No. 132935

IN THE SUPREME COURT OF ILLINOIS

MARSHA J. MARTIN, Plaintiff-Appellee, v. JOSEPH VALDIVIA, Defendant, and FIFTH THIRD BANK NATIONAL ASSOCIATION, Defendant-Appellant.	))))))))))))))))	On Appeal From The Appellate Court of Illinois, First Judicial District, No. 1-25-0705 There heard on Appeal from the Circuit Court of Cook County, Illinois, No. 24 L 1528 The Honorable Anthony C. Swanagan, Judge Presiding.

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN BANKERS ASSOCIATION, AND ILLINOIS BANKERS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT AND REVERSAL

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POINTS AND AUTHORITIES

Page

31 U.S.C. §§ 5311–5336 2

Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3423 3

15 U.S.C. § 1693 *et seq.* 3

ARGUMENT 3

I. The Vast Majority of Jurisdictions Have Held That Banks Do Not Owe A Duty To Noncustomers. 3

SFS Check, LLC v. First Bank of Delaware, 774 F.3d 351 (6th Cir. 2014) 3

Shooter Pops LLC v. Wells Fargo Bank, N.A., 649 F. Supp. 3d 62 (E.D. Pa. 2023) 3, 7

In re Terrorist Attacks on Sept. 11, 2001, 349 F. Supp. 2d 765 (S.D.N.Y. 2005) 3

Renner v. Chase Manhattan Bank, 1999 WL 47239 (S.D.N.Y. Feb. 3, 1999) 3

Praither v. Northbrook Bank & Tr. Co., 2021 IL App (1st) 201192 4

Setera v. Nat'l City Bank, 2008 WL 4425446 (N.D. Ill. Sept. 26, 2008) 4

Bell Bros. v. Bank One, N.A., 116 F.3d 1158 (7th Cir. 1997) 4

El Camino Resources, LTD v. Huntington Nat'l Bank, 722 F. Supp. 2d 875 (W.D. Mich. 2010) 4

Tanisha Lovings v. Sparkles L. Adams, 2026 WL 1455011 (C.D. Cal. Apr. 16, 2026) 4

Shane Smith Enters., Inc. v. Bank of Am., N.A., 2007 WL 1880201 (E.D. Ark. June 29, 2007) 5

Zabka v. Bank of Am. Corp., 131 Wash. App. 167 (Wash. App. 2005) 5

Eisenberg v. Wachovia Bank, N.A., 301 F.3d 220 (4th Cir. 2002) 6

McCallum v. Rizzo, 1995 WL 1146812 (Mass. Super. Ct. Oct. 13, 1995) 6

Bottom v. Bailey, 238 N.C. App. 202 (N.C. App. 2014) 6

POINTS AND AUHORITIES
(continued)

Page(s)

Squeeze Me Once, LLC v. SunTrust Bank, 2020 WL 12968001 (M.D. La. Aug. 3, 2020) 6

Karen Kane, Inc. v. Bank of Am., 67 Cal. App. 4th 1192 (Cal. App. 1998) 6, 7

Kurtz-Ahlers, LLC v. Bank of Am., N.A., 48 Cal. App. 4th 952 (Cal. App. 2020) 6, 8

Chicago Title Ins. Co. v. Superior Ct., 174 Cal. App. 4th 1142 (Cal. App. 1985) 6

Streifel v. Bulkley, 195 Conn. App. 294 (Ct. App. 2020) 7

Conder v. Union Planters Bank, N.A., 384 F.3d 397 (7th Cir. 2004) 8

Guidry v. Bank of LaPlace, 740 F. Supp. 1208 (E.D. La. 1990) 8

Shreveport Production Credit Ass'n v. Bank of Commerce, 405 So. 2d 842 (La. 1981) 8

City Check Cashing, Inc. v. Manufacturers Hanover Trust Co., 166 N.J. 49 (N.J. 2001) 9

Cache Valley Bank v. JPMorgan Chase Bank, N.A., 2026 WL 810661 (D. Utah Mar. 24, 2026) 9

II. The National-Consensus No-Duty Rule Is Consistent With Illinois's Negligence Principles. 9

Simpkins v. CSX Transp., Inc., 2012 IL 110662 10

Eisenberg v. Wachovia Bank, N.A., 301 F.3d 220 (4th Cir. 2002) 10

Illinois Bankers Association, *Re: Request for Information on Potential Actions to Address Payments Fraud*, Office of the Comptroller of Currency Docket ID OCC-2025-0009,-0125, at 2-3 (Sept. 18, 2025), https://www.regulations.gov/comment/OCC-2025-0009-0125. .... 11, 12

https://www.aba.com/advocacy/community-programs/fight-fraud 12

POINTS AND AUHORITIES
(continued)

Page(s)

US Chamber of Commerce, *How to Prevent Bank Fraud and Protect Your Business Account*, https://www.uschamber.com/co/run/technology/how-to-prevent-bank-fraud-and-protect-business-accounts; 12

U.S. Chamber of Commerce, https://www.uschamber.com/co/run/finance/protecting-bank-accounts 12

CONCLUSION 13

INTEREST OF THE AMICI CURIAE[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

Founded in 1875, the American Bankers Association ("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 $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.

The Illinois Bankers Association ("IBA") is a trade association dedicated to creating a positive business climate for the entire banking industry and the communities banks serve. Founded in 1891, the IBA brings together state and national banks and savings banks of all sizes in Illinois. Over 52% of IBA

[1] *Amici curiae* state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

members are community banks with less than $250 million in assets, and over 75% of IBA members are community banks with less than $750 million in assets. Collectively, the IBA represents nearly 90% of the assets of the Illinois banking industry, which employs more than 105,000 men and women in over 5,000 offices across the state.

Amici are organizations that represent banks and businesses that rely on banks for their daily operations. As such, *amici* have a strong interest in protecting the operation of the banking system from undue interference. Banks handle an enormous volume of transactions every day, and federal and state law, including Illinois law, require banks to process these transactions promptly. In turn, businesses rely on banks to process their transactions in a timely fashion and have organized their operations around that expectation. Businesses need to know when money transferred will be credited to their accounts and when payments will be processed.

Amici Clearing House Association L.L.C. and the Bank Policy Institute thoroughly explain why holding that banks owe a common-law duty of care to noncustomers with respect to authorized transfers like the one in this case would be inconsistent with the General Assembly's adoption of the Uniform Commercial Code ("UCC"), which displaces common-law duties regarding funds transfers in favor of a uniform, statutory assignment of obligations, liabilities and risks. They also address why a common-law duty would be irreconcilable with the existing—and comprehensive—federal framework regulating banks, including the requirements of the Bank Secrecy Act, 31 U.S.C. §§ 5311–5336, Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3423, and Electronic Fund Transfer Act, 15 U.S.C. § 1693 *et seq*.

We submit this *amicus* brief to explain that establishing such a duty would not only interfere with and undermine a carefully constructed statutory framework governing these issues; it also would make Illinois an outlier among the States that have addressed this question. Courts across the country have held that, as a matter of law, banks owe no duty to noncustomers that could subject banks to negligence claims of the type plaintiff advances here. This Court should reject the appellate court's departure from those well-reasoned decisions.

ARGUMENT

I. The Vast Majority of Jurisdictions Hold That Banks Do Not Owe A Duty To Noncustomers.

"The almost-universal law in this country is that banks owe a duty of care only to their own customers." *SFS Check, LLC v. First Bank of Delaware*, 774 F.3d 351, 357 (6th Cir. 2014) (collecting cases applying multiple states' laws); *see also Shooter Pops LLC v. Wells Fargo Bank, N.A.*, 649 F. Supp. 3d 62, 68 (E.D. Pa. 2023) (there is no common-law duty from bank to noncustomer under Restatement of Torts); *In re Terrorist Attacks on Sept. 11, 2001*, 349 F. Supp. 2d 765, 830 (S.D.N.Y. 2005) ("Banks do not owe non-customers a duty to protect them from the intentional torts of their customers."); *Renner v. Chase Manhattan Bank*, 1999 WL 47239, at *13-14 (S.D.N.Y. Feb. 3, 1999) (explaining "[i]t is well-settled" that a bank owes no duty to prevent its customer from defrauding a noncustomer).

Nor is this widespread rule foreign to Illinois, where at least one appellate decision acknowledges that "Illinois courts have consistently held that banks do not owe a general duty of care to noncustomers." *Praither v. Northbrook Bank & Tr. Co.*, 2021 IL App (1st) 201192, ¶ 21. And an Illinois district court, applying Illinois law, acknowledged that "[s]trong policy reasons . . . support this refusal to impose a general duty of care on banks" because, "given the large amount of business that runs through banks, a rule requiring banks to investigate and hold up transactions 'would pour molasses on the gears of commerce.'" *Setera v. Nat'l City Bank*, 2008 WL 4425446, at *4 (N.D. Ill. Sept. 26, 2008) (quoting *Bell Bros. v. Bank One, N.A.*, 116 F.3d 1158, 1160 (7th Cir. 1997)).

As one court explained, "the universal rule in this country [] holds that a bank's relationship is with its customer and that the bank owes third parties no duty of care to monitor a customer's activities." *El Camino Resources, LTD v. Huntington Nat'l Bank*, 722 F. Supp. 2d 875, 907 (W.D. Mich. 2010). That is because "the contract opening the bank account does not involve any implied duty to supervise account activity or to inquire into the purpose for which the funds are being used." *Tanisha Lovings v. Sparkles L. Adams*, 2026 WL 1455011, at *2 (C.D. Cal. Apr. 16, 2026) (internal quotation marks omitted). As another court observed in summarizing the nationwide state of the law, holding that banks owed a duty of care to noncustomers "would depart from the mainstream of American jurisprudence on this point." *Shane Smith Enters., Inc. v. Bank of Am., N.A.*, 2007 WL 1880201, at *3 (E.D. Ark. June 29, 2007). The court continued: "the overwhelming majority of courts have ruled that the bank did not owe a duty of reasonable care to the noncustomer" claiming that a bank's customer deposited fraudulently obtained funds. *Id.* at *2 (collecting cases).

Courts often rely on this prevailing weight of authority in refusing to adopt a duty like the one plaintiff seeks to create here. For instance, relying on the decisions of "[m]any other jurisdictions [that] have held that third party noncustomers are not owed a duty of care by a bank, absent a direct relationship or statutory duty," the Washington Court of Appeals held that a bank did not owe a duty to noncustomers allegedly defrauded by its account holders. *Zabka v. Bank of Am. Corp.*, 131 Wash. App. 167, 171-72 (Wash. App. 2005).

In adopting this bright-line rule, courts across the country have recognized the harms that would follow from imposing such a duty on banks to the virtually unlimited universe of noncustomers. In one of the leading opinions on the issue, the Fourth Circuit held that North Carolina law would not impose a duty of care on a bank to a noncustomer, reasoning that noncustomers comprise an "undefined and unlimited category of strangers who might interact" with a bank's customers, and the imposition of a duty of care to those strangers "would be contrary to the normal understanding of the purpose of a bank account and would expose banks to unlimited liability for unforeseeable frauds." *Eisenberg v. Wachovia Bank, N.A.*, 301 F.3d 220, 225 (4th Cir. 2002) (discussing *McCallum v. Rizzo*, 1995 WL 1146812 (Mass. Super. Ct. Oct. 13, 1995)); *see Bottom v. Bailey*, 238 N.C. App. 202, 209 (N.C. App. 2014) (agreeing with and applying *Eisenberg*); *see also Squeeze Me Once, LLC v. SunTrust Bank*, 2020 WL 12968001, at *12-13 (M.D. La. Aug. 3, 2020) (discussing and following *Eisenberg*). Such unlimited liability would have rippling effects throughout the economy.

For example, courts have focused on the fact that imposing additional, broad common-law duties on banks would "substantially impede[]" the "flow of commerce." *Karen Kane, Inc. v. Bank of Am.*, 67 Cal. App. 4th 1192, 1199 (Cal. App. 1998). Indeed, the duty plaintiff seeks to impose "would imperil both customer privacy and the expedited processing of banking transactions so crucial to a modern economy." *Kurtz-Ahlers, LLC v. Bank of Am., N.A.*, 48 Cal. App. 4th 952, 961 (Cal. App. 2020); *see also Chicago Title Ins. Co. v. Superior Ct.*, 174 Cal. App. 4th 1142, 1159 (Cal. App. 1985) (recognizing broad common-law duty would lead to "loss of privacy, expense and commercial havoc"). That is because "the present banking system operates under rules requiring banking transactions to be processed quickly and automatically and imposing strict deadlines for the payment or timely dishonor of checks." *Kurtz-Ahlers*, 48 Cal. App. 4th at 960 (internal quotation marks omitted). Imposing a duty that would slow the processing of transactions and wire transfers would undermine these important objectives.

Imposing such a duty also would result in overinclusive and burdensome account restrictions and closures based on mere allegations, disrupt legitimate banking activity, reduce certainty and finality in payments systems, harm consumers and businesses who depend on the efficient movement of funds and open accounts, and increase litigation and other risks that would distort the existing balance established by the UCC and banking regulations.

Against these obvious harms, courts have recognized no significant countervailing societal benefits from imposing a common-law duty to noncustomers. To start, the significant increased costs from the duty plaintiff requests would likely be passed on to the bank's customers. *Streifel v. Bulkley*, 195 Conn. App. 294, 320 (Ct. App. 2020) (noting that increased costs imposed by recognizing a new duty to a large group are often passed on to consumers). Additionally, the "villains in the story" are the fraudsters, not the bank. *Karen Kane*, 67 Cal. App. 4th at 1200. "Scoundrels who defraud . . . will no doubt find means to deflect investigatory" efforts from a bank. *Id.* The noncustomer is the person with "the most control and the most to win or lose" and therefore the person best placed to investigate whether a potential transaction may be fraudulent or involve a scam. *Karen Kane*, 67 Cal. App. 4th at 1199; *see also Shooter Pops*, 649 F. Supp. 3d at 70 (plaintiff "was in the best position to prevent the harm in the first place").

For all these reasons, the burden that this duty would impose on banks would be "out of proportion to the potential harm," "intrusive for the citizenry," and "would add to the cost of financial transactions, both in terms of time and money." *Kurtz-Ahlers*, 48 Cal. App. 4th at 962 (internal quotation marks omitted). Applying Indiana law, the Seventh Circuit held that, "given the enormous amount" of financial "traffic," it would be an unreasonable burden to impose a general duty of care "toward persons who are not their customers and to whom they therefore have no contractual obligations." *Conder v. Union Planters Bank, N.A.*, 384 F.3d 397, 399 (7th Cir. 2004).

Similarly, the Louisiana Supreme Court has held that "banks do not have a duty to third parties to investigate a customer's underlying transactions, because that 'would result in an unreasonable burden upon, and disruption of, regular and normal banking operations.'" *Guidry v. Bank of LaPlace*, 740 F. Supp. 1208, 1219 (E.D. La. 1990) (quoting *Shreveport Production Credit Ass'n v. Bank of Commerce*, 405 So. 2d 842, 846 (La. 1981)). Even 45 years ago, when *Shreveport Production* was decided, the court recognized that "[t]he banking industry handle[d] a tremendous volume of transactions, which involve small, as well as large, sums of money" in a complex financial system. 405 So. 2d at 845. Of course, the volume of transactions and complexity of the financial system has grown exponentially since then.

The New Jersey Supreme Court has explained that, under New York and New Jersey law, "absent a special relationship" between the bank and the noncustomer, "courts will typically bar claims of non-customers against banks." *City Check Cashing, Inc. v. Manufacturers Hanover Trust Co.*, 166 N.J. 49, 60-61 (N.J. 2001). The court held that, after "weighing the relationship of the parties, the nature of the risk, and the public interest in the proposed solution," a "transient and noncontractual relationship" with a noncustomer is insufficient to impose a duty of care on a bank. *Id*. at 59-60 (internal quotation marks omitted). Absent "any unique relationship" that would distinguish the case from typical commercial transactions carried out by banks, the court declined to undertake a "radical departure from well-established law" and impose a duty of care to noncustomers. *Id*. at 62. Similarly, a court recently reiterated the rule in Utah that "banks owe noncustomers no duty in the absence of a customer or contractual relationship." *Cache Valley Bank v. JPMorgan Chase Bank, N.A.*, 2026 WL 810661 at *5 (D. Utah Mar. 24, 2026).

The "near-universal" no-duty rule is a well-reasoned, bright-line standard adopted throughout the vast majority of the country. Illinois should follow the reasoning of the great weight of this authority and adopt the same bright-line rule.

II. The National-Consensus No-Duty Rule Is Consistent With Illinois's Negligence Principles.

Adopting the majority bright-line no-duty rule is also in step with Illinois's general rules regarding whether a duty exists in tort. "[T]he touchstone of this court's duty analysis is to ask whether a plaintiff and a defendant stood in such a *relationship* to one another that the law imposed upon the defendant an obligation of reasonable conduct for the benefit of the plaintiff." *Simpkins v. CSX Transp., Inc.*, 2012 IL 110662, ¶ 18 (internal quotation marks omitted) (emphasis in original). And the "relationship," in turn, is a "shorthand description" of the sum of four factors: "(1) the reasonable foreseeability of the injury; (2) the likelihood of the injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on defendant." *Id.*

The decisions discussed above establish that there is no "relationship" sufficient to impose a duty of care on banks to noncustomers. The general rule in Illinois is that "individuals (and businesses) do not owe an affirmative duty to protect or rescue a stranger." *Id.* at ¶ 19. As to foreseeability, there is no practical limiting principle to support the duty plaintiff wants; as other courts have recognized, a bank's customers may come into contact with an undefinable and unlimited group of individuals, *see Eisenberg*, 301 F.3d at 225, and holding that a scam transaction regarding any member of that massive group would be foreseeable would effectively eliminate the foreseeability analysis, *see Simpkins*, 2012 IL 110663, ¶ 19 (business does not owe a "duty to the world at large").

And as the decisions adopting the bright-line no-duty rule repeatedly hold, the magnitude of the burden that a duty would impose on banks would be enormous. The common-law duty plaintiff desires would require banks to review all accounts prior to all incoming transfers to see if the account has been the subject of a prior scam claim and then determine whether to credit the account or block the transfer. Not only would that require an enormous expenditure of resources, but it is irreconcilable with banks' obligations to promptly process transfers. Further, and as explained more fully by the Clearing House *amici*, such a duty would burden banks by shifting the financial loss to them, in contradiction to the allocation of responsibilities under the UCC and federal law. Additionally, such a duty would not be effective, as banks are poorly positioned to detect scams relating to noncustomers. As discussed above, the noncustomer is the person with "the most control and the most to win or lose" and therefore the person best placed to investigate whether a potential transaction may be fraudulent or involve a scam. The bright-line no-duty rule, therefore, is entirely consistent with Illinois's general negligence duty rules.

* * *

Banks already work tirelessly to monitor accounts and detect suspicious activity. *Amici's* members devote enormous time, money, and resources to protect their customers and communities from fraud and scam attempts that occur thousands of times per second.[2] They also dedicate considerable

[2] Illinois Bankers Association, *Re: Request for Information on Potential Actions to Address Payments Fraud*, Office of the Comptroller of Currency Docket ID

resources to educate their customers about how to avoid fraud and scam schemes.[3] The ABA conducts fraud and scam-prevention campaigns for its members.[4] Likewise, the Chamber works to educate small businesses on fraudulent schemes, including providing them with information about protecting their bank accounts from scammers.[5] Despite significant and sustained educational efforts, customers continue to fall prey to scammers.

But exposing banks to liability for harms suffered by noncustomers is an overcorrection that imposes substantial costs on customers, businesses, and the broader economy. Whether by slowing down transaction processing, increasing transfer costs, prompting unnecessary payment blocks, or encouraging the premature closure of accounts, such a duty would produce consequences that far outweigh any purported benefits of the plaintiff's proposal rule. For these reasons, this Court should reverse the decision below and adopt the consensus no-duty rule.

OCC-2025-0009,-0125, at 2-3 (Sept. 18, 2025), https://www.regulations.gov/comment/OCC-2025-0009-0125.

[3] *See id.*

[4] *See, e.g.*, https://www.aba.com/advocacy/community-programs/fight-fraud

[5] *See, e.g.*, U.S. Chamber of Commerce, *How to Prevent Bank Fraud and Protect Your Business Account*, https://www.uschamber.com/co/run/technology/how-to-prevent-bank-fraud-and-protect-business-accounts; U.S. Chamber of Commerce, https://www.uschamber.com/co/run/finance/protecting-bank-accounts.

CONCLUSION

For the foregoing reasons, the Court should reverse the appellate court's decision, affirm the circuit court's determination that Fifth Third owed no duty to plaintiff, and remand for further proceedings.

August 5, 2026

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Rule 341(c) Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table contents and statement of points and authorities, the Rule 341(c) certification of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 13 pages.

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