rev. Code Ann. § 5301.36 to avoid and the dilemma faced under this and many other Ohio laws should new standing requirements be imposed. This Court must, therefore, recognize the General Assembly's prerogative to provide for judicial enforcement of important policy decisions. *Groch*, 117 Ohio St.3d at ¶ 212 ("It is not this court's role to establish legislative policies or to second-guess the General Assembly's policy choices.").

(4) RESTRICTING CLASS ACTIONS.

Lastly, but of no less importance, this appeal is a review of the decision to certify Appellee class members. Rocket Mortgage argues that class actions "require *class-wide* proof of injury in fact" as a challenge to the predominance finding under Civ.R. 23(b)(3). (*Emphasis in original*) *Appellants Merit Br.*, p. 35. This argument ignores precedent implicitly recognizing standing conferred by Ohio Rev. Code Ann. § 5301.36 and the desirability of class actions as a vehicle for handling such claims. *Mtge. Satisfaction Cases*, 97 Ohio St.3d at 468.

In *In re Consol. Mtge. Satisfaction Cases*, the Ohio Supreme Court addressed the propriety of class-action lawsuits for violations of Ohio Rev. Code Ann. § 5301.36 and concluded that these statutory claims "necessarily involve a common question of law: whether a particular lender violated its duty to record a satisfaction of mortgage." *Id.*, at ¶ 10. Therein, the defendants opposed class certification, arguing, as Rocket Mortgage does here, that individual issues predominated. As in *Cope*, the Supreme Court rejected that argument, finding:

Clearly, the claims brought by each plaintiff invoke a common question of law: whether a particular lender violated its duty to record a satisfaction of mortgage. In resolving this common question, the trial court, of course, will be presented with different evidence relating to each lender's failure to record the satisfaction of a

residential mortgage. While appellees assert that sifting through these facts in a class action suit will be arduous, we are not compelled to agree. The mere existence of different facts associated with the various members of a proposed class is not by itself a bar to certification of that class. If it were, then a great majority of motions for class certification would be denied. Civ.R. 23(B)(3) gives leeway in this regard and permits class certification when there are facts common to the class members.

Id. at 468; *Cope v. Metro. Life Ins. Co.*, 82 Ohio St.3d 426, 696 N.E.2d 1001 (1998). Thus, the Supreme Court made clear that where the claimants invoke a common question of law, the mere fact that evidence as to each transaction would have to be gathered did not preclude the finding of a common question of law or fact, nor did it preclude class certification. The Court noted that “[t]he desirability of the class action is evident since allowing a separate action for each affected mortgagor would severely clog the docket of the common pleas court.” *Id.*

Were there a requirement to determine whether every putative class member has suffered the requisite “concrete harm” necessary to demonstrate Article III standing under Ohio law, individualized issues would be more likely to predominate over common issues, effectively eliminating class actions under statutes like Ohio Rev. Code Ann. § 5301.36. The benefits of class actions, such as lower litigation costs, greater judicial efficiency, uniformity of recovery and judgments, and the vindication of statutory rights intended by the General Assembly, would be lost.

IV. CONCLUSION

For the foregoing reasons, amicus curiae Advocates for Basic Legal Equality, Inc., Legal Aid Society of Southwest Ohio, LLC, and Pro Seniors, Inc. urge this Court to affirm the judgment under review.

Dated: August 22, 2024

Respectfully submitted,

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