

**IN THE
INDIANA SUPREME COURT**

Citizens Action Coalition of Indiana and Vote Solar, Appellants, v. Duke Energy Indiana, LLC and Indiana Utility Regulatory Commission, Appellees.	Supreme Court Case No. 26S-EX-127 Court of Appeals Case No. 25A-EX-2999 IURC Case No. 46193
--	--

BRIEF OF *AMICI CURIAE* CLEAN GRID ALLIANCE, EARTH CHARTER INDIANA, ENVIRONMENTAL LAW & POLICY CENTER, GARY ADVOCATES FOR RESPONSIBLE DEVELOPMENT, HOOSIER ENVIRONMENTAL COUNCIL, INDIANA AUDUBON SOCIETY, INDIANA CONSERVATION VOTERS, JUST TRANSITION NORTHWEST INDIANA, SAVE THE DUNES CONSERVATION FUND, INC., SIERRA CLUB-HOOSIER CHAPTER, SOLAR UNITED NEIGHBORS, and SURFRIDER FOUNDATION IN SUPPORT OF ASSOCIATIONAL STANDING

Kim E. Ferraro, Attorney No. 27102-64
Noah B. Hines, Attorney No. 38889-02
Conservation Law Center
116 South Indiana Avenue
Bloomington, Indiana 47408
812/856-5737
kimferra@iu.edu
nbhines@iu.edu

Counsel for Amici Curiae

TABLE OF CONTENTS

STATEMENT OF INTEREST OF <i>AMICI</i>	1
SUMMARY OF THE ARGUMENT.....	2
ARGUMENT.....	3
I. THE INDIANA COURT OF APPEALS DID NOT “UNCRITICALLY” ADOPT THE <i>HUNT</i> FRAMEWORK.	3
II. THE CONSTITUTIONALLY RECOGNIZED REPRESENTATIVE FUNCTION SERVED BY ASSOCIATIONAL STANDING CANNOT BE REPLACED BY ORGANIZATIONS FUNDING MEMBER LAWSUITS OR PURSUING CLASS ACTIONS.	8
CONCLUSION.....	14
WORD COUNT CERTIFICATE	15
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

Cases

<i>Board of Commissioners of Allen County v. Northeastern Indiana Building Trades Council</i> , 954 N.E.2d 937 (Ind. Ct. App. 2011).....	4, 5
<i>Bhd. of Maint. of Way Employees Div. v. Indiana Harbor Belt R.R.</i> , 20 F. Supp. 3d 686 (N.D. Ind. 2014)	13
<i>Citizens Action Coalition of Indiana v. Duke Energy Indiana, LLC</i> , 268 N.E.3d 785 (Ind. Ct. App. 2025).....	5, 6
<i>Gary Advocates for Responsible Development v. Fulcrum Centerpoint LLC</i> , Ind. Office of Environmental Adjudication No. 10-W-J-4386	11
<i>Gilday & Assocs., P.C. v. Marion Cty. Assessor</i> , 176 N.E.3d 1000 (T.C. Sep. 15, 2021)	9
<i>Gunderson v. State</i> , 90 N.E.3d 1171 (Ind. 2018)	5
<i>Himsel v. Himsel</i> , Hendricks Super. Ct. No. 32D04-1510-PL-000150	10
<i>Hoosier Environmental Council v. Ind. Dept. of Env. Mgmt.</i> , Morgan Cir. Ct. No. 55C01-2503- RA-000691	12
<i>Huffman v. Indiana Office of Environmental Adjudication</i> , 811 N.E.2d 806 (Ind. 2004).....	9
<i>Hunt v. Washington State Apple Advertising Commission</i> , 432 U.S. 333 (1977).....	<i>passim</i>
<i>Ind. Family & Soc. Servs. Admin. v. Anderson</i> , 155 N.E.3d 621 (Ind. Ct. App. 2020).....	9
<i>Individual Members of the Medical Licensing Board of Indiana v. Anonymous Plaintiff 1</i> , 233 N.E.3d 416 (Ind. Ct. App. 2024).....	5, 6
<i>International Union, UAW v. Brock</i> , 477 U.S. 274 (1986).....	12, 13, 14
<i>Jones v. Sullivan</i> , 703 N.E.2d 1102 (Ind. Ct. App. 1998).....	9
<i>Maya Energy, LLC v. Hoosier Environmental Council, Inc.</i> , Lake Super. Ct. No. 45D10-1807- PL-000229	10

Brief of *Amici Curiae*

<i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 449 (1958).....	8, 9, 14
<i>Natural Resources Defense Council v. POET Biorefining–North Manchester, LLC</i> , 15 N.E.3d 555 (Ind. 2014).....	5
<i>Retail, Wholesale & Department Store Union v. Standard Brands, Inc.</i> , 540 F.2d 864 (7th Cir. 1976).....	13
<i>Retired Chicago Police Ass’n v. City of Chicago</i> , 7 F.3d 584 (7th Cir. 1993).....	13
<i>Save the Dunes Conservation Fund, Inc. v. Ind. Dept. of Natural Resources</i> , Porter Super. Ct. No. 64D05-2512-RA-013842.....	12
<i>Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.</i> , 820 N.E.2d 677 (Ind. Ct. App. 2005).....	2, 4, 5
<i>Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.</i> , 824 N.E.2d 776 (Ind. Ct. App. 2005).....	4
<i>Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.</i> , 841 N.E.2d 179 (Ind. 2005).....	4
<i>State ex rel. Cittadine v. Ind. DOT</i> , 790 N.E.2d 978 (Ind. 2003).....	6
<i>State ex rel. Steinke v. Coriden</i> , 831 N.E.2d 751 (Ind. Ct. App. 2005).....	9
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> , 600 U.S. 181 (2023).....	7
<i>United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.</i> , 517 U.S. 544 (1996).....	7, 8
Statutes & Constitutional Provisions	
Ind. Code § 4-21.5-3-7(a)(1)(B)	14
Ind. Code § 4-21.5-3-7(a)(3)(A)	13
U.S. Const. art. I.....	6
U.S. Const. art. III.....	<i>passim</i>

Other Authorities

<i>Common-Law and Statutory Solutions to the Problem of SLAPPS</i> , 26 Loy. L.A. L. Rev. 395 (1993).....	11
<i>SLAPPS: Strategic Lawsuits Against Public Participation</i> , 7 Pace Envtl. L. Rev. 3, 5 (1989).....	11

STATEMENT OF INTEREST OF *AMICI*

Amici are twelve environmental, conservation, community, and clean energy organizations that collectively represent thousands of Hoosiers and business interests who share a common commitment to protecting Indiana's natural resources, public health, and quality of life. Through their respective missions, *Amici* work to protect Indiana's lakes, rivers, wetlands, forests, wildlife, and communities while facilitating informed decision-making and meaningful public participation in government processes. *Amici* are substantively aligned with Appellants Citizens Action Coalition and Vote Solar and submit this brief to offer *Amici's* collective perspective on the role associational standing has played in protecting the environment and advancing responsible energy resource development in Indiana.

Public participation and citizen enforcement are foundational to federal and state environmental and energy laws, facilitating informed agency decision-making, safeguarding due process rights of affected communities and stakeholders, and ensuring effective implementation of environmental protections and energy policies. Environmental and clean energy organizations play an essential role in carrying out these functions by enabling members to participate meaningfully in complex permitting, administrative, and judicial proceedings that they could not realistically navigate on their own. Indeed, many of *Amici's* members are laypersons who lack the time, resources, technical expertise, or financial ability to monitor and participate in highly technical and complex environmental or energy proceedings. Instead, they rely on *Amici* to undertake those responsibilities on their behalf. In turn, *Amici* rely on associational standing to represent their members' interests in court and have done so in numerous administrative and judicial proceedings concerning air pollution, water quality, energy regulation, public trust, wetlands, industrial permitting, and environmental justice. Because this case concerns whether

associational standing will remain available in Indiana, *Amici* have a direct institutional interest in the Court's resolution of that question.

SUMMARY OF THE ARGUMENT

Four Indiana appellate panels have embraced the doctrine of associational standing adopted in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). The arguments advanced by the Indiana Utility Regulatory Commission ("IURC"), Duke Energy Indiana, LLC ("Duke"), and their *amici* provide no persuasive reason for Indiana to change course now.

Their principal argument is that the Indiana Court of Appeals "uncritically" adopted the *Hunt* framework without reconciling it to Indiana's constitutional standing requirements. This is incorrect. Beginning with *Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.*, 820 N.E.2d 677, 682 (Ind. Ct. App. 2005) and continuing through the Court of Appeals' decision in this case, four panels of the appellate court examined associational standing through the lens of Indiana's direct-injury requirement and each time concluded that the *Hunt* framework is consistent with that requirement.

The one law review article on which Duke and the IURC principally rely provides no basis for abandoning Indiana's appellate precedent. Its criticisms are directed at Article III and federal procedural rules, not Indiana's standing doctrine. Moreover, those academic criticisms have been squarely rejected by federal courts. Indeed, the U.S. Supreme Court has repeatedly held that the *Hunt* test itself is squarely grounded in Article III. The Court also rejected the contention that associational standing circumvents class protections afforded by Federal Rule of Civil Procedure 23. A single academic critique cannot outweigh two decades of carefully reasoned Indiana appellate decisions that are in turn supported by nearly fifty years of consistent federal precedent.

Furthermore, neither funding member lawsuits nor pursuing class actions are adequate substitutes for associational standing, particularly in the context of complex environmental and

energy litigation. Appellees' arguments to the contrary mischaracterize associational standing as a prudential doctrine that exists merely to advance policy objectives. But the *Hunt* framework is rooted in constitutional standing principles, and it preserves the constitutionally recognized relationship between an organization and its members—a relationship not preserved by funding member lawsuits or pursuing class actions.

In the environmental and energy contexts, litigation is rarely the beginning of representation. More often, it is the culmination of years of representative work. Members often rely on environmental and clean energy organizations to monitor agency proceedings, evaluate complex scientific, economic, and legal issues, and represent their shared interests throughout the regulatory process. To require the organization to relinquish that representative role at the critical point when judicial involvement becomes necessary would sever the continuity of representation that associational standing is designed to preserve. The Court should affirm the Indiana Court of Appeals' embrace of associational standing.

ARGUMENT

I. THE INDIANA COURT OF APPEALS DID NOT “UNCRITICALLY” ADOPT THE *HUNT* FRAMEWORK.

Relying primarily on a recent law review article and a decision of the Georgia Supreme Court, Duke asserts that the Indiana Court of Appeals has “uncritically” followed other states in “jump[ing] on the associational standing bandwagon” based solely on the doctrine’s “claimed policy benefits.” Duke Mot. to Dism. at 13-14. According to Duke, “[n]one of the four Indiana Court of Appeals decisions that approve associational standing reconciles the doctrine with the constitutionally based standing requirements articulated and enforced by this Court.” Duke Mot. to Dism. at 11. This is simply not so.

In 2005, the Court of Appeals in *Save the Valley* considered whether environmental organizations could rely on associational standing under the Administrative Orders and Procedures Act (“AOPA”) to appeal a permit issued by the Indiana Department of Environmental Management (“IDEM”). 820 N.E.2d at 677-78. Before concluding the organizations could, the court surveyed the decisions of twenty-four state supreme courts—from Alabama and Arizona to Oklahoma, Texas, and West Virginia—that had already adopted the *Hunt* framework. 820 N.E.2d at 680. The court then considered the policy rationales underlying the doctrine. *Id.* at 680–81. It next examined Indiana precedent before concluding that associational standing is consistent with Indiana law, including the AOPA, because the organizations were proceeding on behalf of specific members who themselves were aggrieved by IDEM’s permitting decision. *Id.* at 681–82. The Court of Appeals reaffirmed that conclusion on rehearing. *Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.*, 824 N.E.2d 776, 776 (Ind. Ct. App. 2005). And this Court denied transfer. *Save the Valley, Inc. v. Ind.-Kentucky Elec. Corp.*, 841 N.E.2d 179 (Ind. 2005).

Six years later, in *Board of Commissioners of Allen County v. Northeastern Indiana Building Trades Council*, the Court of Appeals again considered whether an association could sue on its members’ behalf, this time in the context of a labor dispute. 954 N.E.2d 937, 941 (Ind. Ct. App. 2011). Like in *Save the Valley*, the court explained that Indiana’s standing doctrine turns on whether the plaintiff is the proper party to invoke the court’s authority and whether the litigation will be actively and vigorously contested. *Id.* Only then did the court reaffirm that an association satisfies these principles when it meets the three-part *Hunt* test. *Id.*

In the following years, Indiana appellate courts, including this Court, continued deciding cases brought by organizational plaintiffs on behalf of their members without questioning that associational standing is anything but consistent with Indiana law. For example, in *Natural*

Resources Defense Council v. POET Biorefining–North Manchester, LLC, this Court resolved a challenge brought by an environmental organization to IDEM’s interpretation and implementation of the federal Clean Air Act—a case presenting important questions regarding the regulation of certain major sources of air pollution in Indiana. 15 N.E.3d 555, 559-61 (Ind. 2014). Likewise, in *Gunderson v. State*, this Court decided a landmark case defining the legal boundary of Lake Michigan’s public trust shoreline after environmental organizations sought to protect its members’ rights, as well as the public trust rights shared by all Hoosiers, to access and enjoy one of Indiana’s most treasured natural resources. 90 N.E.3d 1171, 1173 (Ind. 2018). Not only was associational standing uncontroversial in both cases, but they illustrate the critical role the doctrine has played in bringing discrete issues of statewide importance before Indiana’s appellate courts.

More recently, the Court of Appeals in *Individual Members of the Medical Licensing Board of Indiana v. Anonymous Plaintiff 1* expressly addressed the relationship between Indiana’s constitutional standing requirements and associational standing. 233 N.E.3d 416 (Ind. Ct. App. 2024). There, the State argued that a religious organization lacked standing because it had not itself suffered an injury. *Id.* at 432. Rejecting that argument, the court explained that although plaintiffs must always satisfy Indiana’s “irreducible minimum” standing requirements, associational standing addresses a different question: whether an organization may assert claims on behalf of members who themselves satisfy those constitutional requirements. *Id.* Following *Save the Valley, Board of Commissioners*, and the overwhelming weight of federal and out-of-state authority, the court reaffirmed that the *Hunt* framework “is the proper test for determining whether associational standing exists” and is consistent with Indiana’s direct-injury requirement. *Id.* at 434.

Most notably, in the underlying appeal before this Court, another unanimous panel of the Court of Appeals confronted the very arguments Duke renews here. *Citizens Action Coalition of*

Indiana v. Duke Energy Indiana, LLC, 268 N.E.3d 785 (Ind. Ct. App. 2025). In rejecting those arguments, the court again considered Indiana’s constitutional standing principles, recognizing that an association, like any other plaintiff, must satisfy Indiana’s requirement that there be an actual injured party. *Id.* at 790–91. It then concluded that Citizens Action Coalition (“CAC”) satisfied the injury requirement because its members are Duke ratepayers and have standing in their own right, the members’ rate claims are germane to CAC’s mission, and those claims do not require the members’ participation. *Id.* at 791–92. As the court put it: “In the language of Indiana’s established law of standing, a direct injury to an association member that is related to that association’s purpose *is* a direct injury to the association.” *Id.* at 791(emphasis in original).

Notably, in rejecting Duke’s contention that it is “impossible” to reconcile associational standing with Indiana’s “direct injury” requirement (Duke Mot. to Dism. at 13), the Appeals Court found it “especially compelling that the federal judiciary, which is generally limited by the subject matter of federal law, *see* U.S. Const. art. I, the ‘case and controversy’ requirement of Article III of the U.S. Constitution, and the reservation of undelegated powers to the States or the People, *see* U.S. Const. amend. X, has adopted associational standing.” *Id.* at 791. Accordingly, the court reasoned that since “[t]he federal judiciary with its expressly limited reach has no qualms with associational standing; neither should Indiana’s broader, plenary judiciary.” *Id.* That conclusion is consistent with this Court’s directive that excessive formalism be avoided in applying Indiana’s standing doctrine. *See State ex rel. Cittadine v. Ind. DOT*, 790 N.E.2d 978, 979 (Ind. 2003) (explaining, “[w]hile this Court respects the separation of powers, we do not permit excessive formalism to prevent necessary judicial involvement. Where an actual controversy exists we will not shirk our duty to resolve it.”) Plainly, the Indiana Court of Appeals did not “uncritically” adopt the *Hunt* framework for associational standing.

Nevertheless, Duke and the IURC invite this Court to abandon two decades of Indiana precedent in favor of a recent law review article advancing academic criticism that associational standing conflicts with Article III and Federal Rules of Civil Procedure. Duke Mot. to Dism. at 16-19. This Court should reject the invitation. Even in the federal system where standing is constrained by Article III’s “case or controversy” requirement and a constitutional separation of powers more restrictive than Indiana’s, the U.S. Supreme Court has for nearly five decades recognized the *Hunt* framework as consistent with Article III. *See, e.g., Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333 (1977); *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544 (1996); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

Contrary to the IURC’s contention that the Supreme Court has never “offer[ed] a constitutional justification” for associational standing and has, instead, “simply adopted the doctrine as a means of representative litigation,” IURC Mot. to Dism. at 15, the Court’s decision in *United Food* shows otherwise. There, the Supreme Court undertook a detailed examination of the *Hunt* test and explained that its first requirement—that at least one member would have standing to sue—is itself grounded in Article III’s case-or-controversy requirement. 517 U.S. 544 at 554-55. The Court further explained that the second prong of the *Hunt* test, “that an association plaintiff be organized for a purpose germane to the subject of its member’s claim,” is likewise grounded in Article III because it assures “that the association’s litigators will themselves have a stake in the resolution of the dispute and, thus be in a position to serve as the defendant’s natural adversary.” *Id.* at 555-56. Only the third *Hunt* requirement—that neither the claim asserted nor the relief requested requires the participation of individual members—is a prudential consideration

rather than a constitutional one. *Id.* at 556. Thus, far from disregarding Article III, the Supreme Court confirmed that Article III is foundational to the *Hunt* framework itself.

In sum, the Court of Appeals did not “uncritically” adopt associational standing. To the contrary, the court’s decisions demonstrate that it carefully considered Indiana’s constitutional standing requirements before concluding that the *Hunt* framework is consistent with those requirements. Federal courts, including the U.S. Supreme Court, have likewise recognized for nearly five decades that the *Hunt* framework is consistent with the more demanding constraints of Article III. There is no reason for this Court to decide differently.

II. THE CONSTITUTIONALLY RECOGNIZED REPRESENTATIVE FUNCTION SERVED BY ASSOCIATIONAL STANDING CANNOT BE REPLACED BY ORGANIZATIONS FUNDING MEMBER LAWSUITS OR PURSUING CLASS ACTIONS.

Appellees next argue that associational standing is merely a prudential doctrine adopted to advance “debatable” policy benefits that can be achieved by funding member lawsuits or pursuing class actions. *See* Duke Mot. to Dism. at 19; IURC Mot. to Dism. at 14. These arguments fail because they misunderstand both the constitutional foundation and the representative function of associational standing. As discussed below, associational standing is rooted in constitutional principles, preserves a representative relationship that begins long before litigation, and cannot be replicated by funding member lawsuits or pursuing class actions.

The *Hunt* test is not a prudential doctrine. It is a constitutional one that is rooted in Article III’s constitutional case-or-controversy requirement. *Supra* at 8 (discussing *United Food*). Moreover, long before the Supreme Court articulated *Hunt*’s three-part test, the Court recognized that individuals often advance their constitutional rights through membership organizations. In *NAACP v. Alabama ex rel. Patterson*, the Court held that Alabama’s effort to compel the NAACP to disclose its membership lists threatened to “abridge the rights of its rank-and-file members to

engage in lawful association in support of their common beliefs.” 357 U.S. 449, 460 (1958) (explaining also that “freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment”). Accordingly, the Court held that the NAACP was “the appropriate party” to defend its members’ rights because it was “in every practical sense identical” to its members and was “but the medium through which [they sought] to make more effective the expression of their own views.” *Id.* at 459–60. Thus, Appellees’ view that associational standing sidesteps constitutional requirements has no foundation in the law or the *Hunt* framework itself.

Nor are the benefits of associational standing “debatable.” According to the IURC, associational standing “undercuts judicial efficiency” because of the “considerable time, energy, and effort” it requires of parties and the courts in “briefing collateral challenges to standing rather than addressing the central merits of the dispute.” IURC Mot. to Dism. at 14. But such collateral disputes over standing are part and parcel of litigation, regardless of whether a lawsuit is brought by an individual or an association.

For example, in *Huffman v. Indiana Office of Environmental Adjudication*, this Court resolved a multi-year dispute over an individual’s standing to seek administrative review under the AOPA, leaving the merits of the underlying permit decision to be resolved on remand. 811 N.E.2d 806, 808–09, 816 (Ind. 2004). *Huffman* is hardly unique. Indiana courts are routinely called on to resolve the question of an individual plaintiff’s standing. *See e.g., Gilday & Assocs., P.C. v. Marion Cty. Assessor*, 176 N.E.3d 1000 (T.C. Sep. 15, 2021); *Ind. Family & Soc. Servs. Admin. v. Anderson*, 155 N.E.3d 621 (Ind. Ct. App. 2020); *State ex rel. Steinke v. Coriden*, 831 N.E.2d 751 (Ind. Ct. App. 2005); *Jones v. Sullivan*, 703 N.E.2d 1102 (Ind. Ct. App. 1998). Indiana’s

experience confirms courts have not experienced a disproportionate number of standing challenges in cases brought by organizations.

Rather than repeatedly litigating the same standing issues in multiple lawsuits brought by individual members challenging the same government action, associational standing requires the issue of standing to be resolved only once. Associations, like every other plaintiff, are required to meet the direct injury requirement of standing by establishing that an identified member has suffered personal harm. Only after making that showing are associations allowed to represent their members' interests in a single action, thereby reducing the burden on parties and the courts. Thus, far from "illusory," judicial efficiency is a natural consequence of the doctrine itself.

Recognizing that *Hunt* requires an associational plaintiff to demonstrate at least one of its members has standing, the IEA asserts that "the putative benefit of individual anonymity [to avoid retaliation] is at least partly illusory." IEA *Amicus* Br. at 26. That misses the point. Identifying a member to establish standing is fundamentally different from requiring that member to serve as the plaintiff. The named plaintiff, unlike a standing declarant, must participate in the litigation and bear the financial and legal risks of retaliatory countersuits. As *Amici's* experience shows, that latter risk is neither theoretical nor insignificant in environmental disputes involving well-resourced corporate defendants. *See, e.g., Maya Energy, LLC v. Hoosier Environmental Council, Inc.*, Lake Super. Ct. No. 45D10-1807-PL-000229, HEC's Anti-SLAPP Mot. to Dism. (developer brought defamation action against environmental organization for opposing the developer's proposed waste-processing facility during IDEM permitting proceedings); *Himsel v. Himsel*, Hendricks Super. Ct. No. 32D04-1510-PL-000150, Pls.' Mot. to Dism. Counterclaim (seeking dismissal under Indiana's Anti-SLAPP Act of defendants' attorney-fee counterclaim brought in retaliation for plaintiffs' exercise of their right to petition the courts); *Gary Advocates for*

Responsible Development v. Fulcrum Centerpoint LLC, Ind. Office of Environmental Adjudication (“OEA”) No. 10-W-J-4386, Pet’rs’ Resp. to Fulcrum’s Mot. Compel (objecting that expansive discovery directed at citizen petitioners was “an abuse of the justice system to intimidate seven people who are simply trying to protect their right to breathe clean air”).¹

Nonprofit organizations are better equipped than individuals to assume these burdens. Protected by the corporate form, liability insurance, and institutional continuity, they can absorb litigation risks that would deter many people from serving as plaintiffs, despite having concrete harms to vindicate. Associational standing therefore protects more than member anonymity. It allows the organization that has represented its members’ interests from the outset to continue doing so in court without exposing them to significant financial and legal risk.

The IURC’s proposed substitute for pooling resources and expertise fails for the same reason. According to the IURC, an organization may “offer its resources and expertise to its members as they litigate in their own names.” IURC Mot. to Dism. at 17. This not only ignores the risks of being a named party to litigation, it also disregards the representative function environmental and clean energy organizations perform throughout the regulatory process. Such organizations are not merely sources of financial support for lawsuits. Their members join precisely because they rely on the organizations to represent their shared interests before litigation begins. Organizations monitor agency proceedings, review permit applications and technical studies, coordinate scientific, economic, social, and legal expertise, participate in public hearings

¹ See also *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 Pace Envtl. L. Rev. 3, 5 (1989) (observing that since at least the 1970s, ordinary individuals have been sued for simply speaking out politically to send the message that there is a “price” for civic engagement.); John C. Barker, *Common-Law and Statutory Solutions to the Problem of SLAPPS*, 26 Loy. L.A. L. Rev. 395, 405 (1993) (noting that the defining goal of these retaliatory lawsuits is not to win, but to silence opposition with “delay, expense and distraction”).

and administrative proceedings, and preserve the institutional knowledge necessary to evaluate agency action over time. Through those representative activities, organizations evaluate the sources of potential harm, analyze complex issues, develop the administrative record, and determine whether court intervention is necessary to protect their members' shared interests. *See, e.g., Hoosier Environmental Council v. Ind. Dept. of Environmental Management*, Morgan Cir. Ct. No. 55C01-2503-RA-000691, Pet'r's Opening Br. (seeking judicial review after developing the administrative record through contested proceedings before IDEM, the former OEA, and the Office of Administrative Law Proceedings ("OALP") challenging a permit authorizing continued releases of coal ash contaminants to the White River); *Save the Dunes Conservation Fund, Inc. v. Ind. Dept. of Natural Resources*, Porter Super. Ct. No. 64D05-2512-RA-013842, Pet'r's Opening Br. (seeking judicial review after developing the administrative record through contested proceedings before the Natural Resources Commission, and the OALP challenging DNR's delineation of Lake Michigan's public trust boundary).

In other words, litigation rarely marks the beginning of the relationship between an organization and its members. More often, it is the culmination of years of representative work already performed by the organization.² To require the organization to relinquish that representative role at the critical point when the dispute requires judicial involvement would sever the continuity of representation that associational standing is designed to preserve. *See International Union, UAW v. Brock*, 477 U.S. 274, 289-90 (1986).

² That organizations advocate for their members in different fora, including legislative and administrative fora, as well as the courts, does not blur the line between lobbying and litigation activities, as IEA argues (IEA *Amicus* Br. at 25). Citizens seeking to engage with their governmental bodies are entitled to use either vehicle to vindicate their interests. The *Hunt* test ensures that Article III's requirements for judicial resolution of such interests are met, maintaining the distinction between these different pathways to citizen involvement.

Finally, Duke and the IURC insist that a class action under Trial Rule 23 offers the proper procedural path if an organization wants to represent its members. Duke Mot. to Dism. at 16-17; IURC Mot. to Dism at 14-15. That alternative likewise ignores the preexisting relationship between organizations and their members. More importantly, it ignores the U.S. Supreme Court's decision in *Brock*, which "recognize[d] the special features, advantageous both to the individuals represented and to the judicial system as a whole, that distinguish suits by associations on behalf of their members from class actions." 477 U.S. at 288-89; *See also Bhd. of Maint. of Way Employees Div. v. Indiana Harbor Belt R.R.*, 20 F. Supp. 3d 686, 691 (N.D. Ind. 2014) (explaining that associational standing and Rule 23 are "analytically distinct" doctrines and "evaluated on two different rubrics" (quoting *Retail, Wholesale & Department Store Union v. Standard Brands, Inc.*, 540 F.2d 864, 867 (7th Cir. 1976))); *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 600 (7th Cir. 1993).

Specifically, the Court observed "a class action creates an ad hoc union of injured plaintiffs who may be linked only by their common claims," while "an association suing to vindicate the interests of its members can draw upon a pre-existing reservoir of expertise and capital" that serves "the primary reason people join an organization," which is "to create an effective vehicle for vindicating interests that they share with others." *Id.* at 289–90. Put differently, Trial Rule 23, like its federal counterpart, recognizes a representative plaintiff for a particular lawsuit. Associational standing recognizes a representative relationship that already exists.

In Indiana, that distinction has important practical consequences for challenging agency actions under the AOPA. A petition for administrative review must generally be filed within fifteen days. Ind. Code § 4-21.5-3-7(a)(3)(A). Requiring an organization to also seek Trial Rule 23 class certification to represent its members who are "aggrieved or adversely affected" as required by

AOPA, Ind. Code § 4-21.5-3-7(a)(1)(B), would fundamentally alter the nature of the proceeding. Rather than promptly resolving whether the agency acted lawfully based on an existing administrative record, the parties would be required to litigate collateral class-certification proceedings that routinely take months, if not years, thereby imposing substantial, unnecessary burdens on parties, administrative agencies, and reviewing courts. In other words, requiring organizations to proceed through Trial Rule 23 would, in the context of the AOPA, transform what is intended to be prompt review of agency action into protracted class-action litigation—an entirely unworkable result that would replace a constitutionally recognized representative relationship with a procedural device designed to serve a fundamentally different purpose.

Amici's experience demonstrates what the U.S. Supreme Court recognized in *Patterson*, *Hunt*, and *Brock*: associational standing preserves the representative relationship that already exists between organizations and their members. Neither funding member lawsuits nor Trial Rule 23 preserve that relationship and are thus not adequate substitutes for associational standing.

CONCLUSION

For the foregoing reasons, *Amici* respectfully request this Court affirm the conclusion reached by four, unanimous panels of the Court of Appeals: the *Hunt* framework is consistent with Indiana's constitutional standing requirements and should be embraced in Indiana.

Respectfully submitted,

/s/ Kim E. Ferraro

Kim E. Ferraro, Attorney No. 27102-64
Noah B. Hines, Attorney No. 38889-02
Conservation Law Center
116 South Indiana Avenue
Bloomington, Indiana 47408
812/856-5737
kimferra@iu.edu
nbhines@iu.edu
Counsel for Amici Curiae

WORD COUNT CERTIFICATE

I verify that this brief contains no more than 4200 words.

/s/ Kim E. Ferraro

CERTIFICATE OF SERVICE

I certify that on July 24, 2026, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS). I also certify that, on that same date, the foregoing document was served upon the following person(s) via IEFS:

Jennifer Washburn: jwashburn@citact.org
Kirti Datla: kdatla@earthjustice.org
Sameer Doshi: sdoshi@earthjustice.org
Linnet Davis-Stermitz: ldavisstermitz@earthjustice.org
Shannon Fisk: sfisk@earthjustice.org
Robert Rigonan: rrigonan@earthjustice.org
Andrew Wells: andrew.wells@duke-energy.com
Liane K. Steffes: liane.steffes@duke-energy.com
Peter J. Rusthoven: peter.rusthoven@btlaw.com
Nicholas K. Kile: nicholas.kile@btlaw.com
Hillary J. Close: hillary.close@btlaw.com
Lauren M. Box: lauren.box@btlaw.com
Lauren Aguilar: lauren.aguilar@btlaw.com
Abby R. Gray: agray@oucc.in.gov
T. Jason Haas: thaas@oucc.in.gov
Adam Kashin: akashin@oucc.in.gov
Tabitha Balzer: tbalzer@lewis-kappes.com
Aaron Schmoll: aschmoll@lewis-kappes.com
Theodore E. Rokita: efile@atg.in.gov
Benjamin M.L. Jones: benjamin.jones@atg.in.gov
Kyle Hunter: kyle.hunter@atg.in.gov
Beth Heline: bheline@urc.in.gov
Jeremy R. Comeau: jcomeau@urc.in.gov
Anne E. Becker: abecker@lewis-kappes.com
Nikki G. Shoultz: nshoultz@boselaw.com
Kristina Kern Wheeler: kwheeler@boselaw.com
Brian J. Paul: brian.paul@faegredrinker.com
Maggie L. Smith: mlsmith@fbtgibbons.com
David P. Johnson: djohnson@holtzmanvogel.com
Todd J. Janzen: janzen@aglaw.us
Brianna J. Schroeder: schroeder@aglaw.us
Emily C. Guenin-Hodson: office@gueninlaw.com

/s/ Kim E. Ferraro
