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Supreme Court Case Number 26S-EX-00127

IN THE INDIANA SUPREME COURT

CITIZENS ACTION COALITION OF INDIANA AND VOTE SOLAR, *Appellants – Intervenors Below*, v. DUKE ENERGY INDIANA, LLC AND INDIANA UTILITY REGULATORY COMMISSION, *Appellees (Petitioner and Administrative Agency Below)*	Appeal from Indiana Utility Regulatory Commission IURC Cause No. 46193 The Hon. James F. Huston, Chair The Hon Davis E. Veleta, The Hon David E. Ziegner, Commissioners The Hon Loraine Seyfried, Chief Administrative Law Judge

BRIEF *AMICI CURIAE* OF AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION, ASSOCIATED GENERAL CONTRACTORS OF AMERICA, ASSOCIATED GENERAL CONTRACTORS OF INDIANA, INDIANA CONSTRUCTORS, INC., INDIANA ASSOCIATION OF REALTORS®, INDIANA BUILDERS ASSOCIATION, NATIONAL APARTMENT ASSOCIATION, NATIONAL ASSOCIATION OF HOMEBUILDERS, NATIONAL ASSOCIATION OF REALTORS®, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., NATIONAL RETAIL FEDERATION, RESTAURANT LAW CENTER, AND RETAIL LITIGATION CENTER

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STATEMENT OF INTEREST OF *AMICI*

Amici in this case represent a diverse group of industry associations including wholesaler-distributors, home builders, food service, retail, small businesses, automotive and transportation, and realtors. Together this coalition captures hundreds of thousands of businesses that employ tens of millions of Americans and contribute trillions of dollars to the economy. These industry associations keep America and Indiana functioning. *Amici* advocate for their millions of members and affiliates in courts around the country, through litigation and *amicus* briefs. As associations that have frequently litigated on behalf of members or otherwise supported associational litigation, *amici* are well-suited to answer this Court's questions about the benefits of associational standing, and whether the Court should recognize the doctrine. *See Citizens Action Coal. of Ind.*, 277 N.E.3d at 1 (calling for amicus briefs on the issue).

INTRODUCTION & SUMMARY OF ARGUMENT

Recognized by federal courts, the doctrine of associational standing allows "an organization [to] sue to redress its members' injuries . . . without a showing of injury to the association itself[.]" *United Food & Commer. Workers Union Local 751 v. Brown Grp.*, 517 U.S. 544, 552 (1996). For at least three reasons, this Court should recognize the doctrine as well.[1]

First, associational standing serves practical benefits for large groups of citizens and industry stakeholders, and, in turn, it streamlines litigation and

[1] *Amici* take no position on the application of the doctrine to the facts of this case.

preserves judicial resources. Among other benefits, the doctrine allows already-aligned plaintiffs to coordinate with one another, share expertise, and pool resources, which, in turn, sharpens their cases and the adversarial process generally. It also allows plaintiffs to maintain anonymity, which reduces the risk of reprisal.

Second, associational standing, like individual standing, respects the separation of powers because it requires discernable injury to members like in traditional cases. That ensures cases are concrete, and it prevents the judiciary from deciding abstract policy disputes that must be left to the political branches. In other words, an associational standing case is jurisdictionally similar in all material respects to individual litigation, except that the association stands in the shoes of members who otherwise would have standing as litigants.

Third, the doctrine—as applied by state and federal courts—has sufficient parameters to prevent a flood of associational cases. Supreme courts that have adopted the associational standing doctrine impose several layers of scrutiny before allowing an association to sue in the shoes its members. Those hurdles prevent associational standing from opening the floodgates to interest group-litigation.

ARGUMENT

I. ASSOCIATIONAL LITIGATION BENEFITS LARGE GROUPS OF STAKEHOLDERS AND THE ENTIRE COURT SYSTEM

Associational litigation can be an effective tool for large groups of stakeholders with already aligned interests, and it benefits the judicial system.

As the U.S. Supreme Court has recognized, associational standing allows similarly situated plaintiffs to coordinate, share expertise, and pool capital to more

effectively advocate for their interests: "The only practical judicial policy when people pool their capital, their interests, or their activities under a name and form that will identify collective interests, often is to permit the association or corporation in a single case to vindicate the interests of all." *Int'l Union v. Brock*, 477 U.S. 274, 290 (1986) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 187 (1951) (Jackson, J., concurring)). Indeed, most members join associations for that very reason—to advocate for their shared interests, including in court. *See NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 459 (1958) (association "is but the medium through which its individual members seek to make more effective the expression of their views.").

Associational standing also sharpens and streamlines the adversarial process for all participants. With the collective expertise of multiple stakeholders and their associational representative, courts have better information and can more intelligently decide cases: the "interest and expertise of this plaintiff, when exerted on behalf of its directly affected members, assure 'that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult . . . questions." *Int'l Union*, 477 U.S. at 290 (quoting *Harlem Valley Transp. Ass'n v. Stafford*, 360 F. Supp. 1057, 1065 (S.D.N.Y. 1973)).

Associational standing also promotes judicial economy by reducing the number of lawsuits necessary to protect the aligned interests of multiple injured persons. This is because "[o]ne plaintiff can, in a single lawsuit, adequately represent, and perhaps vindicate, the interests of many of its members, thus avoiding repetitive and costly

independent actions." *Conn. Ass'n of Health Care Facilities, Inc. v. Worrell*, 508 A.2d 743, 747 (Conn. 1986). Therefore, "[p]ermitting the association or organization to sue to protect the interests of its members avoids multiplicity of suits by similarly situated plaintiffs involving the same or similar causes of action and provides an efficient and expeditious method of adjudicating disputes." *Id.* at 747–48 (citing *Snyder v. Callaghan*, 284 S.E.2d 241, 251 (W. Va. 1981)); *accord Individual Members of the Med. Licensing Bd. of Ind. v. Anonymous Plaintiff 1*, 233 N.E.3d 416, 434 (Ind. Ct. App. 2024) (citing *Save the Valley, Inc. v. Indiana-Ky. Elec. Corp.*, 820 N.E.2d 677, 680–81 (Ind. Ct. App. 2005)).

Finally, associational standing serves an important protective function for injured potential plaintiffs who have a legitimate fear of retaliation, especially in litigation involving government officials or political adversaries. In *NAACP v. Alabama ex rel Patterson*, for example, the Court recognized that revealing the identity of members can expose them to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U.S. 449, 463 (1958). Under those circumstances, the Court found it appropriate to allow those members "to pursue their collective effort to foster beliefs which they admittedly have the right to advocate." *Id.* Like the U.S. Supreme Court, the Indiana Court of Appeals has explained that "associations are generally less susceptible than individuals to retaliations by officials responsible for executive challenged policies." *Save the Valley, Inc.*, 820 N.E.2d at 681. This fear of reprisal is a real threat in the business world too because they face the risk of regulatory retaliation from state actors for exercising

their right to petition the courts. For example, in one instance where one of NFIB's members joined as a party in a lawsuit that challenged regulations imposed by a state agency, that member thereafter found themselves in significant disputes with their local county. Moreover, the risk of retaliation for builders challenging government action is so well known that "your first lawsuit is your last permit" is now a building industry aphorism. Associational standing allows industry associations like *amici* to step in and protect their members from this sort of reprisal.

II. ASSOCIATIONAL STANDING RESPECTS THE SEPARATION OF POWERS AND LIMITED JURISDICTION OF THE COURTS

Associational standing is a functional doctrine that makes litigation efficient, while also not undermining formal separation of powers and constitutional principles. For those reasons, the U.S. Supreme Court and over thirty state supreme courts have upheld it against constitutional challenge.[2] That is because, simply put, associational plaintiffs must show that the members for whom they are advocating have their own, independent stake in the outcome. That ensures cases involve concrete disputes so that courts do not decide abstract policy issues or render advisory decisions.

In the federal judicial system, standing doctrine flows from Article III's case-or-controversy requirement. *See* U.S. Const. art. III, § 2; *see also Hein v. Freedom*

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[2] *See, e.g., Fla. Home Builders Ass'n v. Dep't of Labor & Emp. Sec.,* 412 So. 2d 351, 353 (Fla. 1982); *Idahoans for Open Primaries v. Labrador*, 533 P.3d 1262, 1272 (Idaho 2023); *1000 Friends of Iowa v. Polk Cnty. Bd. of Supervisors*, 19 N.W.3d 290, 299 (Iowa 2025); *Kan. Bldg. Indus. Workers Comp. Fund v. State*, 359 P.3d 33, 52 (Kan. 2015); *Mo. State Conf. of the NAACP v. State*, 730 S.W.3d 550, 564–65 (Mo. 2026); *D.A. Davidson & Co. v. Slaybaugh*, 558 P.3d 1100, 1107 (Mont. 2024); *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 690 (Tex. 2022); *Utah Chapter of the Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960, 967–68 (Utah 2006).

from Religion Found., Inc., 551 U.S. 587, 597–98 (2007). Therefore, to establish standing, a plaintiff must demonstrate a "personal stake" in the dispute—meaning "(i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 379–80 (2024). If the plaintiff does not have a personal stake in the dispute, then the case amounts to a political disagreement and puts the court in the position of issuing advisory opinions. That violates the separation of powers because the court usurps the legislative role. *See Valley Forge Christian Coll. v. Americans United for Separation of Church & State*, 454 U.S. 464, 473 (1982) (absent Article III standing, courts become "merely publicly funded forums for the ventilation of public grievances"); *see also All. for Hippocratic Med.*, 602 U.S. at 380 ("The standing requirement means that the federal courts decide some contested legal questions later rather than sooner, thereby allowing issues to percolate and potentially be resolved by the political branches in the democratic process.").

Associational standing preserves those boundaries, as groups asserting associational standing must show their members would have Article III standing on their own, meaning the members could otherwise bring a lawsuit individually. *See Nat'l Motor Freight Traffic Ass'n v. United States*, 372 U.S. 246, 247 (1963) ("Since individual member carriers of appellants will be aggrieved by the Commission's order, and since appellants are proper representatives of the interests of their

members, appellants have standing to challenge the validity of the Commission's order in the District Court.").

While "the Indiana Constitution has no 'case or controversy' requirement at all," its "explicit separation of powers clause fulfills a similar function." *Pence v. State*, 652 N.E. 2d 486, 488 (Ind. 1995) (citing Ind. Const. art. 3, § 1). As in federal court, standing doctrine in Indiana asks, "whether the plaintiff is the proper person to invoke a court's authority." *Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019). And, in doing so, standing "restrains the judiciary to resolving real controversies in which the complaining party has a demonstrable injury." *Pence*, 652 N.E.2d at 488 (citation omitted). Given standing doctrine serves parallel interests in the Indiana and federal systems, this Court has referred to them as "analogous." *State ex rel Cittadine v. Ind. DOT*, 790 N.E.2d 978, 979 (Ind. 2003).

Accordingly, for the same reasons that associational standing complies with the U.S. Constitution, it also satisfies Indiana's requirement that its judiciary only resolves "real controversies," *Schloss v. Indianapolis*, 553 N.E.2d 1204, 1206 (Ind. 1990), because associations *must* show that at least some of their members will suffer "threatened or actual injury." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976). Associational standing therefore does not risk converting the "judicial process into no more than a vehicle for the vindication of the value interests of concerned bystanders," *Valley Forge Christian Coll.*, 454 U.S. at 473 (citation omitted), or trampling on the political branches by providing a forum "to press general complaints about the way in which government goes about its business." *All. for. Hippocratic*

Med., 602 U.S. at 379 (citation omitted). Associational standing therefore comports with this Indiana's traditional standing doctrine and its constitutional separation of powers.

III. ASSOCIATIONAL STANDING WOULD NOT OPEN THE FLOODGATES TO INTEREST-GROUP LITIGATION

If this Court recognizes the doctrine of associational standing, it will not open the floodgates to interest-group litigation. If anything, as noted, it would *reduce* burdens on the courts by streamlining cases and consolidating litigants into one rather than multiple suits. Further, courts that apply associational litigation not only ensure that there is constitutional standing at the threshold but also that the vehicle is prudential. That prevents superfluous interest-group lawsuits and ensures that the vehicle is appropriate for the type of case at hand and relief sought.

Specifically, courts perform two layers of analysis before finding an association has standing. "[A]ssociational standing requires establishing everything that an individual plaintiff would have to establish, *plus* satisfying additional burdens that apply only to associational standing." *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 691 (Tex. 2022) (emphasis added). These hurdles serve as constitutional and functional safeguards against an influx of interest-group litigation. This Court could apply the same safeguards if it recognizes the doctrine in Indiana.

The Supreme Court in *Hunt* outlined the operative three-part test for associational standing. A group must show: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested

requires the participation of individual members in the lawsuit." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). These requirements have prevented—and will continue to prevent—associational standing from opening the courthouse doors to any advocacy group who takes umbrage at governmental or private action.

Enforcing those limitations, the U.S. Supreme Court and state courts have rejected associational standing for groups who fail to meet *Hunt's* requirements. *Simon*, 426 U.S. at 40–45 (groups' members lacked concrete injury and thus denied associational standing); *Muth v. Voe*, 2026 Tex. LEXIS 353, *10–*11 (Tex. 2026) (group could not satisfy associational standing requirements when its members' claims became moot); *Kan. Bar Ass'n v. Judges of the Third Judicial Dist.*, 14 P.3d 1154, 1160 (Kan. 2000) (no associational standing when group failed to show its members had standing). This Court declined to find associational standing when a county did not serve "a specific associational purpose on behalf of its residents[.]" *Bd. of Comm'rs of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 169–70 (Ind. 2017).[3] This Court could continue to apply the same safeguards if it recognizes associational standing.

The U.S. Supreme Court has shown that standing requirements for individual members can be rigorously applied to deny associational standing. In *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), the Court found that pro-life medical

[3] The Court declined to recognize associational standing in that case because the plaintiff would not qualify anyway. *McGuiness*, 80 N.E.3d at 170.

associations challenging the FDA's approval of the abortifacient drug Mifepristone lacked standing. *Id.* at 377, 394–96. The Court applied its three-part standing test—(1) injury in fact; (2) causation; and (3) redressability—to find that, to the extent the medical associations represented the interests of their individual doctor-members, they failed to show injury or causation. *Id.* at 385–86. The doctor-members were not directly regulated by the FDA's action and asserted only (1) a moral objection to others' use of Mifepristone; (2) the speculative prospect that they *may* have to perform emergency abortions because of the drug; and (3) the possible diversion of resources to address Mifepristone-related complications. *Id. at* 390–93. These harms were "simply too speculative or too attenuated to support Article III standing." *Id.* at 393.

In *Alliance for Hippocratic Medicine* the Court also denied the associations' standing in their own right. The associations asserted that the FDA's actions caused them "to conduct their own studies on mifepristone so that the associations can better inform their members and the public about mifepristone's risks" which required them to "expend considerable time, energy, and resources drafting citizen petitions to FDA, as well as engaging in public advocacy and public education." *Id.* at 394 (internal quotation marks omitted). This was not enough—an association "cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way." *Id.* Thus, for an association to address its abstract moral, political, or philosophical objections to a defendant's conduct when neither it nor its members

suffer concrete injury, it "may present [its] concerns and objections to the President . . . or to Congress," but not the courts.

***

Because associational standing doctrine imposes constitutional hurdles *and* prudential testing, it will not open the flood gates to litigation over abstract cultural, political, or economic issues. This is why associational standing has existed and been applied by courts for decades without serious challenge at the U.S. Supreme Court. Associational standing will only benefit litigants and the courts by streamlining cases, ensuring efficient and expert presentation of widespread legal issues, and protecting stakeholders from retribution.

CONCLUSION

For these reasons, and others, this Court should recognize the doctrine of associational standing. *Amici* take no position on the outcome of this case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief contains no more than 4,200 words, as determined by the word processing system used to prepare the document (Microsoft Word 2016).

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CERTIFICATE OF SERVICE

I certify that on June 9, 2026, copies of the foregoing Motion and Brief were filed electronically served electronically upon the following via the IEFS:

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