IN THE

Indiana Supreme Court

Supreme Court Case No. 22S-MI-252

City of Gary,
Appellant,

–v–

Jeff Nicholson, et al.,
Appellees.

Argued: June 9, 2022 | Decided: July 21, 2022

Appeal from the Lake Superior Court
No. 45D05-1802-MI-14
The Honorable Stephen E. Scheele, Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-MI-2317

Opinion by Justice Slaughter

Chief Justice Rush and Justices David, Massa, and Goff concur.

Slaughter, Justice.

The City of Gary is a so-called "welcoming city"—with a local ordinance designed to protect the rights of immigrants. The plaintiffs below, four Indiana residents, argue Gary is a "sanctuary city" with its ordinance. The plaintiffs challenge Gary's ordinance as violating state law and seek to prevent the city from enforcing it. Yet they allege no injury; they argue instead that neither statutory nor public standing requires an injury. We disagree and grant transfer to dismiss for lack of standing.

I

In 2017, Gary adopted a welcoming ordinance establishing its commitment to protecting the rights of immigrants. The ordinance, among other things, limits the city's ability to investigate a person's immigration status and to assist the United States in enforcing federal immigration laws. Shortly after the ordinance took effect, the plaintiffs sued Gary, seeking a declaration that four sections of the ordinance violate Indiana Code chapter 5-2-18.2 and enjoining the city from enforcing those sections.

Their complaint alleges they have statutory and public standing based on their "public interests in the performance of public duties required by Chapter 18.2, including interests in enforcement of the law and public safety." The plaintiffs and Gary then filed cross-motions for summary judgment on the merits, and the State intervened. The State did not file its own complaint and sought no relief from Gary. It merely offered its view of the ordinance's meaning and legality. The trial court entered summary judgment for the plaintiffs, enjoining Gary from "enforcing those provisions of its City of Gary Ordinance 9100 . . . that are violative of Indiana Code §§5-2-18.2-3, 5-2-18.2-4 and/or other applicable state or federal law." The court did not specify which provisions of the four challenged sections violate state or federal law.

Gary appealed, and the court of appeals affirmed in part, reversed in part, and remanded with instructions. *City of Gary v. Nicholson*, 181 N.E.3d 390, 395 (Ind. Ct. App. 2021). As for the entry of summary judgment for the plaintiffs, the court of appeals held some of the challenged sections violate chapter 18.2 while others do not. *Id.* at 402, 405, 408, 413–15. The

court of appeals did not address the plaintiffs' standing, and Gary did not challenge it. *Id.* at 396 n.3. The plaintiffs and the State then sought transfer, which we grant today, thus vacating the appellate opinion.

II

The plaintiffs claim they have standing to sue under principles of public standing and a separate statutory right to sue under Indiana Code section 5-2-18.2-5. Standing is a legal question we review de novo. *Holcomb v. Bray*, 187 N.E.3d 1268, 1275 (Ind. 2022). Indiana law is clear that standing requires an injury. See, e.g., *id.* at 1286 (citing *Solarize Indiana, Inc. v. Southern Indiana Gas and Elec. Co.*, 182 N.E.3d 212, 217 (Ind. 2022)). But the plaintiffs, acknowledging they have alleged no injury, argue instead that lack of injury is "irrelevant" here because they have statutory and public standing. We disagree. Because the plaintiffs allege no injury, there is no justiciable dispute.

According to the plaintiffs, Indiana Code section 5-2-18.2-5 confers "domicile-standing". Section 18.2-5 says: "If a governmental body . . . violates this chapter, a person lawfully domiciled in Indiana may bring an action to compel the governmental body . . . to comply with this chapter." Ind. Code § 5-2-18.2-5. By its terms, section 18.2-5 creates a private right of action—but does not confer standing because it lacks an injury requirement. Cf. *Bray*, 187 N.E.3d at 1287 (discussing injury requirement under Declaratory Judgment Act); *Solarize*, 182 N.E.3d at 217–18 (discussing injury requirement under utility code section 8-1-3-1). As we recently held: "litigants [must] demonstrate a sufficient injury before a court can decide the substantive issues of their claims." *Bray*, 187 N.E.3d at 1286 (citation omitted). Thus, "a person lawfully domiciled in Indiana" may have a statutory cause of action. But this does not mean the person has necessarily sustained an injury essential to obtaining judicial relief.

Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992), is instructive on this point. There, the Supreme Court analyzed the Endangered Species Act, a federal statute that created a private right of action. *Id.* at 571–72. The statute's so-called "citizen-suit" provision says that "any person may commence a civil suit on his own behalf . . . to enjoin any person, including the United States and any other governmental instrumentality

or agency . . . who is alleged to be in violation of any provision of this chapter". 16 U.S.C. § 1540(g)(1)(A). The Court held the statute did not confer standing, rejecting the notion that Congress could "convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts". *Lujan*, 504 U.S. at 577. Allowing Congress to do so, the Court reasoned, would effectively transfer executive authority to the judicial branch. *Ibid.* Thus, the Court held the statute could not confer standing without an injury-in-fact requirement. *Id.* at 573.

Similarly, our recent opinion in *Solarize Indiana, Inc. v. Southern Indiana Gas and Electric Co.* addressed a statute with an injury requirement. 182 N.E.3d at 215. At issue was whether a litigant had standing to challenge a utility-commission procedure under a statute requiring a party to be "adversely affected" to bring an appeal. *Ibid.* As the Supreme Court did in *Lujan*, we held a statute can confer a party with standing but only if the statute requires an injury. See, e.g., *id.* at 215, 218 n.4. Here, like the Endangered Species Act's "citizen-suit" provision in *Lujan*—and unlike the utility code's "adversely affected" provision in *Solarize*—section 18.2-5 has no injury requirement. Thus, the statute upon which the plaintiffs rely for "domicile standing" cannot meet our constitutional requirements for conferring standing.

Alternatively, the plaintiffs allege they have public standing. Although our public-standing doctrine is unsettled in Indiana, at a minimum it requires some type of injury. This is why in *Pence v. State* we held an uninjured plaintiff lacked standing to challenge a statute's constitutionality. 652 N.E.2d 486, 487–88 (Ind. 1995). Here, the plaintiffs' public-standing argument likewise fails because they allege no injury. We thus decline to find public standing here.

Finally, the State's intervention here does not alter our standing analysis. The State did not file a separate complaint, sought no relief from Gary, intervened only to "offer its view of the meaning of the relevant statutory provisions", and conceded at oral argument that dismissal would be appropriate if the plaintiffs lack standing. Because we hold that plaintiffs lack standing, we also hold that dismissal is warranted here.

* * *

For these reasons, the plaintiffs lack standing to challenge Gary's ordinance. We remand to the trial court with instructions to dismiss the action for lack of standing.

Rush, C.J., and David, Massa, and Goff, JJ., concur.

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