

No. 26A203

IN THE
Supreme Court of the United States

NATIONAL PARK SERVICE, ET AL,

Applicants,

v.

NATIONAL TRUST FOR HISTORIC PRESERVATION IN THE UNITED STATES,

Respondent.

On Application for a Stay of the Injunction
Issued by the United States District Court for the District of Columbia
and Request for an Immediate Administrative Stay

**BRIEF OF INDIANA, IDAHO, 17 OTHER STATES, AND THE ARIZONA
LEGISLATURE AS AMICI CURIAE IN SUPPORT OF APPLICANTS**

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INTRODUCTION AND INTEREST OF AMICI CURIAE

This case is about more than a ballroom. It is about whether a passerby's aesthetic objection to a government construction project furnishes not just the passerby standing, but an uninjured association standing to air its grievances in court. That issue is of significant interest to States across the Nation.

Amici States have extensive experience litigating against organizations that invoke associational standing as their ticket into court. They regularly find themselves having to defend all manner of laws, executive actions, and public improvements against claims brought by uninjured associations. And their experience reveals a lesson that this dispute also illustrates—associational standing has become a near limitless doctrine that allows virtually any organization to sue about anything. This Court can and should make clear that a passerby's aesthetic, psychic, or political objection to a government action is “not an injury sufficient to confer standing.” *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 477 (1982). But the Court also should use this opportunity to reconsider the validity of associational standing.

This Court has “never explained or justified” associational standing. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 398 (2024) (Thomas, J., concurring). Associational standing appears to have developed by “historical accident” in the United States Supreme Court in the middle of the 20th century. *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 538 (6th Cir. 2021) (Sutton, J.). But associational standing's cracks have begun to show. Members of this Court and others

have begun to question the propriety of associational standing, explaining that it “runs roughshod over [the] traditional understanding of the judicial power.” *All. for Hippocratic Med.*, 602 U.S. at 399 (Thomas, J., concurring); see *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1167 (D.C. Cir. 2025) (Henderson, J., concurring). And associational standing’s incompatibility with limits on universal injunctions and other legal doctrines is becoming increasingly apparent.

As States with an interest in preserving the proper separation of powers nationwide, Amici States urge this Court to take this opportunity to reconsider associational standing. Perpetuating it will only distort the judicial role. As Amici States have witnessed firsthand, associational standing inevitably tends to convert courts from venues where actual controversies are resolved between adverse litigants into debate societies where interest groups raise generalized grievances and ask judges to “exercise general legal oversight of the Legislative and Executive Branches.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021). This Court should recommit the judiciary to its proper constitutional role.

SUMMARY OF THE ARGUMENT

The Constitution demands that the party invoking federal jurisdiction have suffered a cognizable injury. Associational standing, the theory that the National Trust for Preservation invokes, conflicts with this foundational requirement. It excuses a plaintiff from showing injury and creates other doctrinal incongruences.

Neither history nor this Court’s precedent offers a coherent justification for associational standing. Associational standing is a historical anomaly, and appears to have arisen through historical accident. This Court has not provided a reasoned

defense of associational standing either, which even compared to other theories of third-party standing, remains an outlier.

Although this Court has tried to limit associational standing, associational standing tends to become limitless in practice. This case puts the problem on full display. Not only was the Trust able to assert an interest in managing a property outside of the scope of its congressional mandate, but it also was able to base its standing on a single member's displeasure with a government construction project.

To associational standing's many problems, this case also presents a solution. It provides an ideal opportunity to reexamine the doctrine and to establish that an uninjured association cannot invoke federal jurisdiction based on a lone member's aesthetic, political, or moral displeasure.

ARGUMENT

I. Associational Standing Erodes the Separation of Powers

“[T]he separation of powers in our National Government ha[s its] principal foundation in the first three Articles of the Constitution,” and “[u]nder Article III, the Federal Judiciary is vested with the ‘Power’ to resolve not questions and issues but ‘Cases’ or ‘Controversies,’” which “restricts the federal judicial power to the traditional role of the Anglo–American courts.” *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 132 (2011) (citation modified). “[T]he traditional role of Anglo–American courts [] is to redress or prevent actual or imminently threatened injury to persons caused by private or official violation of law.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). “The ultimate purpose of this separation of powers is to protect

the liberty and security of the governed,” *Metro. Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991), by “diffus[ing] power” among the three branches, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

Courts have developed the doctrine of standing to ensure that they exercise only the judicial power. *Raines v. Byrd*, 521 U.S. 811, 820 (1997) (“Standing is built on a single basic idea—the idea of separation of powers”) (quoting *Allen v. Wright*, 468 U.S. 737, 752 (1984)). Standing, of course, requires a plaintiff to show “(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citation modified). The doctrine of standing represents an acknowledgement that “courts do not exercise general legal oversight of the Legislative and Executive Branches.” *Id.* at 423–24; *United States v. Richardson*, 418 U.S. 166, 188 (1974) (Powell, J., concurring) (“Relaxation of standing requirements is directly related to the expansion of judicial power.”). For an “unelected and politically unaccountable” judiciary to wield such power would create the threat to individual liberty and proper “democratic principles” that the separation of powers is designed to prevent. *Rucho v. Common Cause*, 588 U.S. 684, 719 (2019).

Allowing an organization to sue based on associational standing, however, “run[s] roughshod over [the] traditional understanding of the judicial power.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 399 (2024) (Thomas, J., concurring).

Fundamentally, associational standing exceeds the limits of the judicial power because it dispenses with the “key” requirement that the “plaintiff identify a personal injury.” *Ass’n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 534 (6th Cir. 2021) (citation modified). “[T]he irreducible constitutional minimum of standing” requires that “the plaintiff must have suffered an ‘injury in fact.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992); see *Clark v. Kansas City*, 176 U.S. 114, 118 (1900) (the courts will “not listen to an objection made to the constitutionality of an act by a party whose rights it does not affect and who has therefore no interest in defeating it”) (citation modified); Michael T. Morley & F. Andrew Hessick, *Against Associational Standing*, 91 U. Chi. L. Rev. 1539, 1593 (2024) (“A basic tenet of the English legal system was that only a person who had suffered injury could seek a remedy for that harm.”). Associational standing, however, empowers an organization to bring an action “[e]ven in the absence of injury to itself,” *Warth v. Seldin*, 422 U.S. 490, 511 (1975), as long as “one identified member” has been injured, *Summers*, 555 U.S. at 498; see also *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023) (“[T]he organization can claim that it suffered an injury in its own right or, alternatively, it can assert ‘standing solely as the representative of its members.’” (quoting *Warth*, 422 U.S. at 511)).

And that’s not the only incongruence associational standing creates—the mismatch between who is injured and who is a party in court redounds to an equally problematic mismatch on the remedy front. “[A]s a general rule, American courts of equity did not provide relief beyond the parties to the case.” *Trump v. Hawaii*, 585

U.S. 667, 717 (2018) (Thomas, J., concurring); *see Trump v. CASA, Inc.*, 606 U.S. 831, 851–52 (2025) (historical equitable principles allow courts to provide “complete relief to the plaintiffs before the court”) (emphasis omitted). But associational standing allows organizations to procure relief for members who are not before the court. In fact, courts often grant relief to all an organization’s members (and sometimes its *future* members), *regardless* of whether they are injured. *See, e.g., NetChoice v. Carr*, 789 F. Supp. 3d 1200, 1213–16, 1234 (N.D. Ga. 2025) (finding associational standing and awarding injunction covering the association’s members’ users); *League of Women Voters of Mass. v. Trump, et al.*, No. 1:26-CV-11549-IT, 2026 WL 2322705, at *9, *13 (D. Mass. Aug. 11, 2026) (finding associational standing “because the [executive order] . . . threatens Plaintiffs’ members’ ability to vote” and enjoining all implementation of the order).

Associational standing also raises thorny questions about who is bound by a decision. *See Morley & Hessick, supra*, at 1546. Indeed, the opportunity for an organization’s members to obtain relief in associational standing cases may not even be accompanied by a risk that their individual claims will be precluded if the organization is unsuccessful. Unlike a class action where each putative class member is given notice that their claim is being raised in court and an opportunity to opt out lest they be bound by the results of the class action, Fed. R. Civ. P. 23(b)(3), (c)(2)(B)(v), (c)(2)(B)(vii), organizational members never become a party to litigation and may never be informed of litigation. Thus, “it is not clear whether the adverse judgment would bind the members,” meaning they may have “two bites at the apple” and be

able to “assert the exact same issues or claims in a suit in their own names” if the organization is unsuccessful. *All. for Hippocratic Med.*, 602 U.S. at 403 (Thomas, J., concurring).

“[T]he availability of associational standing subverts the class-action mechanism.” *All. for Hippocratic Med.*, 602 U.S. at 402 (Thomas, J., concurring). To litigate by class action, a plaintiff must establish a discernable class exists, satisfy the requirements of typicality and commonality, show the plaintiff is an adequate class representative, and prove the class is proper under Rule 23(b). *See* Fed. R. Civ. P. 23(a)–(b). None of that is true in cases involving associational standing. An association need not show anything more than injury to “one identified member” and that the claim is germane to the organization’s purpose and does not require individual participation. *Summers*, 555 U.S. at 498; *see Warth*, 422 U.S. at 511. Gone is the need to establish that the member’s injuries are like that of other members’ or that, for example, the class’s injuries are so cohesive that a single injunction can provide relief. That not only removes any incentive to pursue a class action, *All. for Hippocratic Med.*, 602 U.S. at 402, (Thomas J., concurring), but it also deprives the judiciary of the assurance that a featured member is a good representative of those allegedly harmed by a government action and for whom relief is sought, *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995) (explaining “the procedural requirements of Rule 23” were designed “so that the court can assure, to the greatest extent possible, that the actions are prosecuted on behalf of the actual class members in a way that makes it fair to bind their interests”).

Associational standing therefore allows uninjured parties to challenge state laws and government actions to procure relief for (potentially many) individuals who are not before the court, without those individuals necessarily having to be bound by the result. Simply put, that does not resemble the traditional exercise of the judicial power at all. Instead, it looks like courts that have become “roving commissions assigned to pass judgment on the validity of the Nation’s [or State’s] laws.” *Broadrick v. Oklahoma*, 413 U.S. 601, 610–11 (1973).

II. Associational Standing Has No Historical Pedigree

These anomalies might be tolerable if associational standing’s deviation from ordinary adjudicatory principles were rooted in a Framing-era practice or were traditionally understood to be within the judicial power. But associational standing can claim no historical pedigree and “has never [been] explained or justified” as a historical matter by this Court. *All. for Hippocratic Med.*, 602 U.S. at 398 (Thomas, J., concurring). In fact, associational standing looks nothing like other doctrines that have authorized plaintiffs to bring claims on behalf of injured third parties.

Consider next-friend litigation, which traces its lineage back to the common law. 1 William Blackstone, *Commentaries* *452 (explaining that an infant could sue through a guardian or “*prochein amy*, his next friend”) (emphasis added). In these cases, a plaintiff—generally one with a “significant relationship” with a minor or disabled person—may litigate on that person’s behalf, but the next friend must be “truly dedicated to the best interests” of the claimant and “does not himself become a party.” *Whitmore v. Arkansas*, 495 U.S. 149, 163–64 (1990). By contrast, associational

standing (1) requires only a loose membership relationship, (2) does not mandate that the injured member be a minor or disabled, and (3) allows organizations to become a party and pursue their own interests. *See Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343–45 (1977); *All. for Hippocratic Med.*, 602 U.S. at 401 n.3 (Thomas, J., concurring) (“Associations may have very different interests from the individuals whose rights they are raising.”) (citation modified). Other historical examples are similarly far afield. *See Fink v. Campbell*, 70 F. 664, 666–687 (6th Cir. 1895) (cover-ture); *Kerrison v. Stewart*, 93 U.S. 155, 160 (1876) (“[U]nder some circumstances, a trustee may represent his beneficiaries.”).

Associational standing also does not track this Court’s ordinary “third-party standing” doctrine either, which itself has no historical roots. *See Whole Woman’s Health v. Hellerstedt*, 579 U.S. 582, 630 (2016) (Thomas, J., dissenting) (“For most of our Nation’s history, plaintiffs could not challenge a statute by asserting someone else’s constitutional rights.”). Third-party standing requires that the plaintiff suffer his own injury in fact, that he have a close relationship with the right-holder, and that there be some hindrance preventing the third party from protecting his own interests. *Powers v. Ohio*, 499 U.S. 400, 411 (1991). Associational standing discards each of those requirements—it permits an association to sue (1) “solely as the representative of its members” even without its own injury, (2) on behalf of members it barely knows, (3) even if the member could bring their own suit. *Warth*, 422 U.S. at 511.

The reason associational standing does not track any of these doctrines (or class-action litigation) is likely that it appears to have developed unintentionally—certainly without careful explanation.

For more than 150 years, this Court recognized no doctrine permitting an uninjured association to sue solely on behalf of its members. *All. for Hippocratic Med.*, 602 U.S. at 403 (Thomas, J., concurring). The first step toward associational standing came in 1958, when this Court allowed the NAACP to sue to prevent the disclosure of its membership lists. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Even there, the organization had arguably suffered an injury of its own—the challenged order directly injured the NAACP because disclosure threatened its membership and financial support. *Id.* at 458–60. The organization’s interests were also “in every practical sense identical” to its members’, and the members could not sue without revealing their identities and thereby causing “nullification of the right at the very moment of its assertion.” *Id.* at 459. In other words, the case coincided with the Court’s ordinary (yet still ahistorical) third-party standing requirements.

But the Court transformed organizations’ ability to sue on behalf of their members beyond recognition just five years later in *National Motor Freight Traffic Ass’n v. United States*, 372 U.S. 246, 247 (1963) (per curiam), when it declared with no explanation in a one-paragraph order denying rehearing that motor-carrier associations could challenge an agency order because their members were aggrieved and the associations were “proper representatives of the interests of their members.” 372 U.S. 246, 247 (1963) (per curiam). The Court identified no injury to the associations nor

any obstacle preventing the carriers from suing in their own names. *See id.* at 246–47.

That unexplained departure evolved into modern associational standing. Five years later, the Court relied on *Motor Freight* to announce that, “[e]ven in the absence of injury to itself, an association may have standing solely as the representative of its members.” *Warth*, 422 U.S. at 511. But once again, the Court supplied no constitutional justification. In fact, “[t]o date, the Court has provided only practical reasons for its doctrine.” *All. for Hippocratic Med.*, 602 U.S. at 403 (Thomas, J., concurring); *see Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1169–70 (D.C. Cir. 2025) (Henderson, J., concurring) (agreeing and arguing the time for reexamining it is “overdue”); Morley & Hessick, *supra*, at 1546 n.37 (“[T]hird-party standing requirements in general, and associational standing in particular, are not constitutional doctrines.”); Curtis A. Bradley & Ernest A. Young, *Unpacking Third-Party Standing*, 131 Yale L.J. 1, 5, 69 (2021) (“It is unclear why, in these circumstances, an organization should be able to rely on its member’s injury to establish Article III standing.”).

The Court should clarify that the judiciary’s constitutional role is to wield only the “judicial power”—*i.e.*, the power to resolve disputes that are “traditionally thought to be capable of resolution through the judicial process.” *Raines*, 521 U.S. at 819 (citation modified). As even a cursory review of the contours and history of associational standing shows, the doctrine has no place within the traditional judicial role. *All. for Hippocratic Med.*, 602 U.S. at 403 (Thomas, J., concurring) (stating that in creating associational standing, “the Court departed from [the] traditional

understanding [of the judicial power] without explanation, seemingly by accident”); *Ass’n of Am. Physicians & Surgeons*, 13 F.4th at 542 (“[I]t is hard to see how the Supreme Court’s more recent caselaw on standing has not undercut its associational-standing test.”); Morley & Hessick, *supra*, at 1540 (associational standing is “a largely unnecessary deviation from both Article III’s injury-in-fact requirement and the fundamental principles underlying our justice system”). The Court should take this opportunity to reject associational standing and reinforce fidelity to the constitutional structure.

III. Associational Standing Inevitably Becomes Limitless

Associational standing’s threat to the separation of powers and the judicial role is not static, either. In much the same way that third-party standing grew into associational standing, courts inevitably expand the scope of associational standing until it provides little check at all on organizations’ ability to bring claims in court. This expansion “take[s] the courts far beyond their” prescribed role and converts them into “roving enforcers of the law,” Heather Elliott, *Associations and Cities as (Forbidden) Pure Private Attorneys General*, 61 WM. & MARY L. REV. 1329, 1333 (2020), thereby creating “grave implications for democratic governance,” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 202 (2000) (Scalia, J., dissenting).

This case is a perfect example: The National Trust for Historic Preservation, a congressionally chartered nonprofit, brought suit to block a ballroom’s construction because a single member asserts her “enjoy[ment]” of the White House “will be impaired . . . by the construction on the East Wing’s former site of a ballroom.” *Nat’l Tr.*

for Historic Pres. in the United States v. Nat'l Park Serv., No. 26-5123, 2026 WL 2276494, at *14 (D.C. Cir. Aug. 7, 2026). The organization asserted no other injury. *Id.* at *12–18. And the Trust’s member did not even say that she wants to use the space where the ballroom will be; she just does not want to see it. *See id.* at *14. Even so, the D.C. Circuit allowed the Trust to stop an in-progress federal project because a single member claimed she will suffer injury from, once a month, seeing a building she does not like. *See id.* at *2, *19–22. If that asserted injury gives the Trust standing, then it is hard to see how any organization cannot sue over any public project.

In theory, of course, this Court has placed some limits on associational standing. An association may only sue on behalf of its members if “(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*, 432 U.S. at 343. But none of these three requirements serves as a meaningful limitation on the doctrine, as Amici States’ experiences and this case illustrate.

Take the germaneness requirement. Many federal courts describe the requirement that the association protect interests “germane” to its purpose as “undemanding.” *Presidio Golf Club v. Nat'l Park Serv.*, 155 F.3d 1153, 1159 (9th Cir. 1998); *see Elliott, supra*, at 1357 (collecting cases). “[G]ermaneness” has been understood to require “mere pertinence between litigation subject and organizational purpose.” *Humane Soc’y of the U.S. v. Hodel*, 840 F.2d 45, 58–59 (D.C. Cir. 1988) (collecting cases). And because an organization’s purpose is typically self-authored, organizations will

often craft their purpose broadly to maximize potential germaneness. *E.g.*, *Vazquez Perdomo v. Noem*, 148 F.4th 656, 677 (9th Cir. 2025) (finding associations’ “institutional goals to protect a broad range of rights for their members is sufficient for purposes of establishing associational standing” (citation modified)).

This case brings the lax nature of the germaneness requirement into sharp relief. Congress created the Trust and set its purposes by statute. *See* 54 U.S.C. §§ 312102(a)–(b). Those purposes are to “(1) receive donations of sites, buildings, and objects significant in American history and culture; (2) preserve and administer the sites, buildings, and objects for public benefit; (3) accept, hold, and administer gifts of money, securities, or other property of any character for the purpose of carrying out the preservation program; and (4) execute other functions vested in the National Trust by this chapter.” § 312102(b). Ordinarily, the Trust, like any other congressionally created entity, would be strictly bound to its statutory purposes. *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986). But here, the D.C. Circuit allowed the organization to venture beyond its four prescribed purposes so far that the Trust can now manage White House’s appearance through litigation. If organizations can use associational standing to circumvent even Congress’s express limits on an organization’s purposes, this prong of the test is no limit at all.

Associational standing’s third requirement—that a claim does not require the participation of individual members—likewise serves as no obstacle in countless cases. Organizations that invoke associational standing often seek to enjoin state law or other government action to the broadest extent, and raise facial claims requesting “injunctive

and declaratory relief” that “do not require individualized proof” relating to any particular member. *Columbia Basin Apartment Ass’n v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001). Ironically, thanks to associational standing, it is precisely because their claims are so abstract that they are *more* likely to be adjudicated in court. *But see Lance v. Coffman*, 549 U.S. 437, 439 (2007) (this Court “has a lengthy pedigree” of refusing to “serve as a forum for generalized grievances”).

Because the germaneness and individual participation requirements are negligible, the associational standing analysis in practice often turns solely on whether the association has a single member who satisfies Article III’s injury-in-fact requirement. But large, eager associations generally have no difficulty surmounting that requirement either. Organizations of all stripes in the United States have *millions* of members, yet they must find only one injured person among their ranks to establish standing to raise their ideological objections to a state law or government action. The pool of potential injured members grows exponentially when the members of an association are themselves associations—courts in those cases generally allow the plaintiff organization to use an injured member two levels deep. *See All. for Hippocratic Med.*, 602 U.S. at 400 (Thomas, J., concurring).

And organizations who can’t find an injured member are often allowed to recruit someone who has already been injured and invoke that person’s injury in court. *E.g.*, *Citizens Coal Council v. Matt Canestrone Contracting, Inc.*, 40 F. Supp. 3d 632, 642–43 (W.D. Pa. 2014). Some courts have even allowed organizations to rely on the injury of a member recruited after the case began. *E.g.*, *Conservation L. Found., Inc.*

v. Acad. Express, LLC, 129 F.4th 78, 85 (1st Cir. 2025); Morley & Hessick, *supra*, at 1561 (“It is often fairly easy for an organization that wishes to pursue a particular claim to identify a member, or recruit a new member, who has suffered the requisite injury to satisfy this element.”).

The three associational standing requirements therefore do little to prevent those with abstract objections to public policy from turning the courts into “a vehicle for the vindication of value interests.” *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (citation modified). These requirements on their face are not particularly demanding, and in practice are frequently watered down even further.

Federal courts’ permissive approach to associational standing may be explainable by judges’ “natural urge to proceed directly to the merits of [an] important dispute and to ‘settle’ it for the sake of convenience and efficiency.” *Raines*, 521 U.S. at 820. The tendency of courts to treat standing as “merely a troublesome hurdle to be overcome if possible so as to reach the ‘merits’ of a lawsuit” only increases the more feeling a dispute evokes. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 476 (1982). So too in cases in which plaintiffs invoke associational standing, which frequently involve ideologically motivated interest groups challenging consequential government actions. Associational standing is therefore likely to be diluted, just as other third-party standing doctrines have been twisted in the past. *See Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 287 (2022) (“The Court’s abortion cases have diluted the strict standard for facial

constitutional challenges. They have ignored the Court’s third-party standing doctrine.”).

But in Amici States’ experience, the effects of associational standing run even deeper. As high-profile litigation tends to repeatedly center around large organizations and real injured citizens are reduced to a checkbox for these organizations to pursue their claims, courts instinctively drift away from viewing their role as using the judicial power to resolve concrete cases and controversies. Instead, they begin to see their role as “ombudsmen of the general welfare.” *Valley Forge*, 454 U.S. at 487. The result is “inevitably . . . an overjudicialization of the processes of self-governance” that was never intended by the Framers of the United States Constitution. Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 881–84 (1983); see *Nuziard v. Minority Bus. Dev. Agency*, 721 F. Supp. 3d 431, 454 (N.D. Tex. 2024) (“the Framers wanted to ensure federal courts don’t become the *de facto* forum to air political grievances”).

Losing sight of the proper judicial role is not a victimless offense. Rather, should the Court allow associational standing to continue expanding, it will be the American People who pay the price. “Liberty is always at stake when one or more of the branches seek to transgress the separation of powers,” *Clinton v. City of New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring), and every expansion of associational standing aggrandizes the judicial power while “usurping the role of the political branches,” Morley & Hessick, *supra*, at 1562–63. The underlying problems

with associational standing underscore that associational standing's expansion in this litigation warrants this Court's attention.

IV. The Court Should Revisit Associational Standing While Clarifying a Passerby's Offense Does Not Constitute a Cognizable Injury

Although this Court could resolve this case on the ground that the Trust did not identify a member who has suffered a cognizable injury, this case provides an excellent opportunity to revisit associational standing because it pairs that theory with an ahistorical, offended observer theory of injury to dramatically expand the ability of organizations to block government projects. As noted above, the theory of injury underlying the Trust's suit is that a member's "enjoy[ment]" of the White House "will be impaired . . . by the construction on the East Wing's former site of a ballroom." *Nat'l Tr. for Historic Pres.*, 2026 WL 2276494, at *14. Standing is supposed to "screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *All. for Hippocratic Med.*, 602 U.S. at 381. Yet here, an aesthetic objection was enough.

This Court need not look far afield to see the potential damage embracing the D.C. Circuit's theory of standing could cause. Over the last several decades, private persons and associations have run into court to block government monuments that allegedly partake too much in religion on the theory that a person would come into "direct and unwelcome contact with an [alleged] Establishment Clause violation." *Red River Freethinkers v. City of Fargo*, 679 F.3d 1015, 1024 (8th Cir. 2012). But "this 'offended observer' theory of standing has no basis in law," *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 29, 79–80 (2019) (Gorsuch, J., concurring), and "cannot

be squared with this Court’s longstanding teachings about the limits of Article III,” *id.* at 83; *see Kondrat’yev v. City of Pensacola*, 949 F.3d 1319, 1335 (11th Cir. 2020) (Newsom, J., concurring) (criticizing as “just plain wrong” circuit precedent’s “full-on embrace of what Justice Gorsuch recently called the ‘offended observer’ theory”) (citation modified)). Instead, “[l]ower courts invented” the offended observer theory of standing in response to *Lemon v. Kurtzman*, 403 U.S. 602 (1971), sparking decades of litigation over war memorials, historical markers, and nativity displays. *Am. Humanist Ass’n*, 588 U.S. at 84 (Gorsuch, J., concurring); *see City of Ocala, Fla. v. Rojas*, 143 S. Ct. 764, 765 (2023) (statement of Gorsuch, J., respecting denial of certiorari).

Associations were frequent combatants in these cases. Many Establishment Clause challenges were brought by organizations that claimed nothing more than that their members were or would be offended. *See, e.g., Am. Legion*, 588 U.S. at 79, (Gorsuch, J., concurring) (“The American Humanist Association wants a federal court to order the destruction of a 94 year-old war memorial because its members are offended.”); *Adland v. Russ*, 307 F.3d 471, 478 (6th Cir. 2002) (“[V]arious members of the American Civil Liberties Union travel to the Capitol, all of whom would come into direct, unwelcome contact with the monument.”); *Indiana Civil Liberties Union Inc. v. O’Bannon*, 110 F. Supp. 2d 842, 847 (S.D. Ind. 2000) (holding an association had standing to challenge Ten Commandments monument because “individuals will be forced into frequent, direct, and unwelcome contact with the monument during the course of their normal routines, if it is erected as planned”). This practice ended up placing “Article III standing . . . in the hands of concerned bystanders, who . . . use[d]

it simply as a vehicle for the vindication of value interests.” *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (quotation marks omitted).

If, as the Trust urges, the offense that comes from seeing construction projects that are in no way religious is held to be a cognizable injury, it is not hard to predict what will happen next. State and local governments will see themselves mired in litigation over efforts to build schools, roads, jails, and other vital projects solely because an interest group can find a single person who says they won’t like the way the building will look. That result cannot be squared with Article III. “Article III does not contemplate a system where 330 million citizens can come to federal court whenever they believe that the government is acting contrary to the Constitution or other federal law” during the process of laying pavement or putting up a school. *All. for Hippocratic Med.*, 602 U.S. at 382.

* * *

Fortunately, the Court need not allow the judiciary to continue down this path. Rather than arrogate “general legal oversight of the Legislative and Executive Branches,” *TransUnion*, 594 U.S. at 423–24, the Court can take this opportunity to check a doctrine that has become limitless. Doing so will not prevent organizations from seeking redress for their own injuries. Nor will it prevent the actual injuries of individuals from being redressed: organizations who wish to see members’ claims go forward can still provide legal assistance, funding, or representation to the injured member, or even to a class of injured members. See *Morley & Hessick, supra*, at 1569 (citing an instance where an organization successfully used this strategy). But the

Court should not allow groups whose members claim offense to sue over virtually anything and everything. The problems underlying the theory that the D.C. Circuit embraced are yet further reasons this case warrants this Court's attention.

CONCLUSION

The Court should stay the district court's preliminary injunction.

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