25-1179

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES,
Plaintiff-Respondent,

v.

CITIBANK, N.A.,
Defendant-Petitioner.

On Petition from the United States District Court
for the Southern District of New York
No. 1:24-cv-659-JPO (Hon. J. Paul Oetken)

BRIEF FOR AMICI CURIAE THE CLEARING HOUSE ASSOCIATION L.L.C., THE BANK POLICY INSTITUTE, THE AMERICAN BANKERS ASSOCIATION, THE NEW YORK BANKERS ASSOCIATION, AMERICA'S CREDIT UNIONS, AND THE NEW YORK CREDIT UNION ASSOCIATION IN SUPPORT OF PETITION FOR PERMISSION TO APPEAL PURSUANT TO 28 U.S.C. § 1292(b)

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, Amici Curiae The Clearing House Association L.L.C., the Bank Policy Institute, the American Bankers Association, the New York Bankers Association, America's Credit Unions, and the New York Credit Union Association state that none have a parent corporation and, since none have stock, no publicly held company owns 10% or more of the entities' stock.

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INTEREST OF AMICI CURIAE[1]

The Clearing House Association L.L.C. ("TCH"). Established in 1853, TCH is a nonpartisan advocacy organization that represents the interests of its member banks by developing and promoting policies to support a safe, sound, and competitive banking system that serves customers, communities, and economic growth. TCH's sister company, The Clearing House Payments Company L.L.C. ("PaymentsCo"), owns and operates U.S. payments networks that provide safe, sound, and efficient payment clearing and settlement services to financial institutions. PaymentsCo's CHIPS® wire-transfer system and EPN® automated clearing house ("ACH") network clear and settle more than $2 trillion of payments every business day.

The Bank Policy Institute ("BPI"). BPI is a nonpartisan public policy, research, and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. BPI produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

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[1] All parties have consented to the filing of this brief. Citibank, N.A., is a member of TCH, PaymentsCo, BPI, ABA, and NYBA. No counsel for a party authored this brief in whole or in part, and no party, party's counsel, or person or entity other than Amici and their counsel funded its preparation and submission.

American Bankers Association ("ABA"). Established in 1875, ABA is the voice of the nation's $24.1 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2.1 million people, safeguard nearly $19.2 trillion in deposits, and extend $12.7 trillion in loans.

New York Bankers Association ("NYBA"). NYBA, founded in 1894, comprises more than 100 community, regional and money center commercial banks and thrift institutions operating across the State of New York. NYBA's members have over 200,000 employees and aggregate assets in excess of $10 trillion. NYBA's mission is to be New York State's preeminent provider of legislative and regulatory services to a unified banking industry.

America's Credit Unions. America's Credit Unions represents our nation's nearly 5,000 federally and state-chartered credit unions that collectively serve over 142 million consumers with personal and small business financial service products. America's Credit Unions delivers strong advocacy, resources, and services to protect, empower, and advance credit unions and the people they serve. The organization advocates for responsible legislative policies and regulations so credit unions can efficiently meet the needs of their members and communities.

New York Credit Union Association ("NYCUA"). For more than 100 years, the New York Credit Union Association has served as the trade association for the state's credit unions, which collectively hold more than $123 billion in assets and

serve 6.8 million members. NYCUA strives to advance the credit union movement by advocating, educating, uniting and supporting the interests of all credit unions statewide.

Amici's members provide payment services governed by the Electronic Fund Transfer Act ("EFTA") and/or Article 4A of the Uniform Commercial Code ("UCC") and have considerable experience with consumer wire transfers. Amici's members are deeply committed to consumer protection, to meeting their obligations under EFTA, the UCC, and other applicable laws and regulations, and to providing consumers with options for efficient, effective payment methods. Amici's members have provided consumer wire services for decades under the long-undisturbed, uniform view that they are subject to Article 4A and its customer protection scheme, not EFTA. The district court's decision upends the stability of that legal regime. Amici thus have a strong interest in Defendant's petition for permission to appeal.

INTRODUCTION AND SUMMARY OF ARGUMENT

For decades, courts, regulators, Amici, and even the New York legislature have understood that all wire transfers, other than a particular subset of cross-border remittance transfers, are exclusively governed by Article 4A of the UCC, not EFTA. This includes consumer wire transfers, whether initiated online or otherwise. This is because courts, regulators, and Amici have uniformly understood that 15 U.S.C. § 1693a(7)(B) ("Section 7(B)") expressly exempts all consumer wire transfers from

EFTA. Wire transfers, in turn, are understood to comprise a "*series of transactions*, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order." N.Y. U.C.C. § 4-A-104(1) (emphasis added). Wire transfers, in their entirety, have thus been understood to be exclusively subject to Article 4A. Amici are aware of no court or legislature (other than the district court here) that has endorsed or recognized the novel theory that Section 7(B) exempted only one of the series of transactions involved in a wire transfer—interbank transfers facilitating the wire transfer.

The district court's endorsement of this creative statutory theory thus presents a sea change in long-settled understandings about the legal regime that governs wire transfers. The decision has spawned significant uncertainty and confusion over what rules govern wire transfers, particularly because Article 4A explicitly provides that it "does not apply to a funds transfer *any part of which is governed by* [EFTA]." N.Y. U.C.C. § 4-A-108(1) (emphasis added). The district court's decision will therefore force Amici's members to scramble to determine their legal obligations and to expend a tremendous amount of time and resources to reorganize their operations built on a decades-old doctrinal foundation, only to expend more time and resources if this Court were to eventually endorse the long-settled understanding years later in an end-of-case appeal.

Given the undisputedly unprecedented nature of the district court's decision and the enormous impact it will have, Amici respectfully urge the Court to grant the petition for permission to appeal.

ARGUMENT

"[T]his court may assume jurisdiction of an interlocutory appeal if," as here, the district court properly certifies the order to be appealed for interlocutory review under 28 U.S.C. § 1292(b). *Weber v. United States*, 484 F.3d 154, 159 (2d Cir. 2007). Here, the district court found that the certified order involves a "controlling question of law," App. 80a-81a, that there is "substantial ground for difference of opinion," App. 82a, and that interlocutory review would materially advance the litigation by "greatly reducing the scope of the matter" and clarifying the applicable legal regime, App. 83a.

Defendant has ably set forth the grounds supporting interlocutory review. Amici file this brief to emphasize (1) a few points making clear the substantial grounds for difference of opinion and (2) the impact the district court's decision will have on the banking industry.

I. THERE IS SUBSTANTIAL GROUND FOR DIFFERENCE OF OPINION AS TO WHETHER ONLINE CONSUMER WIRE TRANSFERS ARE SUBJECT TO EFTA

In their district court briefs, Defendant and Amici set forth the extensive errors in the district court's statutory interpretation, as well as the wealth of court decisions and regulatory guidance contradicting it. *See generally* Dkt. 55 at 6-22; Dkt. 60-1

at 4-18. Rather than repeat these points, Amici highlight here some of the most important to demonstrate the substantial ground for difference of opinion.

One overriding error is the district court's method of analyzing EFTA's statutory text. Rather than read the statute with an eye toward the overall statutory structure and purpose, the court parsed individual statutory phrases in a manner that obscured their contextual meaning. In one significant example, this analytical method led the court to conclude that Congress "conspicuously omitted" reference to consumer wires, App. 28a—despite Section 7(B)'s explicit reference, in the very next part of the same phrase, to a transfer "made by a financial institution *on behalf of a consumer*," 15 U.S.C. § 1693a(7)(B) (emphasis added).

The district court further erred because its holding rendered Section 7(B) meaningless surplusage. If Congress had intended EFTA to treat interbank "'transfer[s]' of funds from one financial institution to another along a wire network," App. 21a, as a separate "transfer," it would have made no sense to include Section 7(B). This is because EFTA applies *only* to accounts "established primarily for personal, family, or household purposes." 15 U.S.C. § 1693a(2). It does not apply to non-consumer accounts. Yet, the interbank transfers that the NYAG argued, and the district court found, to be Section 7(B)'s focus do "not involve consumer funds or a consumer's account, since only banks—using their institutional accounts—have access to those networks." App. 24a. Amici's district court brief

highlighted multiple additional errors beyond these particularly important ones. *See* Dkt. 60-1 at 6-12.

Those errors were compounded by the district court's decision to distinguish or disregard decisions by other courts contrary to the NYAG's cramped view of Section 7(B). As Amici explained in their district court briefing, walking through cases individually, the decisions readily establish "a substantial ground for difference of opinion as to whether the [district court's] conclusion can be reconciled with this wall of precedent treating as uncontroversial the idea that a wire transfer, for purposes of Section 7(B), is the entirety of the transfer, end to end, and not simply the first step." Dkt. 60-1 at 14.[2] And, beyond precedent, what the court itself described as a "slew of regulatory guidance," App. 37a—from the Federal Reserve, FDIC, OCC, FinCEN, and CFPB—has similarly and uniformly taken a position contrary to the district court's. *See* Dkt. 60-1 at 15-17.

[2] *See Stepakoff v. IberiaBank Corp.*, 637 F. Supp. 3d 1309 (S.D. Fla. 2022); *Nazimuddin v. Wells Fargo Bank N.A.*, 2024 WL 3431347 (S.D. Tex. June 24, 2024), *report and recommendation adopted*, 2024 WL 3559597 (S.D. Tex. July 25, 2024), *aff'd*, 2025 WL 33471 (5th Cir. Jan. 6, 2025); *Pope v. Wells Fargo Bank, N.A.*, 2023 WL 9604555, at *2 (D. Utah Dec. 27, 2023); *Wright v. Citizen's Bank of East Tennessee*, 640 F. App'x 401, 404 (6th Cir. 2016); *Fischer & Mandell LLP v. Citibank, N.A.*, 2009 WL 1767621, at *3-4 (S.D.N.Y. June 22, 2009); *McClellon v. Bank of America*, 2018 WL 4852628 (W.D. Wash. Oct. 5, 2018); *Trivedi v. Wells Fargo Bank, N.A.*, 609 F. Supp. 3d 628, 633 (N.D. Ill. 2022); *Bodley v. Clark*, 2012 WL 3042175, at *4 (S.D.N.Y. July 23, 2012); *Bakhtiari v. Comerica Bank, Inc.*, 2024 WL 3405340 (N.D. Cal. July 12, 2024).

II. INTERLOCUTORY REVIEW IS PARTICULARLY APPROPRIATE IN LIGHT OF THE DRAMATIC CONSEQUENCES OF THE COURT'S ADMITTEDLY NOVEL DECISION

This case has profound consequences for an industry that has organized its operations based on what has been understood for decades to be a settled legal regime. The decision below has prompted significant uncertainty and will impose steep costs on Amici's members as they consider whether and how to reorganize their online funds transfer offerings—costs that may be compounded if, years from now, the district court's construction of Section 7(B) is reversed in an end-of-case appeal. The district court recognized as much in certifying this appeal, saying that "this case concerns highly impactful and novel questions of statutory interpretation affecting the day-to-day operations of major financial institutions and the finances of millions of Americans." App. 83a.

Amici's members have understood for decades that wire transfers are not "electronic fund transfers" and therefore are not subject to EFTA and Regulation E (except for certain cross-border remittance transfers not at issue here) but instead are governed by Article 4A. They have accordingly planned their operations, organized their business, priced their services, and created policies, procedures, and contractual agreements all based on the foundation of what was—until the district court's order—a settled legal regime. If not reviewed on an interlocutory basis, the district court's decision threatens to inject significant uncertainty, impose substantial costs

to fundamentally transform operations (and potentially transform them again following an end-of-case appeal), or lead financial institutions to eliminate or severely restrict the ability of consumers to avail themselves of online wire transfers. Moreover, Petitioner has already identified new class-action litigation that argues Section 7(B) applies only to interbank wires, and more has followed after Petitioner's brief was filed. *See Chen v. Bank of America, N.A.*, No. 3:25-cv-03790 (N.D. Cal.).

Article 4A has long been understood to provide a "comprehensive body of law that defines the rights and obligations that arise from wire transfers." *See* Uniform Laws Annotated, U.C.C. Article 4A, Prefatory Note (1989). EFTA and Article 4A are different, "mutually exclusive" legal regimes. N.Y. U.C.C. § 4-A-108 Official Comment. Article 4A is unambiguous—it "does not apply to a funds transfer *any part of which* is governed by [EFTA]." *Id.* § 4-A-108(1) (emphasis added). The district court's determination that one segment of a wire transfer—a consumer's payment order—is subject to EFTA would thus mean Article 4A ceases to govern online consumer wire transfers even with respect to issues wholly unaddressed by EFTA.

Article 4A addresses myriad issues that EFTA does not. It provides rules, for example, if an intermediary bank makes an error while handling the funds transfer, such as modifying the payment amount or changing the account number for the

beneficiary. Article 4A also provides the right of the beneficiary to be paid by her bank once the wire transfer is completed. With the district court's decision, the beneficiary is left without a clear statutory right to be paid—a consequence that is decidedly unfriendly for consumer beneficiaries. These issues and many others are addressed by Article 4A but would not be if the first transaction in the series of transactions that make up an online consumer wire transfer is covered by EFTA.

That uncertainty will be enormously costly. Every business day, the Fedwire Funds Service and CHIPS network process trillions of dollars of wire transfers.[3] To be sure, that includes more than simply online consumer wire transfers, but the sheer volume of transactions demands a clear answer on what rules apply when things go wrong. If the vacuum created by the district court's order is left unreviewed, financial institutions will inevitably attempt to recreate Article 4A-style rules via contract. That process will come with significant costs as funds-transfer systems and financial institutions attempt to replace by private contract a statutory regime that has formed the foundation of an industry for decades. A regime established by contract—even if achievable—may prove less predictable, particularly as compared

[3] Fed. Rsrv. Banks, *Fedwire Funds Service—Annual Statistics* (Jan. 23, 2025), https://www.frbservices.org/resources/financial-services/wires/volume-value-stats/annual-stats.html; The Clearing House, *CHIPS Annual Statistics From 1971 to 2025* (Feb. 2025), https://www.theclearinghouse.org/-/media/New/TCH/Documents/Payment-Systems/CHIPS_Volume_Value_February_2025.pdf?rev=b217a54ac30e4de9930131f61af9bd74.

to the Article 4A regime on which financial institutions have relied until this district court's decision. Indeed, that was the very purpose of UCC Article 4A and its adoption across the country. *See* Uniform Laws Annotated, U.C.C. Article 4A, Prefatory Note (1989) (Article 4A intended to provide "comprehensive body of law that defines the rights and obligations that arise from wire transfers"); *Levin v. JPMorgan Chase Bank, N.A.*, 751 F. App'x 143, 147 (2d Cir. 2018).

Amici are also extremely concerned that many of the costs described above could recur if, in an end-of-case appeal years later, this Court agrees with and restores the long-understood meaning of Section 7(B). In that event, it may come to pass that members will undertake substantial, costly changes to their operations only for those changes to be held to be unnecessary by some future court that is more persuaded by the textual arguments, case law, and regulatory guidance described above.

Ultimately, because of costs and risks like these, the decision may lead many financial institutions to severely restrict, or eliminate entirely, the option for their consumer customers to initiate wire transfers through convenient electronic means, whether by telephone, computer, or mobile device. That would be a significant inconvenience for consumers, as many desire the ease of such payment options and regularly use them. Prompt appellate review would serve an important purpose of

ensuring that disruption is not needlessly encountered by Amici's members or the consumers they serve.

CONCLUSION

For the foregoing reasons, the Court should grant the petition.

Respectfully submitted.

/s/ *Noah Levine*

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 5(c)(1), Fed. R. App. P. 29(a)(5), and Local Rule 29.1.

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f), the brief contains 2,598 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font and complies with the requirements of Fed. R. App. P. 32(a)(5)-(6). As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ Noah Levine
NOAH LEVINE

May 9, 2025

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2025, I caused the foregoing document to be filed with the Clerk of the Court for the U.S. Court of Appeals for the Second Circuit by using the appellate case management system.

I certify that service will be accomplished via email, to which all parties in this case have consented.

/s/ Noah Levine
NOAH LEVINE

May 9, 2025