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IN THE SUPREME COURT OF OHIO

Case No. 2026-0710

On Review of Certified Question from the
U.S. Court of Appeals for the Sixth Circuit

Sixth Circuit Appeals Nos. 24-3944, 24-3974

WILLIAM R. KLOPFENSTEIN, *et al.*

Plaintiffs/Petitioners,

vs.

FIFTH THIRD BANK,

Defendant/Respondent.

BRIEF OF AMICI CURIAE OHIO BANKERS LEAGUE, AMERICAN BANKERS ASSOCIATION, AND COMMUNITY BANKERS ASSOCIATION OF OHIO IN SUPPORT OF DEFENDANT-RESPONDENT FIFTH THIRD BANK

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TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF INTEREST OF AMICI CURIAE 2

III. STATEMENT OF THE CASE AND FACTS 5

IV. ARGUMENT 5

A. For More than a Century, Ohio's Voluntary Payment Doctrine Has Served Critical Commercial Interests 5

1. The doctrine has long promoted transparency, prompt dispute resolution, and commercial finality 5

2. The interests undergirding the voluntary payment doctrine are especially important in banking 8

B. Standardized Consumer Contracts and Regulated Disclosures Should Not Be Subject to Different Voluntary Payment Rules 11

1. Modern commerce relies on standardized agreements and uniform disclosures 11

2. Standardization and uniform disclosures promote consumer protection and predictability 12

3. Neither standardized contract terms nor regulated disclosures justify limiting the voluntary payment doctrine 15

C. The Certified Questions Should Be Answered Consistently with Ohio's Traditional Distinction Between Facts and Law. 17

1. Certified Question No. 1: How are "relevant facts" defined for purposes of the voluntary payment doctrine? 17

2. Certified Question No. 2: Is the voluntary payment doctrine available as a matter of law for contracts that include two potentially conflicting price terms? 20

V. CONCLUSION 22

TABLE OF AUTHORITIES

Page(s)

Cases

City of Cincinnati v. Cincinnati Gaslight & Coke Co.,
53 Ohio St. 278 (1895).....5, 17, 21

City of Cleveland v. Ohio Bureau of Workers' Compen.,
2018-Ohio-846 (8th Dist. 2018) 5, 16

Consol. Mgt., Inc. v. Handee Marts, Inc.,
109 Ohio App.3d 185 (8th Dist. 1996) 17, 21

State ex rel. Dickman v. Defenbacher,
151 Ohio St. 391 (1949).....5, 17

Indus. Fabricators, Inc. v. Natl. Cash Register Corp.,
1984 WL 4669 (10th Dist. Mar. 8, 1984) 7, 17, 21

L.R. & J. Smith Co. v. City of Cleveland,
25 Ohio C.D. 8 (Cir. Ct. 1908) 6

Moore v. Farmers' State & Sav. Bank of Oxford, Ohio,
47 Ohio App. 10 (1st Dist. 1933).....6

Nelson v.Am. Power and Light,
2010 WL 3219498 (S.D.Ohio Aug. 12, 2010).....18, 19

Putnam v. Time Warner Cable of S.E. Wisconsin, Ltd. Partn.,
649 N.W.2d 626 (Wis. 2002).....6

Salling v. Budget Rent-A-Car Sys., Inc.,
672 F.3d 442 (6th Cir. 2012) 7

Valley Ry. Co. v. Lake Erie Iron Co.,
46 Ohio St. 44 (1888).....5, 6, 10

Wears Kahn McMenamy & Co. v. JPMorgan Chase Bank, N.A.,
2013 WL 1689030 (S.D.Ohio Apr. 18, 2013) 5, 7, 18, 19

Statutes

12 U.S.C. 5511.....12, 14

Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301 et seq. 9

Electronic Fund Transfer Act, 15 U.S.C. 1693 et seq. ..... *passim*

Truth in Lending Act, 15 U.S.C. 1601 et seq. ..... *passim*

Truth in Savings Act, 12 U.S.C. 4301 et seq. ..... *passim*

Other Authorities

12 C.F.R. 1005.17(b) 19

12 C.F.R. pt. 1005, App. A 14

12 C.F.R. pt. 1005.11 8

12 C.F.R. pt. 1026, App. G 14

12 C.F.R. pt. 1030, App. B 14

74 Fed. Reg. 59,033, 59,055 (Nov. 17, 2009) 19

Federal Reserve Board, *Design and Testing of Overdraft Disclosures: Phase Two* (Oct. 12, 2009) 19

Bd. of Governors of the Fed. Rsrv. Sys., *National Payment Volumes*, *Top-Line Data (CY 2015–24)*, https://www.federalreserve.gov/paymentsystems/frps_cy2015_24_topline.htm (accessed Sep. 25, 2026) [https://perma.cc/Y3XH-92P3] 8

73 Ohio Jur.3d Payment & Tender, § 62 (Aug. 2026) 17

Rule 16.06 2

I. INTRODUCTION

At some point, a transaction must be treated as final. Ohio's voluntary payment doctrine embodies that common-sense principle by preventing parties who pay with knowledge of the operative facts from later revisiting completed transactions based solely on a new legal interpretation of those same facts. For more than a century, the doctrine has promoted commercial finality, encouraged transparency and the prompt resolution of disputes, and protected settled expectations throughout Ohio's economy.

Those same interests apply with equal force in modern banking relationships. Millions of transactions are conducted every day pursuant to standardized agreements and regulated disclosures. Far from undermining the voluntary payment doctrine, the prevalence of standardized contracts makes the doctrine's finality-promoting function more important. Businesses and consumers alike benefit from clear rules governing when transactions become settled and when disputes must be raised.

Moreover, standardized agreements are often the product of federal consumer-protection laws and regulations that require financial institutions to provide customers with clear, uniform, and comparable information. Congress enacted statutes such as the Truth in Savings Act, the Truth in Lending Act, and the Electronic Fund Transfer Act because it concluded that consumers are better protected when financial institutions communicate information in a consistent and standardized manner. Likewise, federal regulators, including the Consumer Financial Protection Bureau ("CFPB"), routinely prescribe model forms and standardized disclosures to promote consumer understanding and informed decision making. The standardized disclosures at issue in modern banking are therefore frequently the result of legislative and regulatory efforts designed to ***protect*** consumers.

Petitioners nevertheless urge this Court to adopt a different rule for standardized consumer agreements and regulated disclosures. Their theory would effectively convert a customer's later disagreement with the legal significance of disclosed information into a lack of factual knowledge sufficient to avoid the voluntary payment doctrine. If adopted, that approach would substantially narrow the doctrine in the very commercial settings where standardized agreements and regulated disclosures are most common.

The Court should decline that invitation and instead answer the certified questions consistently with Ohio's traditional distinction between mistakes of fact and mistakes of law. For purposes of the voluntary payment doctrine, the relevant facts are the operative facts surrounding the transaction and payment, not a payor's later legal conclusions regarding the significance of those facts. Likewise, the existence of allegedly conflicting price terms does not transform a mistake of law into a mistake of fact or render the doctrine unavailable as a matter of law. Maintaining those distinctions preserves the doctrine's longstanding role in promoting finality and transparency while avoiding a rule that would undermine the certainty upon which businesses and consumers rely.

II. STATEMENT OF INTEREST OF AMICI CURIAE

Pursuant to Rule 16.06, the Ohio Bankers League ("OBL"), the American Bankers Association ("ABA"), and the Community Bankers Association of Ohio ("CBAO") (collectively, "*Amici*"), respectfully submit this brief in support of Defendant-Respondent Fifth Third Bank.

OBL. OBL is a nonprofit trade association that represents the interests of state and federally chartered FDIC-insured commercial banks, savings banks, and thrifts and savings associations doing business in Ohio. Members include depository institutions that are headquartered in Ohio, as well as institutions that are headquartered elsewhere but conduct banking business in Ohio. OBL has 167 member banks, which represent most of the depository institutions in Ohio. OBL

membership is diverse and includes the full spectrum of FDIC-insured depository institutions and their affiliates. Member institutions range from small savings associations that are organized as mutual thrifts owned by their depositors, to community banks that are locally owned and operated, to large regional, multistate, and multinational financial institutions that have multiple bank and non-bank affiliates and conduct business across the country as well as internationally. OBL's members directly employ more than 75,000 people across the State of Ohio.

ABA. Established in 1875, the ABA is the united voice of America's $24.1 trillion banking industry, comprised of small, regional, and large national and state banks that together employ approximately 2.1 million dedicated people, safeguard $19.2 trillion in deposits, and extend $12.7 trillion in loans. ABA often appears as amicus curiae in litigation that affects the banking industry.

CBAO. CBAO is an Ohio nonprofit trade association that represents and advocates for community banks throughout the State of Ohio. CBAO's member institutions serve consumers, small businesses, farmers, and communities across the state and are committed to relationship-based banking, responsible financial services, and the economic vitality of the communities they serve. CBAO's mission includes representing the interests of Ohio community banks before governmental and regulatory bodies; providing education and professional development to promote sound banking practices; and creating opportunities that strengthen community banks and the customers and communities they serve.

This case is of particular interest to all *Amici* members as it concerns far more than Fifth Third Bank's Early Access program. Ohio's banking industry, which collectively holds approximately $5.75 trillion in assets, and the 156 FDIC-insured institutions ***headquartered*** in Ohio, which employ approximately 380,000 people nationwide, rely on standardized account

agreements, loan documents, fee schedules, and regulatory disclosures to provide financial products and services to consumers throughout the State.

Each year, Ohio banks process hundreds of millions of transactions pursuant to those agreements. The efficient operation of the banking system depends on clear rules governing when payments are final and when completed transactions may later be challenged. Banks rely on those rules in administering customer accounts, complying with regulatory obligations, managing risk, and maintaining accurate financial records.

The Court's answers to the certified questions will therefore have consequences far beyond the parties to this case. The questions presented concern the continued operation of the voluntary payment doctrine in modern banking relationships generally, not merely Fifth Third's lending product. Financial institutions routinely offer products governed by both clearly disclosed contractual terms and separate disclosures required by federal law. Mortgages, home-equity lines of credit, installment loans, deposit accounts, and other common banking products frequently pair specific price terms with government-mandated disclosures designed to inform consumers and facilitate comparison shopping. A rule permitting voluntary payments to be revisited whenever a plaintiff later characterizes those disclosures as inconsistent or claims an inability to reconcile them could affect a broad range of ordinary banking products and services throughout Ohio.

Amici therefore have a substantial interest in ensuring that Ohio's voluntary payment doctrine continues to provide a clear and predictable framework for determining when a payment made with knowledge of the operative facts may later be challenged. Accordingly, *Amici* submit this brief to address the broader commercial implications of the certified questions and to explain why preserving the voluntary payment doctrine is important to certainty, finality, and predictability in Ohio's banking industry.

III. STATEMENT OF THE CASE AND FACTS

Amici adopt the Statement of the Case and Facts in Defendant-Respondent's Merit Brief.

IV. ARGUMENT

A. For More than a Century, Ohio's Voluntary Payment Doctrine Has Served Critical Commercial Interests

1. The doctrine has long promoted transparency, prompt dispute resolution, and commercial finality

Ohio's voluntary payment doctrine rests on a straightforward but important principle: when a party voluntarily pays money "with knowledge of the relevant facts," that payment ordinarily cannot later be recovered merely because the payor adopts a different legal view of the transaction. *City of Cleveland v. Ohio Bureau of Workers' Compen.*, 2018-Ohio-846, ¶ 92 (8th Dist. 2018), *rev'd on other grounds*, 2020-Ohio-337; *see also State ex rel. Dickman v. Defenbacher*, 151 Ohio St. 391, 395 (1949). The doctrine has deep roots in Ohio law, tracing back to nineteenth-century decisions recognizing that payments made in response to a disputed contractual obligation should not remain perpetually subject to later challenge. *See, e.g.*, *Valley Ry. Co. v. Lake Erie Iron Co.*, 46 Ohio St. 44, 51–52 (1888) (applying the voluntary payment doctrine to bar recovery of goods voluntarily delivered under a void stock-subscription agreement); *City of Cincinnati v. Cincinnati Gaslight & Coke Co.*, 53 Ohio St. 278, 289 (1895) (applying the voluntary payment doctrine to bar city's recovery of overpayments for gas supplied under a disputed pricing provision).

By conditioning its protection on the payor's possession of "full knowledge of the relevant facts," the voluntary payment doctrine promotes transparency in commercial relationships. A payee cannot realistically invoke the doctrine unless it has provided sufficient information regarding the nature and basis of the charge in the first instance. *See, e.g.*, *Wears Kahn McMenamy & Co. v. JPMorgan Chase Bank, N.A.*, 2013 WL 1689030, *9 (S.D.Ohio Apr. 18, 2013) (faulting borrower for its "inaction, over the course of years," in failing to object to disputed charges despite

receiving monthly invoices detailing the charges and providing a procedure for disputing them with the bank).

Once a payor has been provided that information, the doctrine expects the payor to act on it. A party who believes a charge is improper should raise that concern when the payment is demanded or made, rather than remain silent and challenge the transaction years later. As this Court recognized nearly 140 years ago, "'[i]f the party would resist an unjust demand, he must do so at the threshold.'" *Valley Ry. Co.*, 46 Ohio St. at 51, quoting *Boston & S Glass Co. v. City of Boston*, 45 Mass. 181, 188 (1842). Other courts have likewise observed that the doctrine promotes the prompt resolution of disputes. *See Putnam v. Time Warner Cable of S.E. Wisconsin, Ltd. Partn.*, 649 N.W.2d 626, 633 (Wis. 2002) (explaining that the voluntary payment doctrine "operates as a means to settle disputes without litigation by requiring the party contesting the payment to notify the payee of its concerns. After such notification, a payee who has acted wrongfully can react to rectify the situation.").

These interests ultimately converge in the doctrine's core purpose: *commercial finality*. As this Court observed long ago, without the voluntary payment doctrine:

> "[T]he effect would be to leave the party who pays the money the privilege of selecting his own time and convenience for litigation; delaying it, as the case may be, until the evidence which the other party would have relied upon to sustain his claim may be lost by lapse of time, and the various casualties to which human affairs are exposed." In some cases stress is laid upon the inconvenience it would be to the other party, who may receive the money as his own, and, acting upon that belief, so dispose of it as to make it exceedingly inconvenient, if not impossible, to repay it.

Valley Ry. Co. at 51, quoting *Boston & S Glass Co* at 188.

Those observations remain equally true today. Consistent with those principles, Ohio courts have repeatedly applied the doctrine to bar efforts to recoup payments voluntarily made under disputed contractual interpretations. *See, e.g.*, *L.R. & J. Smith Co. v. City of Cleveland*, 25

Ohio C.D. 8 (Cir. Ct. 1908) (reversing judgment for city in action to recover payments made to excavator for alleged extra work under a water-main construction contract, where the parties disputed whether the work fell within the contract's scope, because the trial court failed to instruct the jury that the voluntary payment doctrine barred recovery if the city paid under a mistaken interpretation of the contract); *Moore v. Farmers' State & Sav. Bank of Oxford, Ohio*, 47 Ohio App. 10, 16–17 (1st Dist. 1933) (affirming judgment for defendant bank finding that the voluntary payment doctrine barred an administratrix's recovery of payments made on estate debts based on her mistaken interpretation of a will); *Indus. Fabricators, Inc. v. Natl. Cash Register Corp.*, 1984 WL 4669, at *4 (10th Dist. Mar. 8, 1984) (holding that the voluntary payment doctrine barred a buyer from recouping approximately $40,000 in alleged overpayments under a parts-supply contract, despite a dispute over whether quoted prices applied to individual parts or to pairs or sets, because the buyer voluntarily paid with knowledge of the facts and could not later recover based on a mistaken interpretation of the contract); *Salling v. Budget Rent-A-Car Sys., Inc.*, 672 F.3d 442, 445 (6th Cir. 2012) (applying Ohio's voluntary payment doctrine to bar a breach of contract claim arising from a $13.99 fuel service fee that the plaintiff voluntarily paid but later alleged was in violation of the rental agreement); *Wears Kahn*, 2013 WL 1689030, at *6–7 (dismissing borrower's breach of contract claim under the voluntary payment doctrine, where the borrower had paid interest invoices on loan for years with knowledge of the bank's billing practices and without objection).

For well over a century, therefore, the voluntary payment doctrine has served complementary functions. It encourages transparency by incentivizing the disclosure of relevant information, promotes the prompt identification and resolution of disputes while the facts remain accessible, and protects the finality of completed transactions once those opportunities have

passed. Together, these functions advance fairness, reduce unnecessary litigation, protect settled commercial expectations, and foster stability, predictability, and confidence in Ohio's marketplace.

2. The interests undergirding the voluntary payment doctrine are especially important in banking

The public interests furthered by the voluntary payment doctrine have particular importance in the banking industry.

First, banks process an enormous volume of recurring transactions governed by standardized agreements and disclosures. Every year, Ohio financial institutions process hundreds of millions of these transactions, including maintaining deposit accounts, receiving and applying loan payments, assessing service charges, processing debit-card transactions, executing electronic fund transfers, and facilitating countless other customer transactions. In fact, U.S. financial institutions collectively processed an estimated ***236.6 billion*** noncash payments in 2024, more than 650 million per day on average and valued at $140 trillion. Bd. of Governors of the Fed. Rsrv. Sys., *National Payment Volumes*, *Top-Line Data (CY 2015–24)*, https://www.federalreserve.gov/paymentsystems/frps_cy2015_24_topline.htm (accessed Sep. 25, 2026) [https://perma.cc/Y3XH-92P3]. The efficient operation of this system requires rules that permit banks and customers alike to treat completed transactions as settled.

Second, banks have structured their relationships with customers to encourage the prompt identification and resolution of disputes. Consumer account agreements routinely include procedures through which customers may review account activity, dispute charges, report errors, seek clarification regarding transactions, and otherwise raise concerns regarding their accounts. Federal law reinforces these protections. For example, the Electronic Fund Transfer Act ("EFTA"), 15 U.S.C. 1693 et seq., establishes a comprehensive error-resolution process for electronic fund

transfers. When a customer timely disputes a transaction (typically within 60 days after receiving his or her monthly statement), the financial institution must promptly investigate the matter, determine whether an error occurred, notify the customer of the results, and promptly correct any confirmed error. *See* 15 U.S.C. 1693f; 12 C.F.R. pt. 1005.11. Financial institutions that fail to comply with these requirements can face substantial liability. *Id.* Both the voluntary payment doctrine and consumer protection statutes such as the EFTA are premised on the same idea: disputes should be raised and resolved while the relevant information remains readily available. Timely dispute resolution benefits both customers and financial institutions by facilitating the correction of genuine errors while minimizing the costs and uncertainty associated with reconstructing historical transactions years later.

Third, banks rely on the finality of completed transactions throughout their operations. Financial institutions use transaction data to prepare financial statements for shareholders, boards of directors, investors, and regulators. They are subject to regular examinations and audits by federal and state regulators, including the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve, and the Ohio Division of Financial Institutions. Banks also use historical transaction data to assess risk, evaluate potential liabilities, calculate reserves and allowances for expected losses, and maintain accurate books and records. For example, when evaluating reserves for anticipated customer claims, banks rely on historical transaction data and existing dispute information to assess potential liabilities. If routine payments could be challenged years later based on newly asserted contractual interpretations, banks would face greater uncertainty and would likely be required to maintain larger reserves against liabilities previously considered settled. Those additional reserves tie up capital and divert resources that could be used to extend credit, invest in operations, or otherwise serve customers.

In addition, banks must comply with extensive federal and state requirements governing consumer accounts and payments, including the Truth in Lending Act ("TILA"), 15 U.S.C. 1601 et seq.; the EFTA, 15 U.S.C. 1693 et seq.; the Truth in Savings Act ("TISA"), 12 U.S.C. 4301 et seq.; the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5301 et seq.; regulations governing deposit accounts and funds availability; and numerous safety-and-soundness requirements enforced by state and federal banking regulators. To illustrate, TILA requires banks to provide detailed disclosures regarding the cost of consumer credit, while the EFTA imposes obligations concerning electronic-payment transactions and customer error-resolution rights. In administering those requirements, banks maintain records of customer account activity and payment histories. Federal and state examiners, in turn, review those records to assess compliance and operational controls. Those reviews – and their effectiveness – depend upon the assumption that completed transactions, absent a timely dispute, may be treated as settled. These functions depend upon the ability to treat completed transactions as settled and reliable.

Fourth, the passage of time inevitably creates evidentiary challenges, as this Court recognized in *Valley Ry. Co.*, 46 Ohio St. at 51. Memories fade. Employees retire, change positions, or leave an institution altogether. Records may remain available, but reconstructing the circumstances surrounding years-old transactions becomes increasingly difficult and costly. The voluntary payment doctrine mitigates these concerns by encouraging disputes to be raised and resolved while the pertinent facts remain fresh and accessible.

These practical realities explain why finality occupies such an important role in banking and other highly regulated industries. The law should promote, not undermine, the ability of financial institutions and their customers to rely on completed transactions.

B. Standardized Consumer Contracts and Regulated Disclosures Should Not Be Subject to Different Voluntary Payment Rules

1. Modern commerce relies on standardized agreements and uniform disclosures

Petitioners repeatedly emphasize that the agreement at issue was a standardized consumer contract. (*See* Pet'rs' Br. at 1, 3, 20, 23-24.) But standardized agreements are not unique to banking. They are the principal means through which consumers obtain essential goods and services throughout the modern economy.

Consider a typical consumer's daily activities. The consumer maintains checking and savings accounts pursuant to standardized deposit agreements. The consumer uses a debit card governed by a cardholder agreement and electronic-funds-transfer disclosures. The consumer may have a mortgage, auto loan, credit card, insurance policy, cell-phone contract, internet-service agreement, streaming subscription, utility account, or residential lease, each governed by standardized contractual terms and disclosures. These agreements often govern thousands, and sometimes millions, of customer relationships.

The widespread use of standardized agreements reflects necessity, not convenience. A bank cannot individually negotiate the terms governing millions of deposit-account transactions. Nor can an insurance company negotiate separate policy language with every policyholder, a utility provider bargain individually with every customer regarding service terms, or a telecommunications provider tailor unique contracts for every subscriber. Modern commerce depends upon the ability of businesses to offer products and services through standardized contractual arrangements.

For that reason, the prevalence of standardized contracts is not a unique feature of banking or a basis for treating banking agreements differently. To the contrary, standardized agreements are a defining characteristic of modern commercial relationships. Any rule that limits the voluntary

payment doctrine merely because a contract is standardized would therefore have consequences far beyond this case, reaching countless transactions conducted every day pursuant to ordinary consumer and commercial agreements.

2. Standardization and uniform disclosures promote consumer protection and predictability

Petitioners' criticism of standardized contracts gets the policy exactly backwards. In the banking industry, standardization is often not a product of unequal bargaining power; it is the product of consumer protection laws and regulations requiring banks to communicate information in a uniform manner.

Congress and federal regulators have often concluded that consumers are better served when financial institutions provide standardized disclosures that facilitate comparison shopping, informed decision-making, and market competition. For example, in enacting TISA, Congress found that economic stability, competition among depository institutions, and consumers' ability to make informed decisions would be enhanced through uniform disclosures regarding interest rates and fees. 12 U.S.C. 4301(a).[1] Indeed, TISA's stated purpose is to require the "clear and uniform disclosure" of account terms so that consumers can meaningfully compare competing products offered by different institutions. *Id.*

Similarly, Congress enacted TILA to ensure the "meaningful disclosure of credit terms" so that consumers can readily compare available credit options and "avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices." 15 U.S.C. 1601(a); *see also* 12 U.S.C. 5511(a) (establishing the CFPB to "ensur[e] that

[1] As set forth in TISA, Congress expressly found that "economic stability would be enhanced, competition between depository institutions would be improved, and the ability of the consumer to make informed decisions regarding deposit accounts, and to verify accounts, would be strengthened if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts." 12 U.S.C. 4301(a).

all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive"). The widespread use of standardized disclosures is therefore not evidence of consumer disadvantage, as Petitioners argue. It is evidence of compliance with regulatory frameworks expressly designed to ***benefit*** consumers.[2]

And this makes sense. Standardization promotes efficiency by allowing transactions to be processed according to uniform rules. A customer who opens a checking account today receives substantially the same disclosures, fee schedules, and account documentation as similarly situated customers. That consistency permits institutions to administer accounts efficiently, provide better customer service, implement compliance programs, and process transactions at scale. Consumers also benefit from the efficiency of standardized agreements. Few consumers opening a checking account, obtaining a debit card, or applying for a loan expect or desire individualized negotiations over routine account terms. Were businesses required to negotiate and administer bespoke agreements for each customer, costs would increase and access would decline.

Equally important, standardization promotes predictability and consistent access to products and services. Consumers know where to find governing terms and can expect that similarly situated customers will be subject to the same contractual provisions and disclosures. Businesses likewise know how those terms will be administered. Standardization thus reduces uncertainty, mitigates against discrimination by ensuring even-handed application of contractual

[2] This case itself illustrates the point. Petitioners' challenge centers on an allegedly deficient APR disclosure, a subject already governed by TILA. Petitioners obtained summary judgment on their TILA claim below, demonstrating that alleged disclosure deficiencies are properly addressed through specialized consumer-protection statutes rather than by creating exceptions to longstanding common law doctrines.

provisions, and allows businesses and consumers to organize their affairs around a common set of contractual rules.

Indeed, federal regulators have frequently encouraged standardization for precisely these reasons. The CFPB, whose statutory mission is to ensure that markets for consumer financial products and services are "fair, transparent, and competitive," routinely issues model forms, disclosure requirements, and interpretive guidance designed to promote uniformity across the financial-services industry. *See* 12 U.S.C. 5511. Many standardized disclosures therefore reflect language developed in response to regulatory requirements imposed by an agency whose central purpose is consumer protection. *See*, *e.g.*, 12 C.F.R. pt. 1005, App. A (collecting nearly 30 model disclosures and forms implementing the EFTA); 12 C.F.R. pt. 1026, App. G (setting forth 47 model forms and clauses for open-end credit disclosures under TILA); *id.* at App. H (setting forth 79 model forms and clauses for closed-end credit disclosures under TILA); 12 C.F.R. pt. 1030, App. B (setting forth model clauses and sample forms under TISA). The existence of standardized disclosures is thus often evidence of regulatory compliance and consumer transparency, not unequal bargaining power.[3]

In short, the widespread use of standardized agreements and disclosures reflects a deliberate policy choice by Congress and federal regulators. Uniform disclosures enable consumers to compare products across institutions, make informed financial decisions, and understand the terms governing their accounts. The existence of standardized contracts therefore

[3] Notably, these disclosure requirements are not limited to a particular product or service. Standardized disclosures are ubiquitous across consumer lending, deposit accounts, payment services, debit-card programs, electronic banking products, and other routine banking relationships.

is not evidence of consumer disadvantage; it is often evidence of compliance with consumer-protection regimes specifically designed to benefit consumers.

3. Neither standardized contract terms nor regulated disclosures justify limiting the voluntary payment doctrine

Nothing in Ohio's voluntary payment jurisprudence suggests that the doctrine applies differently depending upon whether the underlying contract was individually negotiated or presented on a standardized form. The touchstone has always been the payor's knowledge of the relevant facts surrounding the payment, not the manner in which the agreement was drafted.

Nor do Petitioners identify any principled reason why the doctrine should operate differently in the context of standardized agreements. Their argument appears to rest on the premise that because standardized contracts are more common today than when Ohio's early voluntary payment decisions were decided, a different rule should apply. But the relevant question is not whether the contract is standardized or individually negotiated. The relevant question is whether the payor knew the relevant facts surrounding the payment. A party who misunderstands the legal effect of a standardized contract has made the same type of mistake as a party who misunderstands the legal effect of a bespoke contract. In both circumstances, the mistake concerns the meaning of contractual language rather than the underlying facts. Petitioners never explain why one should be treated as a mistake of law while the other should somehow become a mistake of fact.

Petitioners' emphasis on standardization is therefore especially misplaced because it treats a common and ***consumer-protective*** feature of modern financial regulation as a reason to limit the voluntary payment doctrine. The same statutes and regulations that require uniform account terms and disclosures were enacted to promote transparency, comparability, and informed consumer choice. Put differently, Petitioners ask this Court to treat as legally suspect a feature of banking

relationships that Congress and federal regulators deliberately imposed to ***help*** consumers. The Court should decline that invitation.

The same is true of any rule that limits the voluntary payment doctrine whenever a plaintiff alleges that a disclosure was inaccurate, incomplete, or misleading. Virtually every consumer banking product is governed by disclosures mandated by federal or state law. As a result, nearly every dispute involving a consumer financial product could be reframed as a challenge to the adequacy of a disclosure rather than the meaning of the underlying transaction. The doctrine's availability would turn not on the payor's knowledge of the relevant facts, but on a plaintiff's ability to recast a contract dispute as a disclosure dispute.

If the doctrine is weakened whenever a contract is standardized or a disclosure is later alleged to be inaccurate, the effect would extend far beyond this case. It would affect disputes involving bank accounts, credit cards, mortgages, consumer loans, payment services, and countless other relationships governed by standardized contracts and regulated disclosures.

The practical result would be that the voluntary payment doctrine would have its least force in the very commercial settings where it is most needed. Because modern commerce depends overwhelmingly upon standardized agreements, a special exception for those agreements would substantially diminish the doctrine's ability to promote finality and timely dispute resolution.

The Court should therefore decline to create a special voluntary payment rule for standardized consumer contracts and regulated disclosures. Standardized disclosures help consumers make informed decisions at the time of a transaction, not to facilitate reopening settled transactions years later.

C. The Certified Questions Should Be Answered Consistently with Ohio's Traditional Distinction Between Facts and Law.

1. Certified Question No. 1: How are "relevant facts" defined for purposes of the voluntary payment doctrine?

The First Certified Question should be answered in a manner consistent with Ohio's longstanding distinction between mistakes of fact and mistakes of law. Under Ohio law, the voluntary payment doctrine applies when a payor acts with "full knowledge of the relevant facts," even if the payor later concludes that the payment was not legally required. *City of Cleveland*, 2018-Ohio-846, at ¶ 92 (8th Dist.); *see also Dickman*, 151 Ohio St. at 395. Accordingly, the "relevant facts" are the operative facts surrounding the transaction and payment, not a payor's subsequent legal conclusions regarding the parties' contractual rights and obligations.

Ohio's distinction between mistakes of fact and mistakes of law confirms this understanding. Ohio courts have long held that payments made under an incorrect interpretation of contractual language constitute mistakes of law rather than mistakes of fact. *See, e.g.*, *Cincinnati v. Gaslight & Coke Co.*, 53 Ohio St. 278, paragraph three of the syllabus ("A payment made by reason of a wrong construction of the terms of a contract, is not made under a mistake of fact, but under a mistake of law, and if voluntary cannot be recovered back."); *Indus. Fabricators, Inc. v. Natl. Cash Register Corp.*, 1984 WL 4669, at *4 (10th Dist. Mar. 8, 1984) (holding that an alleged overpayment resulting from a dispute over the contract price constituted a mistake of law, not a mistake of fact); *Consol. Mgt., Inc. v. Handee Marts, Inc.*, 109 Ohio App.3d 185, 190 (8th Dist. 1996) (holding that commercial tenant's alleged rent overpayments resulted from a mistaken interpretation of the lease's rent-calculation provisions and therefore constituted a mistake of law, not a mistake of fact, and thus alleged overpayments were voluntary and not recoverable); *accord* 73 Ohio Jur.3d Payment & Tender, § 62 (Aug. 2026) (collecting cases).

Consistent with that distinction, courts applying Ohio law have repeatedly recognized that "full knowledge of the relevant facts" exists when a party possesses the information necessary to understand the charge and the transaction giving rise to it. The doctrine does not require a payor to understand every legal, regulatory, accounting, or mathematical consequence of disclosed transaction terms. The decision in *Wears Kahn* is illustrative. There, the borrower challenged the bank's interest-billing practices and sought to recover payments made pursuant to monthly invoices. *Wears Kahn*, 2013 WL 1689030, at *1–2. In applying the doctrine to bar the plaintiff's breach of contract claim, the court explained that because the plaintiff received monthly invoices disclosing the applicable interest rates, principal balance, and billing information, the plaintiff had "all pertinent information" regarding the challenged charges when making payment. *Id.* at *6.

Nelson v. Am. Power and Light similarly illustrates how the voluntary payment doctrine turns on whether the payor possesses sufficient knowledge of the underlying charge. 2010 WL 3219498 (S.D.Ohio Aug. 12, 2010). In *Nelson*, the plaintiff asserted unjust enrichment claims arising from various charges on her electric bills, including late fees and attorneys' fees associated with prior eviction proceedings. *Id.* at *13. The court analyzed each challenged charge, reaching different results based on the plaintiff's knowledge of the underlying charges. *Id.* at *14. As to the late fees, the court applied the voluntary payment doctrine because the bills clearly disclosed that the fees exceeded the $5 charge contemplated by the parties' contract, and the plaintiff paid those charges with full knowledge of their nature and amount. *Id.* By contrast, the court declined to apply the doctrine to attorneys' fees and costs that appeared on the bills merely as unexplained additions to the amount due. *Id.* Because those charges were neither itemized nor otherwise identified, the court concluded that factual questions remained concerning whether the plaintiff possessed sufficient knowledge of the charges before paying them. *Id.*

Together, *Wears Kahn* and *Nelson* demonstrate that "full knowledge of the relevant facts" requires knowledge of the transaction being charged, not agreement with the charge and not an understanding of every legal consequence that may later be drawn from it.

Petitioners' proposed definition of "relevant facts" impermissibly collapses the distinction between mistakes of fact and mistakes of law. Under Petitioners' approach, a customer lacks knowledge of the relevant facts whenever the customer fails to appreciate the legal significance of a disclosed transaction. As a result, "relevant facts" would encompass not merely the facts surrounding the payment itself, but also every fact necessary to support a later legal theory, establish a breach, or show that a disclosure was misleading. But the doctrine has never required a payor to understand every legal implication of known facts. Were it otherwise, virtually any plaintiff could avoid the doctrine by claiming: "I knew what happened, but I did not understand what it meant." Such a rule would effectively erase Ohio's longstanding distinction between mistakes of fact and mistakes of law and substantially diminish the doctrine itself.[4]

[4] Notably, federal law sometimes requires financial institutions to provide ***less***, not more, information. For example, under EFTA and Regulation E, a bank generally may not assess overdraft fees on ATM transactions or one-time debit-card transactions unless the customer first affirmatively "opts in" to the bank's overdraft service through a separate disclosure. *See* 12 C.F.R. 1005.17(b). The required disclosure must be brief, segregated from other account information, and "substantially similar" to Model Form A-9. *Id.* at 1005.17(d). In developing that model form, the Federal Reserve Board considered and rejected more detailed disclosures regarding overdraft-processing mechanics because additional information made the notice longer and less understandable to consumers. Electronic Fund Transfers, 74 Fed. Reg. 59,033, 59,055 (Nov. 17, 2009); Federal Reserve Board, *Design and Testing of Overdraft Disclosures: Phase Two* at 21 (Oct. 12, 2009). Federal law thus reflects a policy judgment that ***consumers are sometimes better served by concise, standardized disclosures than by exhaustive explanations of every operational, legal, or technical consequence of a transaction***. But Petitioners' theory points in the opposite direction. By effectively defining "relevant facts" to include every legal, regulatory, and mathematical implication of a disclosed transaction, Petitioners would impose disclosure expectations that ***conflict*** with federal requirements designed to promote brevity, clarity, and consumer comprehension.

The Court should therefore answer the First Certified Question by confirming that "relevant facts" means the operative facts surrounding the transaction and payment. The term does not encompass a payor's subsequent legal conclusions regarding contractual rights, pricing methodologies, regulatory requirements, or other legal consequences of disclosed transaction terms. That answer is faithful to Ohio precedent and preserves the core principles underlying the doctrine's traditional role in promoting finality, transparency, and the timely resolution of disputes.

2. Certified Question No. 2: Is the voluntary payment doctrine available as a matter of law for contracts that include two potentially conflicting price terms?

The answer to the Second Certified Question should be yes. The mere existence of two allegedly conflicting price terms does not render the voluntary payment doctrine unavailable as a matter of law.

As discussed above, Ohio courts have long recognized that when a payor possesses knowledge of the operative facts surrounding the transaction and payment – *i.e.*, what the payor paid and why the payment was made – a subsequent dispute over the interpretation of the terms of a contract is a mistake of law, rendering the payment made voluntary, and thus non-recoverable. Ohio's distinction between factual mistakes and legal mistakes would have little meaning if the voluntary payment doctrine became unavailable whenever a plaintiff alleged that a contract contained inconsistent pricing provisions or otherwise disputed the proper interpretation of contractual language. Nearly all contract case involves competing interpretations of the parties' agreement. Parties routinely disagree about the meaning of pricing provisions, payment obligations, allocation methodologies, and other contractual terms. Yet Ohio courts have consistently treated such disputes as issues of contractual interpretation and, therefore, matters of law rather than fact.

The decisions in *Cincinnati v. Gaslight & Coke Co.*, *Indus. Fabricators*, and *Consol. Mgmt.* illustrate the point. In each case, the parties disagreed about the proper interpretation of pricing-related contract provisions. In each case, the courts treated the alleged overpayments as arising from mistaken constructions of contractual terms rather than mistaken understandings of underlying facts. The existence of a dispute concerning price therefore did not eliminate the distinction between mistakes of fact and mistakes of law. Instead, the courts recognized that a party may know precisely what it paid and why it paid it, yet later contend that the contract should have been interpreted differently. In that circumstance, the party's mistake concerns the legal effect of known facts, not the facts themselves, and the voluntary payment doctrine bars recovery.

If the presence of allegedly conflicting price terms automatically defeats the voluntary payment doctrine, as Petitioners assert, plaintiffs could routinely evade the doctrine merely by alleging that contractual language was ambiguous or that a pricing provision meant something different than what the defendant contends. The doctrine's availability would then rise or fall on the existence of a dispute over the interpretation of a contract**,** *precisely* the circumstance in which Ohio courts have historically applied the doctrine.

The distinction between a disclosed transaction charge and a regulatory pricing metric, such as the flat 10% fee and the APR disclosure at issue here, further illustrates the point. Customers using the Early Access program knew how much they borrowed, how much they were charged, when repayment occurred, and how much was withdrawn from their accounts. In other words, they knew the operative facts surrounding the transaction and payment. Their complaint is not that those facts were hidden; it is that those facts allegedly resulted in an APR different from the APR stated in the agreement. That disagreement concerns the legal significance and contractual effect of known facts, not the facts themselves. Treating such a dispute as a lack of factual

knowledge would improperly transform a dispute over the meaning and effect of disclosed pricing terms into a mistake of fact, thereby collapsing Ohio's longstanding distinction between factual ignorance and legal disagreement.

The Court should therefore answer the Second Certified Question by confirming that the voluntary payment doctrine remains available as a matter of law even when a contract contains allegedly conflicting price terms. So long as the payor possesses knowledge of the operative facts surrounding the transaction and payment, a subsequent dispute regarding the meaning or effect of contractual language remains a matter of law, not fact. That answer preserves Ohio's deeply rooted distinction between facts and legal consequences and ensures that the voluntary payment doctrine continues to serve its traditional role in promoting finality and certainty in commercial transactions.

V. CONCLUSION

For the foregoing reasons, *Amici* respectfully request that this Court answer the certified questions in a manner that preserves Ohio's longstanding voluntary payment doctrine, maintains the traditional distinction between mistakes of fact and mistakes of law, confirms that standardized consumer contracts and regulated disclosures are subject to the same doctrine as other contracts, and protects the commercial finality, certainty, and predictability upon which Ohio's banking industry and broader economy depend.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2026, a true and accurate copy of the foregoing was filed electronically with the Clerk of the Ohio Supreme Court, and that a copy of the foregoing was served upon the following by email:

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