IN THE

Indiana Supreme Court

Case No. 26S-EX-127

CITIZENS ACTION COALITION OF INDIANA, INC. and VOTE SOLAR,	)	Appeal from the Indiana Utility Regulatory Commission IURC
Appellants,	)	
	)	IURC Case No. 46193
v.	)	
	)	The Hon. James F. Huston, Chair
DUKE ENERGY INDIANA, LLC, and INDIANA UTILITY REGULATORY COMMISSION,	)	
	)	The Hon. David E. Veleta The Hon. David E. Ziegner, Commissioners
Appellees.	)	
	)	The Hon. Loraine L. Seyfried, Chief Administrative Law Judge

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AMICI CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND NETCHOICE

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STATEMENT OF INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America 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.

NetChoice is a national trade association of e-commerce and online businesses that share the goal of promoting convenience, choice, and commerce on the internet. For over two decades, NetChoice has worked to increase consumer access and options via the internet, while minimizing burdens on small businesses that are making the internet more accessible and useful. Toward those ends, NetChoice engages in litigation, amicus curiae work, and political advocacy.

Amici file here in support of Duke Energy Indiana as it relates to the approval of Duke's Cayuga natural gas energy project as a "clean energy project." Amici also explain why associational standing is consistent with Indiana's constitutional principles, along with its history and tradition. Amici do not take a position on whether the requirements for associational standing are satisfied in this case.

SUMMARY OF ARGUMENT

1. The Indiana Utility Regulatory Commission (IURC) correctly approved Duke's new natural-gas-fired project based on how that project complies with Indiana Code provisions pertaining to clean energy projects. The possibility that Duke's coal-fired units *might* be sold to a third party who uses them to generate coal-fired electricity at some hypothetical point in the future is not a basis for denying approval under the plain text of the statute.

2. Associational standing is a doctrine with deep roots in history and tradition. In English and early American law, the representational suit allowed a single plaintiff to sue on behalf of a group united in common interest without requiring all members of the group to join the action. Beginning in the nineteenth century, Indiana law recognized representational suits as a unique form of action and an exception to the general rule that a plaintiff must litigate only his own rights.

The representational suit is a close historical analogue to modern associational standing cases. Both standing theories allow a single plaintiff to vindicate the rights of non-participating group members so long as they share a common interest and the group members are affected by the relevant conduct. Indeed, each of the three requirements for associational standing under *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977), has a parallel in the representational suit: the standing of individuals not before the court to bring the same action; a commonality of interest between the plaintiff and group members; and an ability for the lawsuit to proceed fairly without all harmed individuals being included as plaintiffs. Both doctrines also allow for prospective relief to all affected members of the group. Associational standing is thus deeply rooted in Indiana's history and tradition and consistent with the Indiana Constitution's distribution of powers.

ARGUMENT

I. The IURC Correctly Approved Duke's Project Based on the Statutory Requirements Rather than Speculation.

The IURC determined that Duke's project would produce "[e]lectricity that is generated from natural gas at a facility constructed . . . which displaces electricity generation from an existing coal fired generation facility." Appellants' App. (App.) II at 61 (citing I.C. § 8-1-37-4(a)(21)). The statute asks what electricity generated from *Duke's facility* will do. The record answers that question unambiguously: Duke intends to retire the Cayuga coal units in 2029 and 2030, coinciding with the in-service dates of the new gas units, and to replace the electricity generation from the coal units with gas-fired electricity from the new units. App. II at 35–36, 61–62. Displacement is satisfied on those facts alone.

Appellants suggest that displacement instead should be assessed based on what a hypothetical future purchaser of the coal units might independently do with them after an arm's-length sale. Section 8-1-37-4(a)(21) nowhere mentions third-party ownership or post-sale conduct, and courts "cannot add words or restrictions" to a statute. *Fam. & Soc. Servs. Admin. v. Saint*, 258 N.E.3d 972, 980 (Ind. 2025) (citation modified). Had the legislature wanted to require permanent decommissioning of a facility regardless of third-party conduct, it could have used language such as "retirement" or "permanent ceasing"—words it used elsewhere in the same statutory chapter. *See* I.C. §§ 8-1-8.5-13, 8-1-8.5-12.1. Instead, the legislature merely required "displace[ment]" of electricity generation from an existing coal fired generation facility; it did not even require "displacement" of the facility itself.

Appellants' theory also depends on an unbroken chain of independent contingencies: a feasibility study, a favorable finding that the coal units can be extended, an RFP process run by an independent administrator, a willing buyer, a separate IURC proceeding, no (or ineffective) objections to a third-party sale, an operational decision to run the units, and a Duke decision to purchase the resulting power. None of these has occurred and, except for the feasibility study, they may never occur. App. II at 62, 76–79.

A compliance determination cannot lawfully rest on such speculation. It is fair to hold regulated parties to their statutory obligations, but it is not fair to condition compliance on the hypothetical conduct of third parties in the future. *See*, *e.g.*, *Suggs v. State*, 51 N.E.3d 1190, 1194 (Ind. 2016) (courts "seek to give a practical application of the statute by construing it in a way that favors public convenience and avoids an absurdity, hardship, or injustice."). Appellants' contention that Duke's compliance should be measured by what strangers might do in the future fails this basic test of practicality and finds no grounding in the relevant statutory text.

II. Associational Standing is Rooted in the History and Tradition of Indiana Law.

In deciding the bounds of Indiana's standing doctrine, this Court has repeatedly considered history and tradition as a meaningful guide. In *Horner v.*

Curry, the Court held that taxpayers have standing to litigate their claims under the state's taxpayer-standing doctrine, relying in part on the doctrine's mid-nineteenth century origins. 125 N.E.3d 584, 590–97 (Ind. 2019). And in *Embry v. O'Bannon*, the Court reaffirmed the validity of Indiana's public standing doctrine, emphasizing that the doctrine "has been recognized in Indiana case law for more than one hundred and fifty years and remains viable today." 798 N.E.2d 157, 160 (Ind. 2003).

History and tradition support associational standing, which is not a modern invention but rather a genuine analogue of a representational suit. Indiana's legislature codified representational suits just one year after the 1851 constitutional convention. That contemporaneous enactment supports the conclusion that the framers of Indiana's Constitution understood the judicial power to encompass representative litigation.

A. The Representational Suit was an Established Exception to the Individual-Plaintiff Rule under English and Early American Law.

In English and early American law, a plaintiff generally had standing to assert only his own rights. WILLIAM BLACKSTONE, TRACTS, CHIEFLY RELATING TO THE ANTIQUITIES AND LAWS OF ENGLAND 80 (3d ed. 1771). But equity recognized certain exceptions: adults could litigate on behalf of minors; the executor of an estate could litigate on behalf of a decedent; and individuals could assign their claim to someone else, permitting a third party to raise their rights by consent. 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND (1765–1979) 503–04, 510, 442 (1992).

Another exception was the representational suit, which has its origins in medieval law. STEPHEN C. YEAZELL, FROM MEDIEVAL GROUP LITIGATION TO THE

MODERN CLASS ACTION 65 (1987). Representational suits allowed a plaintiff to seek equitable relief by representing the common interests of a harmed group. Samuel L. Bray, *Multiple Chancellors: Reforming the National Injunction*, 131 HARV. L. REV. 417, 495 (2017). Representational suits were recognized where "the parties form[ed] a voluntary association for public or private purposes, and those, who sue, or defend, may fairly be presumed to represent the rights and interests of the whole." JOSEPH STORY, COMMENTARIES ON EQUITY PLEADINGS, AND THE INCIDENTS THEREOF, ACCORDING TO THE PRACTICE OF THE COURTS OF EQUITY OF ENGLAND AND AMERICA § 97 (4th ed. 1848).[1] Justice Story, an early American proponent of the representational suit, wrote that "in these and analogous cases of general right, the court[s] dispense with having all the parties, who claim the same right, before it" so long as the plaintiff "may be considered as fairly representing that right, and honestly contesting in behalf of the whole." *West v. Randall,* 29 F. Cas. 718, 723 (C.C.D.R.I. 1820). The representational suit was thus an exception to the "technical rule that prevented equity courts from acting, even formally, on the rights or duties of 'strangers' to a suit," especially where joinder of all necessary parties, though technically required, might be impracticable. Robert G. Bone, *Personal and*

[1] *See*, *e.g.*, *Chancey v. May*, 24 Eng. Rep. 265 (1722) (leader of a business partnership suing on behalf of the rest to reclaim a common interest); *Adair v. New River Co.*, 32 Eng. Rep. 1153 (1805) (shareholders in a joint stock company suing on behalf of other shareholders); *Cockburn v. Thompson*, 33 Eng. Rep. 1005 (1809) (leader of social organization suing on behalf of other members for an accounting); *Good v. Blewitt*, 34 Eng. Rep. 542 (1815) (members of a ship crew suing on behalf of the whole crew for a common bounty).

Impersonal Litigative Forms: Reconceiving the History of Adjudicative Representation, 70 B.U. L. REV. 213, 243–44 (1990).

B. Indiana's Legislature Codified the Representational Suit in 1852, Thereby Confirming Its Consistency with the 1851 Constitution.

For cases where "the question is one of a common or general interest of many persons," Indiana's first comprehensive code of civil procedure—adopted in 1852—established an exception to the general rule that "those who are united in interest must be joined as plaintiffs." 2 Ind. Rev. Stat. ch. 1, art. 2, § 19 (1852) ("Section 19 suits"). In such cases, "one or more may sue . . . for the benefit of the whole." *Id*. This Court noted that Section 19 suits could be maintained where "one general right is claimed—where there is one common interest . . . centering in the point in issue in the cause." *Tate v. Ohio & M.R. Co.*, 10 Ind. 174, 175 (1858). The Court also recognized that Section 19 "substantially re-enact[ed] the old equity rules on the subject of parties," *id*., meaning that the 1852 legislature understood itself to be codifying an established judicial practice, not departing from one.

The timing is significant. Section 19 was enacted shortly after the 1850–51 convention that enacted the 1851 Indiana Constitution. The legislators who enacted Section 19 therefore considered it consistent with both the "Distribution of Powers" decreed by Article III, Section 1 of the 1851 Constitution, as well as the "Judicial power" vested by Article VII, Section 1. The enactment also postdated *Brewington v. Lowe*, indicating that the 1851 framers did not consider representational suits incompatible with a judicial power that extended only to suits "pertaining to the rights of individuals." 1 Ind. 21, 23 (1848).

Indiana courts applied Section 19 analogously to modern applications of associational standing. For example, in *Sourse v. Marshall*, 23 Ind. 194 (1864), a plaintiff challenged the validity of a deed on behalf of himself and an unspecified set of neighbors. This Court rejected an argument that representational suits could be brought only if all individuals not before the court were "in some way designated as an association or class." *Id.* at 195–96. Instead, the Court held that a Section 19 suit could proceed so long as "the persons for whom the plaintiff sues are described with as much certainty as the nature of the controversy will admit, and the defendants need not be at a loss to know who they are called on to answer." *Id.* at 196. As such, the Court established that Section 19 suits permitted the rights of a "great number" of people with "an interest in common" to be represented by a single plaintiff, even if those represented remained formally unidentified or unclassified. *Id.* at 195–96.

In *Blair v. Shelby County Agricultural & Joint Stock Ass'n*, 28 Ind. 175 (1867), the plaintiff sued on behalf of citizens of Shelby County who had advanced money to buy out an unpaid mortgage contract. Though some of them had assigned their claims to plaintiff, others had not, and the Court distinguished representational suits from those brought on assignment. It noted that with respect to the representational-suit claims, the suit was brought for "Blair for himself and all those who have with him a common interest." *Id.* at 178. The Court thereby affirmed the principle that unnamed or absent parties could be represented based on commonality of interest rather than through privity or special relationships.

Shoemaker v. Board of Com'rs of Grant Cnty, 36 Ind. 175 (1871), confirms the closeness of the analogy between Section 19 suits and associational suits. There, the Court rejected Section 19 representation in a suit alleging an improper property tax scheme against the State Auditor and the Grant County Treasurer because, although the plaintiff was a citizen and taxpayer, he did not own taxable real estate and had not paid the taxes complained of. *Id.* at 185. Representational suits, like modern associational standing, required a specific injury shared by the represented group and could not be used to litigate generalized citizen grievances. The two doctrines are therefore parallel in requiring particularized rather than public harm.

C. Indiana's Representational Suit is Analogous to Associational Standing in All Fundamental Respects.

Section 19 suits allowed a single plaintiff to assert the rights "of the whole" regarding questions of "common or general interest," 2 Ind. Rev. Stat. ch. 1, art. 2, § 19 (1852), while associational standing permits a suit that is "germane to the organization's purpose" on behalf of its members who share a common interest in the action. *Hunt*, 432 U.S. at 343. The two vehicles share the same purpose and function, notwithstanding that one involves a suit by a member on behalf of a group whereas the other involves a group suing on behalf of its members.

A membership association constituted for the purpose of advocacy is not a "stranger" to its members' interests—it represents those interests in much the same way that a representative plaintiff did in the nineteenth century. As the U.S. Supreme Court has recognized, an association "is but the medium through which its individual members seek to make more effective the expression of their own views."

NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 459 (1958). When the Chamber and NetChoice bring a regulatory challenge on behalf of their members, they do so because their members seek representation by the association for that purpose. The medium is more institutionalized than a Section 19 plaintiff, but the constitutional character of the exercise is the same: a concrete dispute about the legal rights of specific injured parties is submitted to a court for resolution.

The United States Supreme Court has recognized the kinship between the doctrines. *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 557 (1996) (noting that associational standing "is only one strand" of the entire doctrine of "'representational standing'"). Associational standing is parallel to Section 19 suits in its three fundamental requirements:

Member Standing. Both Section 19 suits and associational standing cases require that individuals not before the court, whose interests are represented by the plaintiff, would themselves have standing to bring the same action. *Hunt* requires that, for an association to sue on behalf of its members, the members "would otherwise have standing to sue in their own right." 432 U.S. at 343. Similarly, Indiana courts interpreted Section 19 suits to require that "there must be that unity of interest between [the plaintiff] and all such other parties that would entitle them to maintain the action, if suit was brought by them jointly." *Certia v. University of Notre Dame Du Lac, Ind.*, 141 N.E. 318, 319 (Ind. Ct. App. 1923).

Germaneness. The requirement of germaneness under associational standing doctrine parallels Section 19's requirement of a common or general interest.

Associational standing requires that an association's mission be germane to the interests being vindicated through the lawsuit. *Hunt*, 432 U.S. at 343. The germaneness requirement ensures a sufficient "nexus" between the association and its members, *NAACP*, 357 at 458, and also "raises an assurance that the association's litigators will themselves have a stake in the resolution of the dispute." *United Food*, 517 U.S. at 555–56. Section 19 likewise required unnamed parties to be "united in interest" with the plaintiff such that "there is one common interest." *Tate*, 10 Ind. at 175. In other words, "the party who sues must have an interest in the controversy common with those for whom he sues." *Certia*, 141 N.E. at 319.

No Individual Participation Needed. Both doctrines require commonality of injury such that the lawsuit can proceed without including all affected individuals as plaintiffs. Under *Hunt*, the association must show that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." 432 U.S. at 343. Associational standing is precluded if "whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof." *Warth v. Seldin*, 422 U.S. 490, 515–16 (1975). So too for Section 19 representational suits, which could proceed on behalf of unnamed individuals so long as they have "an interest in common" and "the persons for whom the plaintiff sues are described with as much certainty as the nature of the controversy will admit, and the defendants need not be at a loss to know who they are called on to answer." *Sourse*, 23 Ind. at 195–96. But if the individuals had separate injuries or sought separate remedies, "then the action must be brought separately by each person interested, for those having a separate interest cannot join in the action." *Certia*, 141 N.E. at 319.

Finally, both associational standing and Section 19 suits allow for prospective relief to all affected members of the group, whether identified in support of standing or not. As it relates to associational standing, this consequence necessarily follows from the third *Hunt* factor described above—that the relief requested need not require the participation of individual members in the lawsuit. Denying associational standing, the Court in *Warth* explained that where "an association seeks relief in damages" it would be necessary that "each member . . . be a party to the suit." 422 U.S. at 515–16. On the other hand, associations may seek injunctive or declaratory relief because "if granted, [those remedies] will inure to the benefit of those members of the association actually injured" without them needing to be party to the suit. *Id.* at 515. Similarly for Section 19 representational suits, this Court held that "[s]everal plaintiffs, by one complaint, cannot demand several matters of relief which are plainly distinct and unconnected." *Tate*, 10 Ind. at 175. But "where one general right is claimed—where there is one common interest among all the plaintiffs, centering in the point in issue in the cause, the objection of improper parties cannot be maintained." *Id.*

D. The Representational Principle Survives, and is Compatible with, Trial Rule 23.

Following its original codification, the representational suit remained a part of Indiana's code of civil procedure for more than a century. It was reenacted verbatim in 1881 as Section 21 of "An Act Concerning Proceedings in Civil Cases," a recodification of the state's civil procedure code, and as republished in Burns' Annotated Indiana Statutes (as Section 270, then Section 277, and then as Section 2-220). Burns' Rev. St. 1901; Burns' Ann. St. 1926; Burns' Ind. St. 1933.

The adoption of modern Trial Rule 23 in 1970 could not eliminate the constitutional basis for associational standing. It was not a constitutional amendment, and it neither prevails over the state constitution nor restricts the scope of the judicial power. I.C. § 1-1-2-1 (the federal and state constitutions are first in the hierarchy of law); *Budden v. Bd. of Sch. Comm'rs of City of Indianapolis*, 698 N.E.2d 1157, 1163–64 (Ind. 1998) (noting concurrent judicial and legislative blessing of Trial Rule 23).[2] That power incorporates the courts' inherent equitable powers. *Id.* at 1162 n.8 (describing history of Trial Rule 23, including how Section 19 codified preexisting "old equity rules on the subject of parties" (quoting *Tate*, 10 Ind. at 175)); *see also State ex rel. Uebelhor v. Armstrong*, 252 Ind. 351, 361 (1969) ("Courts of general jurisdiction in Indiana have power to grant equitable relief, not only under statutes, but inherently, as necessary to the complete administration of justice." (citation and internal quotation marks omitted)). In any event, Rule 23 and associational standing serve different functions and address different populations of litigants.

[2] There are, of course, suits in which associational standing is neither permissible nor in the public interest—for example, where an association cannot identify members who were actually harmed by the challenged action, or where individual participation of members is needed to protect the members' interest. But the fact that associational standing may not be optimal or appropriate in some cases is not a reason to categorically reject the doctrine in all cases.

Trial Rule 23 was designed to aggregate individual claims by large numbers of private plaintiffs that would otherwise be impractical to litigate separately, such as mass-tort or consumer-fraud claims where individual injuries are distinct and quantifiable. *See*, *e.g.*, *Gierek v. Anonymous 1*, 250 N.E.3d 378, 398 (Ind. 2025) (noting that "the purpose of a class-action proceeding" is "the promotion of efficiency and economy of litigation in cases involving multiple parties with similar claims" (citation modified)). The procedural requirements of numerosity, commonality, typicality, adequate representation, and court-supervised notice and settlement are calibrated to protect individual rights in that setting.

Associational standing serves a related but different purpose. It allows *entities organized around common interests* to pursue the interests for which they were organized. This includes legal and administrative proceedings where the legal question is common among members and no individualized proof of harm is required. *See NAACP*, 357 U.S. at 460 ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly.") This aligns with fundamental rights of association under the Indiana Constitution. *See*, *e.g.*, Ind. Const., art. I, § 31 ("No law shall restrain any of the inhabitants of the State from assembling together in a peaceable manner, to consult for their common good . . .").

The Chamber and NetChoice, for example, were organized to advance the legal and policy interests of their members, and a key way they do so is through representation before legislatures, executives, and the courts. When the Indiana legislature replaced Section 19 with Trial Rule 23, it did not eliminate associational advocacy litigation; it codified a procedure for a specific—but different—kind of representative litigation.

Notably, Section 19 claims could proceed "when the question is one of a common or general interest of many persons, *or* where the parties are numerous and it is impracticable to bring them all before the court." 2 Ind. Rev. Stat. ch. 1, art. 2, § 19 (1852) (emphasis added). Common interest and numerosity were alternative avenues to group representation, not shared prerequisites as in Trial Rule 23. Associational standing is therefore aligned with, and not inconsistent with or overruled by, Trial Rule 23.

CONCLUSION

For the foregoing reasons, the order below should be affirmed, and the Court should endorse the doctrine of associational standing in Indiana. Amici curiae take no position on whether Appellants have satisfied or could satisfy the requirements of associational standing in this case.

Dated: July 24, 2026

Respectfully submitted,

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WORD COUNT CERTIFICATE

In compliance with this Court's order of April 16, 2026, I verify that the foregoing amicus brief (exclusive of Appellate Rule 44(C) items) contains no more than 4,200 words, as determined by the word processing system used to prepare the brief.

/s/ Stephen M. Judge
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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that on July 24, 2026, the foregoing was filed and served electronically through the Indiana E-Filing System upon the following people:

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/s/ **STEPHEN M. JUDGE**
Stephen M. Judge