IN THE SUPREME COURT OF GEORGIA

Case No. S25A0634

BRYAN COUNTY *et al.*,
Appellants,

v.

HOME BUILDERS ASSOCIATION OF SAVANNAH, INC.,
Appellee.

BRIEF OF 14 TRADE ASSOCIATIONS AS *AMICI CURIAE* IN SUPPORT OF THE APPELLEE

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STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*

The *amici curiae* are 14 national, state, and regional trade associations that represent members in a variety of industries:

- **National Association of Home Builders of the United States** is a national association that represents approximately 140,000 members in the residential-construction industry. Its members account for the construction of 80 percent of the homes in the United States.
- **American Road & Transportation Builders Association** is a national association that represents more than 8,000 members in the transportation-construction industry, including construction contractors, professional-engineering firms, public agencies, state and local transportation administrators, heavy-equipment manufacturers, and materials suppliers. Its affiliates include the Georgia Highway Contractors Association.
- **Associated General Contractors of America, Inc.** is a national association that represents more than 28,000 members in the commercial-construction industry, including general contractors, specialty contractors, and service providers and suppliers. It has chapters in all 50 states, including Georgia.
- **Associated General Contractors of Georgia, Inc.** is a statewide association that represents more than 600 members in the commercial-construction industry in Georgia, including general contractors, residential and light-commercial builders, construction managers, design builders, municipal-utility contractors, heavy and highway contractors, specialty contractors, service providers, and suppliers.
- **Council for Quality Growth** is a regional association in metro Atlanta that represents more than 300 companies and organizations, with nearly 2,000 individual constituents, in the development industry. Its members include developers, planners, engineers, home builders, architects, land-use attorneys, banks, construction contractors, chambers of commerce, and community improvement districts.
- **Georgia Association of REALTORS** is a statewide association that represents more than 46,000 licensed real-estate professional members

in Georgia. It is the largest trade organization in Georgia and is the umbrella organization for 50 affiliated boards and associations throughout the state.

- **Georgia Restaurant Association** is a statewide association that serves as the unified voice for Georgia's 23,301 restaurant locations, which are responsible for total sales exceeding $45.7 billion and more than 500,000 jobs statewide.
- **Home Builders Association of Georgia** is a statewide organization dedicated to creating, promoting, and protecting an ongoing successful environment for affordable housing to benefit its members and the citizens of Georgia. It is committed to offering opportunities for members to improve their abilities to conduct business with integrity and encourages member involvement in assisting communities to meet the need for affordable, quality housing.
- **National Apartment Association** serves as the leading voice for the rental housing industry, including 141 state and local affiliates and more than 95,000 members that represent over 12.5 million apartment homes globally.
- **National Association of REALTORS** is a national association, representing more than 1.5 million members in the residential and commercial real estate industries. Its members include residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others in the real-estate industry.
- **REALTORS Commercial Alliance of Savannah/Hilton Head** is a professional association that advocates for commercial real-estate interests in coastal Georgia and southern coastal South Carolina.
- **Restaurant Law Center** is the only independent public-policy organization established to represent the interests of the food-service industry in the courts. It represents more than 500,000 restaurant-business members of the National Restaurant Association throughout the United States.
- **Savannah Area REALTORS** is a regional association that represents approximately 2,600 real-estate licensees in Bryan, Chatham, and Effingham Counties.

- **Southeast Propane Alliance** is a regional association that represents more than 700 members in the LP-gas industry in Georgia, North Carolina, and South Carolina. The propane industry in these three states has an annual, estimated economic impact exceeding $4 billion.

As business and trade associations that routinely appear in federal and state courts on behalf of their respective memberships, the *amici curiae* have an interest in preserving the judicial recognition of associational standing.

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INTRODUCTION

A few months ago, this Court rejected the doctrine of third-party standing in *Wasserman v. Franklin County,* 320 Ga. 624 (911 SE2d 583) (2025), but *Wasserman* does not control whether the Court now should reject the separate and distinct doctrine of associational standing. Third-party standing allows a plaintiff—who has suffered harm, but who has no legal right to a remedy—to pursue *redress for herself* by asserting the *legal rights of another*. Although her remedy may benefit the nonparty incidentally, the plaintiff litigates for her own purposes, not simply as a representative of the nonparty. Associational standing, on the other hand, is a classic form of representational standing, which permits a plaintiff to assert the *legal rights of one or more nonparties* for the purpose of securing *redress for the same represented nonparties*. Because third-party standing and associational standing rest upon different premises and function differently in practice, *Wasserman* does not compel the Court to reject associational standing. And since the Court called for briefing only about the effect of *Wasserman*, this case would not be a good vehicle for the Court to revisit whether associational standing is consistent with the state constitution.

When the time comes for the Court to revisit that distinct question, the Court should adhere to its recognition of associational standing in *Aldridge v. Ga. Hospitality & Travel Ass'n,* 251 Ga. 234 (304 SE2d 708) (1983), under the principle of *stare decisis.* Application of *stare decisis* is appropriate most especially because the fundamental holding of *Aldridge*—that an association in some circumstances may have standing to assert claims for the collective benefit of some or all of its members that rest upon their common legal rights—is not obviously wrong, at least as it concerns the standing of trade associations. Representational standing in general has deep roots in the Anglo-American legal tradition and sits comfortably within the limits of the judicial power as those limits were understood at the time of the Founding. And in particular, the roots of associational standing can be found in cases at common law in which guilds and other forebears of modern trade associations sued to vindicate the rights and privileges of their members. Moreover, by the time of the adoption of the Constitution of 1983, parties routinely invoked associational standing in Georgia courts, and even before *Aldridge,* this Court had recognized a form of associational standing. Associational standing has far deeper

roots than third-party standing in our legal tradition, and associational standing has been recognized in Georgia for far longer than third-party standing ever was. What's more, abandoning associational standing now could undermine substantial reliance interests and cast a cloud over other areas of law.

Associational standing permits the more efficient litigation of many justiciable disputes, and the expertise and resources that trade associations bring to bear in these disputes is a benefit not only to their members, but also to the courts. And in some instances, associational standing allows the presentation and resolution of important issues that otherwise might never be brought to the courts, such as in litigation against the government on behalf of companies and individuals who could be exposed to regulatory retaliation if they brought suit individually. To be sure, the convenience and efficiency of a modern doctrine of standing cannot overcome the constitution, and if the constitution clearly forbade the courts to entertain suits that rest upon associational standing, so be it. But the constitution is not so obviously inconsistent with associational standing, and for that reason, the Court in an appropriate case should apply the principle of *stare decisis* and stand by its decision in *Aldridge*.

ARGUMENT AND CITATION OF AUTHORITY

A. *Wasserman* Does Not Control Because Associational Standing and Third-Party Standing Are Separate, Distinct, and Materially Different Doctrines of Standing.

In *Wasserman,* this Court said in *dicta* that its decision about third-party standing "would seem to control" "the closely related question" about associational standing and the extent to which that doctrine is consistent with the constitutional limits of the judicial power in Georgia. 320 Ga. at 649 n.14. The Court reasoned that, "like federal third-party standing, federal associational standing allows an association to assert the rights of people who are not before the court (the association's members) without asserting that the association's own rights are at stake." *Id.* Respectfully, the Court's comparison of third-party standing and associational standing in *Wasserman* is inapt. Associational standing is a form of representational standing that does not rest upon the same premises, and does not function in the same way, as third-party standing. They are separate and distinct doctrines, and *Wasserman* does not control

whether associational standing fits within the limits of the judicial power in Georgia.

The doctrine of third-party standing permits a plaintiff who has sustained herself an injury for which she seeks redress to assert the legal rights of one or more nonparties as a basis for her remedy. *See generally Feminist Women's Health Ctr. v. Burgess,* 282 Ga. 433, 434-35 (651 SE2d 36) (2007), overruled by *Wasserman,* 320 Ga. at 649. To invoke third-party standing, a plaintiff must show that she has sustained herself an injury in fact, a causal connection between her injury and the conduct of the defendant of which she complains, and a likelihood that the remedy she seeks will redress her injury. *See Granite State Outdoor Advertising, Inc. v. City of Clearwater,* 351 F3d 1112, 1116 (11th Cir. 2003). Moreover, to rely upon the legal rights of a nonparty as a basis for the redress she seeks, the plaintiff additionally must show that she and the nonparty share a "close relation" and that there is "some hindrance to the [nonparty's] ability to protect his or her own interest." *Burgess,* 282 Ga. at 434-35. *See also Powers v. Ohio,* 499 US 400, 411 (111 SCt 1364) (1991). In the light of these additional requirements, the interests of the plaintiff and the nonparties whose rights are asserted by the plaintiff often will be aligned, and the nonparties incidentally may benefit from any remedy secured by the plaintiff. Still, third-party standing is not truly a doctrine of representational standing because the plaintiff litigates for her own purpose of securing *redress for herself. See* 13A Fed. Prac. & Proc. Juris. § 3531.9.3 (3d ed.) (discussing potential for unaligned and conflicting interests in context of third-party standing).[1]

[1] Throughout its decision in *Wasserman,* this Court characterized third-party standing as a *federal* doctrine, *see, e.g.,* 320 Ga. at 624-25, and that characterization is apt. Because the test for third-party standing incorporates the threshold requirements for standing under Article III of the United States Constitution, it by definition is distinctly federal. Among those threshold requirements, of course, are the requirements that the plaintiff herself have sustained an injury in fact and that the plaintiff must show a likelihood that the remedy sought will *redress her injury. See Granite State Outdoor Advertising,* 351 F3d at 1116. These requirements of Article III standing ensure that a plaintiff invoking third-party standing necessarily will do so to pursue redress for herself, even though it may incidentally benefit nonparties. Of course, in *Sons of Confederate Veterans v. Henry County Bd. of Commrs.,* 315 Ga. 39, 39 (880 SE2d 168) (2022), this Court rejected the notion that a plaintiff necessarily and always must show an individualized injury of the sort that Article III requires. Instead, the

The various doctrines of representational standing, on the other hand, involve plaintiffs who assert claims explicitly on behalf of—and seek redress specifically for the benefit of—the nonparties whose legal rights are the basis for the claims. A plaintiff invoking one of these doctrines does not borrow legal rights from nonparties just to secure her own redress for her own injury. To the contrary, she effectively steps into the shoes of the nonparties and litigates their claims for their benefit and to secure a remedy for them. This distinction is not an insignificant one. *See* Bradley & Young, *Unpacking Third-Party Standing,* 131 Yale L.J. 1, 60-61 (2021) (noting "important differences between representative standing and [traditional third-party standing]").

Next-friend standing to assert the legal rights of an incapacitated person is a classic example of representational standing, where the next friend asserts a claim explicitly on behalf of the nonparty and to secure redress for the benefit of the nonparty. *See id.* at 63-64. In *Wassserman,* this Court implicitly acknowledged this distinction between traditional third-party standing and representational standing, cautioning that *Wasserman* "should not be understood to call into question…'next friend' standing." 320 Ga. at 649 n.15. Speaking of next-friend standing, the Court noted its "deep roots" in the common law and concluded that "there is little doubt that the judicial power of Georgia courts would extend to those kinds of cases." *Id.* The standing of a personal representative to bring suit on behalf of an estate and the standing of a trustee to litigate on behalf of a trust also are forms of representational standing. In these cases, the representative or trustee steps into the shoes of the represented nonparty to bring claims on its behalf, asserting its rights, to secure a remedy for its benefit. Yet another example is the standing of a class representative to assert not only his own claims, but also to assert the separate and distinct claims of the absent members of a certified class, asserting their legal rights and seeking a remedy for them.

Associational standing likewise is a form of truly representational standing. *See New Cingular Wireless PCS v. Dept. of Revenue,* 308 Ga. 729, 734 (843 SE2d 431) (2020) (acknowledging that associational standing is "a subset or

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Court explained, a plaintiff in a Georgia court simply must show a "violation of a right," whether a private right or a public right that the plaintiff is entitled to vindicate. *Id.* at 52.

strand of representational standing") (cleaned up). *See also* Bradley & Young, *supra* at 68 (treating associational standing as a form of "representative standing"). Associational standing permits an association to appear as a representative of some or all of its members, to assert claims on their behalf and based upon their legal rights, and to pursue a remedy for their benefit. *See generally Aldridge,* 251 Ga. at 235. *See also National Motor Freight Traffic Ass'n v. United States,* 372 US 246, 247 (83 SCt 688) (1963). In cases that rest upon associational standing, the plaintiff-association does not merely borrow the legal rights of its members to seek redress for a harm to the organization itself. Moreover, to assure the adequacy of the representation and due process for the represented members of a plaintiff-association, the doctrine of associational standing requires the association to show not only that one or more of its members would have standing themselves to bring the claim, but also that the association seeks to protect interests "germane to [its] purpose" and that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Aldridge,* 251 Ga. at 236. *See also Atlanta Taxicab Co. Owners Ass'n v. City of Atlanta,* 281 Ga. 342, 344-45 (638 SE2d 307) (2006); *Hunt v. Wash. State Apple Advertising Comm.,* 432 US 333 (97 SCt 2434) (1977). Consistent with its representative nature, associational standing generally is limited to cases in which the relief sought is "a declaration, injunction, or some other form of prospective relief that will inure to the benefit of those members of the association actually injured." *Sawnee Elec. Membership Corp. v. Dept. of Revenue,* 279 Ga. 22, 24-25 (608 SE2d 611) (2005) (cleaned up). It is, as this Court has observed, a doctrine that is "significantly limited in its scope." *New Cingular Wireless,* 308 Ga. at 734.

The doctrines of associational standing and third-party standing are distinct, rest upon different premises, and function in materially different ways. Indeed, as a doctrine of representational standing, associational standing is more akin to next-friend standing, trustee standing, and class-representative standing than to third-party standing. It is true that, under each of these doctrines of standing, a plaintiff may assert the legal rights of a nonparty. But a plaintiff does so for different purposes, to vindicate distinct interests, and to obtain a different remedy. Only in the context of third-party standing does the plaintiff assert the rights of a nonparty explicitly to secure redress for a harm

to the plaintiff herself. Under the various doctrines of representational standing, the plaintiff asserts the rights of one or more nonparties as a representative of the nonparties and to secure redress for their benefit.

In the light of these fundamental distinctions between associational standing and third-party standing, *Wasserman* does not control associational standing. In its February 20 order, this Court invited briefing only on whether *Wasserman* requires the abandonment of associational standing. It does not, and because the question posed by the Court was a narrow one, this case is not a good vehicle for the Court to proceed to revisit *Aldridge* and decide whether associational standing comports with the constitutional vesting of the judicial power in Georgia.

B. In an Appropriate Case, the Court Should Adhere to Its Recognition in *Aldridge* of Associational Standing Under the Principle of *Stare Decisis*.

More than 40 years ago, this Court recognized the doctrine of associational standing in *Aldridge*. 251 Ga. at 235-37. When an appropriate case appears for this Court to revisit *Aldridge*, the principle of *stare decisis* cries out for the Court to adhere to its longstanding recognition of the doctrine. It is far from obvious that *Aldridge* was wrongly decided, even if its reasoning is less than compelling. Moreover, abandoning associational standing could unsettle other important areas of law previously thought to be settled, and it also could undermine long-final judgments upon which substantial reliance interests have developed. For these reasons, its abandonment would be unusually destabilizing, which perhaps might be justified if it were perfectly clear that associational standing breaches the constitutional limits of the judicial power. But as we explain, it is not clear and obvious that associational standing is inconsistent with the judicial power as vested by the Constitution of 1983.

The principle of *stare decisis*—the notion that appellate courts generally should stand by their precedents—is uniquely important to the rule of law. *See State v. Jackson,* 287 Ga. 646, 658 (697 SE2d 757) (2010). As this Court has explained, *stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Olevik v.*

State, 302 Ga. 228, 244 (806 SE2d 505) (2017) (cleaned up). Although *stare decisis* is "not an inexorable command," *Georgia Ports Auth. v. Lawyer,* 304 Ga. 667, 677 (821 SE2d 22) (2018) (cleaned up), it is "the strong default rule." *Johnson v. State,* 315 Ga. 876, 887 (885 SE2d 725) (2023).

When this Court considers whether to apply *stare decisis* and stand by a prior decision, it looks to guideposts, many of which are identified in the case law. *See Jackson,* 287 Ga. at 658. Preeminent among these considerations is the soundness of the precedent, which typically is the most important consideration, *see Pounds v. State,* 309 Ga. 376, 382 (846 SE2d 48) (2020), and is an especially important consideration when the Court reassesses a decision interpreting the constitution. *See Olevik,* 302 Ga. at 245. In considering the soundness of a precedent, the Court looks not only to the quality and extent of the reasoning in the precedential opinion, but also to the fundamental soundness of the rule adopted by that precedent. *See, e.g., Johnson,* 315 Ga. at 887-88. An obviously wrong rule that was adopted without reason or upon poorly reasoned premises is highly susceptible to reconsideration, especially if it concerns matters of great importance and implicates no substantial reliance interests. *See id.* But "[m]inor errors, even if quite obvious, or *important errors if their existence be fairly doubtful,* may be adhered to and repeated indefinitely." *Ellison v. Ga. R. & B. Co.,* 87 Ga. 691, 696 (13 SE 809) (1891) (emphasis added). After all, "[r]especting *stare decisis* means sticking to some wrong decisions." *Kimble v. Marvel Entertainment,* 576 US 446, 455 (135 SCt 2401) (2015). We turn now to the soundness of the rule and reasoning of *Aldridge.*

To begin, we acknowledge that the reasoning of *Aldridge* leaves something to be desired. *Aldridge* did not attempt the sort of extensive and exacting legal and historical analysis that this Court has undertaken in its more recent decisions on standing. *See, e.g., Sons of Confederate Veterans,* 315 Ga. at 46-62; *Wasserman,* 320 Ga. at 627-44. To be sure, *Aldridge* was not altogether unreasoned. But finding no Georgia precedents explicitly addressing associational standing, the Court based its decision in *Aldridge* principally upon federal cases and scholarly commentary about federal law, *see* 251 Ga. at 235-36, a practice that the Court has criticized in recent years. *See, e.g., Wasserman,* 320 Ga. at 647-48. The paucity or inadequacy of the reasoning behind the adoption of a doctrine, however, does not mean inevitably that the doctrine is wrong,

much less that it is obviously so. And there are reasons to think that the doctrine of associational standing recognized in *Aldridge* is consistent with the original understanding of the judicial power in Georgia, as well as the prevailing conception of the judicial power at the time of the adoption of the Constitution of 1983.

1. Associational Standing at Common Law

In assessing standing to bring suit in the Georgia courts, this Court has explained that the pertinent constitutional text "sheds little light on what standing limitations might be inherent in the judicial power," so "we must consider the legal background against which the original Judicial Power Paragraph was adopted in the 1798 Constitution." *Sons of Confederate Veterans,* 315 Ga. at 47. Unlike the doctrine of third-party standing that the Court addressed in *Wasserman,* doctrines of representational standing have deep roots in the Anglo-American legal tradition. And more specifically, the English courts heard a number of cases at common law in which associations sued to vindicate the legal rights and commercial interests of their members. At the very least, the standing of trade associations to assert the legal rights of their members is not *obviously* inconsistent with Founding-era understandings of the judicial power.

Representational standing in general has been a recognized feature of Anglo-American jurisprudence for centuries. In medieval England, litigation by groups of individuals *as groups* and through representatives was "pervasive." Stephen C. Yeazell, FROM MEDIEVAL GROUP LITIGATION TO THE MODERN CLASS ACTION (Yale U. Press 1987) at 4. Parishioners litigated as a parish, villagers litigated as a village, and "the middling and poor burgesses of Scarborough" litigated as a class, notwithstanding that these unincorporated groups of individuals lacked any formal charter. *Id.* at 38 (cleaned up). As Frederick Pollock and Frederick W. Maitland, the great historians of early English law, observed, the "community of the township is not incapable of suing," although "it rarely sues for it has nothing to sue about." 1 Pollock & Maitland, HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I (2d ed. S.F.C. Milsom ed. Cambridge 1968) at 633. In these lawsuits, the litigant-groups effectively were asserting the individual rights of their members because "the

groups in question did not hold property in the name of a collective entity." Yeazell, *supra* at 68 (citing Pollock & Maitland).

Over time, as a nascent law of incorporation began to develop, the royal courts slowly started to evince a preference—and eventually, something approaching a rule—for litigation only by legal persons, whether natural or incorporated. *See id.* at 4, 81. Still, the medieval practice of representational litigation by unincorporated associations without any formal charter on behalf of individuals persisted into the eighteenth century. *See id.* And even as litigation shifted away from unincorporated entities, early corporations litigated, and when they did, they sometimes litigated property rights of which the corporation was understood to be merely a trustee and their shareholder-members the owners. According to Samuel Williston:

> The most accurate [modern] definition of the nature of the property acquired by the purchase of a share of stock in a corporation is that it is a fraction of all the rights and duties of the stockholders composing the corporation. Such does not seem to have been the clearly recognized view till after the beginning of the [nineteenth] century. The old idea was rather that the corporation held all its property strictly as a trustee, and that the shareholders were, strictly speaking, *cestuis que trust,* being in equity co-owners of the corporate property.

Williston, *History of the Law of Business Corporations Before 1800,* 2 HARV. L. REV. 149, 149-50 (1888). This old understanding of the nature and ownership of property held by corporations is evidenced by cases in which it was held that a share of a corporation holding real estate gave the shareholder title to the real estate, such that a will devising the share had to satisfy the formalities required of a deed. *See id.* at 150. To put it simply, when royal courts in the eighteenth century permitted corporations to litigate interests in property, they arguably were recognizing a form of associational standing, precisely because it was not yet settled that corporations—rather than their shareholders—were the true owners of the property that the corporations held. The evolving view of the nature of corporate property around the time of the Founding is at least a reason to doubt that the common law *obviously* did not recognize associational standing.

But perhaps the most pertinent indication of representational standing at common law for our purposes—a practice that foreshadows the associational standing of modern trade associations—is litigation by borough and municipal corporations, trade and craft guilds, and the ancient livery companies to vindicate the rights of guild members. When the king chartered a borough, the king typically conferred a right upon the burgesses—the free inhabitants of the borough—to be free of merchant tolls. *See* Raymond, *The Genesis of the Corporation,* 19 Harv. L. Rev. 350, 356 (1906). Guilds were established and chartered in boroughs and municipalities to safeguard and promotes these rights, *see id.,* and the members of guilds often enjoyed exclusive franchises to practice the business or trade of the guild within the borough. *See* Yeazell, *supra* at 118. The guilds themselves, and sometimes the boroughs and municipal corporations of which guilds were a part, would appear from time to time in the royal courts to enforce the rights of the guild members to their exclusive franchises.[2] *See, e.g., Mercers & Ironmongers of Chester v. Radford,* 83 Eng. Rep. 440 (K.B. 1793) (association of mercers and ironmongers brought action against linen-draper to enforce exclusive franchise rights of members); *Mayor of Berwick v. Ewart,* 96 Eng. Rep. 629 (K.B. 1776) (action by municipal corporation against retailer to enforce exclusive franchise rights of members of municipal guild); *Mayor & Burgesses of the Town of Berwick upon Tweed v. Johnson,* 98 Eng. Rep. 680, 681-82 (K.B. 1773) (action by municipal corporation against stocking seller to enforce exclusive commercial rights of members of municipal guild); *Wardens & Corp. of Weavers in London v. Brown,* 78 Eng. Rep. 1031 (K.B. 1600) (weavers' corporation brought action against tradesman to enforce exclusive franchise rights of its members); Yeazell, *supra* at 128-29 (discussing petition to the Star Chamber by the mayor and aldermen of Newcastle to restrain commodity traders from undermining the franchise rights of the town "bothemen"). *Cf. Mayor of Winton v. Wilks,* 91 Eng. Rep. 181 (K.B. 1790)

[2] In considering these cases, the modern reader must take care not to project modern views of municipal corporations upon the municipal corporations of the English common law. Indeed, William Blackstone put corporations "erected for the good government of a town or particular district, as a mayor and commonalty, bailiff and burgesses, or the like" and corporations established "for the advancement and regulation of manufactures and commerce[,] as the trading companies of London and other towns" into the same class of corporations. 1 Blackstone, Commentaries on the Laws of England (1st ed. 1765) at 458-59.

(municipal corporation brought suit against tradesman to enforce exclusive commercial rights of members of municipal guild, and court held that suit should have been brought instead by the guild itself, inasmuch as it was unclear whether the guild was composed of all burgesses of the town or only a portion thereof). These cases at least suggest a recognition of a form of associational standing at common law prior to and around the time of the War for American Independence.[3]

2. Recognition of Associational Standing in Georgia

Although *Aldridge* was the first decision in which this Court *explicitly* recognized the doctrine of associational standing, it *implicitly* recognized a form of associational standing several years earlier, prior to the popular ratification of the Constitution of 1983. *See Lindsey Creek Area Civic Ass'n v. Consolidated Govt. of Columbus,* 249 Ga. 488 (292 SE2d 61) (1982). Addressing zoning challenges brought by civic and homeowners associations, the Court held that such an association did not have standing to enjoin a rezoning *unless* the association owned property affected by the rezoning *or* was joined by individual plaintiffs who had standing to do so. *Id.* at 490. The second part of this rule amounts to a conditional associational standing of sorts for associations joined as plaintiffs by one or more individual members, allowing the association to represent and assert the rights of its absent members. The Court explained that the rule balanced the burden of conducting "detailed inquiry as to the membership of the civic association to determine its independent standing" and "requiring those individual property owners who have standing to bear the entire burden of opposing the rezoning." *Id.* at 490 n.4. The reference to a "detailed inquiry as to the membership of the civic association to determine its independent standing" suggests, of course, that the Court was implicitly acknowledging a more robust associational standing that would otherwise be

[3] The undersigned counsel caution that they have not undertaken a comprehensive survey of all the English common-law cases, a task that would require an enormous commitment of resources. The cases cited may not be the only, or even the best, cases to illustrate recognition of associational standing at common law. But certainly, before this Court could conclude definitively that associational standing was *not* recognized at common law, such a comprehensive survey would be necessary. And it seems that the parties urging the overruling of precedent ought to bear the burden of undertaking such a survey in the first instance.

available, but the Court prudentially limited that sort of associational standing in zoning cases for purposes of judicial efficiency and convenience.

Besides the recognition of a form of associational standing in *Lindsey Creek,* the case law suggests that associational standing was routinely invoked in practice in the Georgia courts for more than a decade preceding the adoption of the Constitution of 1983. We find associations suing on behalf of their members in cases challenging government regulations and taxes, zoning cases, and voting-rights cases. *See, e.g., Richmond County Bus. Ass'n v. Richmond County,* 224 Ga. 854 (165 SE2d 293) (1968); *Richmond County v. Richmond County Bus. Ass'n,* 225 Ga. 568 (170 SE2d 246) (1969); *Richmond County v. Richmond County Bus. Ass'n,* 228 Ga. 281 (185 SE2d 399) (1971); *DeKalb County v. Carriage Woods Civic Ass'n,* 228 Ga. 380 (185 SE2d 752) (1971); *Pendley v. Lake Harbin Civic Ass'n,* 230 Ga. 631 (198 SE2d 503) (1973); *Clayton County v. Clayton County Homeowners Ass'n,* 231 Ga. 562 (203 SE2d 373) (1973); *Vinings Ass'n v. New Paces Ferry Rd. Dev. Co.,* 231 Ga. 804 (204 SE2d 122) (1974); *Richmond County Prop. Owners Ass'n v. Augusta-Richmond County Coliseum Auth.,* 233 Ga. 94 (210 SE2d 172) (1974); *Riverhill Comm. Ass'n v. Cobb County Bd. of Commrs.,* 236 Ga. 856 (226 SE2d 54) (1976); *League of Women Voters of DeKalb County v. Bd. of Elections,* 237 Ga. 40 (227 SE2d 225) (1976); *Georgia Ass'n of Am. Institute of Architects v. Gwinnett County,* 238 Ga. 277 (233 SE2d 142) (1977); *Concerned Taxpayers of Clarke County v. Clarke County Sch. Dist.,* 240 Ga. 66 (239 SE2d 321) (1977); *City of Atlanta v. League of Women Voters of Atlanta-Fulton County,* 244 Ga. 796 (262 SE2d 77) (1979); *League of Women Voters of Atlanta-Fulton County v. City of Atlanta,* 245 Ga. 301 (264 SE2d 859) (1980); *South Jonesboro Civic Ass'n v. Thornton,* 248 Ga. 65 (281 SE2d 507) (1981). Although none of these cases addresses standing explicitly, they suggest that, by the time the Constitution of 1983 was adopted, associational standing was routinely employed in Georgia practice and that the Court—which, even then, had an acknowledged duty to raise jurisdictional questions in all cases of doubt—seems to have harbored little doubt about the propriety of associational standing. *Cf. Stephenson v. Futch,* 213 Ga. 247, 248 (98 SE2d 374) (1957) ("[I]t is the duty of this court to raise the question of its jurisdiction in all cases in which there may be any doubt as to the existence of such jurisdiction."). The implicit recognition of associational standing—

and its routine use in Georgia practice—prior to the adoption of the Constitution of 1983 is another reason for skepticism that *Aldridge*'s explicit recognition of associational standing is obviously wrong.

3. Abandoning Associational Standing Could Disturb Significant Reliance Interests

Especially because *Aldridge* is not obviously wrong, this Court should exercise great caution before abandoning the doctrine of associational standing. Indeed, its abandonment could disturb significant reliance interests, in particular, reliance upon long-final judgments in cases brought under the doctrine of associational standing. *See Savage v. State of Ga.,* 297 Ga. 627, 641-42 (774 SE2d 624) (2015) (*stare decisis* is "especially important where judicial decisions create substantial reliance interests, as is most common with rulings involving contract and property rights"). As this Court has explained, "standing…is a jurisdictional issue," *Parker v. Leeuwenburg,* 300 Ga. 789, 790 (797 SE2d 908) (2017), and "a plaintiff with standing is a prerequisite for the existence of subject matter jurisdiction." *Blackmon v. Tenet Healthsystem Spalding,* 284 Ga. 369, 371 (667 SE2d 348) (2008). And "[a] judgment void because of lack of jurisdiction of…subject matter may be attacked at any time." OCGA § 9-11-60.

Consider a final judgment entered long ago—perhaps as many as 40 years ago—in a lawsuit brought under the doctrine of associational standing, which settled substantial property rights of the members of a plaintiff-homeowners' association. It is hardly fanciful to suppose that the homeowner-members and their successors may have developed substantial reliance upon that judgment in the decades since it was entered. A decision today by this Court that associational standing is disallowed by our constitution would render that long-final judgment void and unsettle rights previously thought to be settled. The prospect of instantaneously voiding an unknown number of judgments entered decades earlier should give pause to any court. *See Torres v. Madrid,* 592 US 306, 329 (141 SCt 989) (2021) (Gorsuch, J., dissenting, joined by Thomas and Alito, JJ.) ("[T]he doctrine of *stare decisis* may be justified in part as an act of judicial humility…. No judge can see around every corner….").

4. Abandoning Associational Standing Could Unsettle Other Areas of Law

What's more, abandoning associational standing could unsettle other settled doctrines of representational standing in Georgia. In particular, the standing of a class representative to assert claims under OCGA § 9-11-23 on behalf of a class would be called into doubt by the abandonment of associational standing. To understand why, consider the functional similarity of the two doctrines. Both enable a single plaintiff—or a small number of plaintiffs—to effectively and efficiently litigate on behalf of an aggregate group. Associational standing permits an association to represent the interests of some or all of its members, asserting the legal rights of the members as a basis for seeking redress for their benefit. To ensure that the association plausibly is an adequate representative of its membership, the doctrine requires that "the interests it seeks to protect are germane to the organization's purpose." *Aldridge,* 251 Ga. at 236. And to assure that the due process rights of the members are protected, it additionally requires that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* Similarly, class-representative standing permits a plaintiff to pursue claims on behalf of absent members of a class, asserting *their* legal rights to seek redress for *their* harms. The standards for class certification likewise evince a concern about adequacy of representation and the due process rights of absent class members. Class-representative standing requires a plaintiff to show, among other things, that "[t]here are questions of law or fact common to the class," OCGA § 9-11-23 (a) (2), that "[t]he claims or defenses of the representative parties are typical of the claims or defenses of the class," OCGA § 9-11-23 (a) (3), and that "[t]he representative parties will fairly and adequately protect the interests of the class." OCGA § 9-11-23 (a) (4).

To be sure, a class representative must have standing to pursue his own claim before he can undertake to represent others. There is no such requirement of an association that steps into the shoes of its members under the doctrine of associational standing. But it is not apparent why this distinction should make any *constitutional* difference. The claims of the absent class members typically are separate and distinct from the claims of the class representative, even if they share common questions of law or fact. So why should a class

representative be accorded standing to pursue claims for other persons based upon *their* legal rights if a voluntary association of such other persons—which the absent persons at least have chosen for themselves—cannot pursue the same claims on their behalf?

Courts and commentators alike have acknowledged the similarity and overlap of these standing doctrines. *See Food & Drug Admin. v. Alliance for Hippocratic Med.,* 602 US 367, 402 (___ SCt ___) (2024) (Thomas, J., concurring) (noting that associational standing and class actions "achieve th[e] same end goal: One lawsuit can provide relief to a large group of people"); *International Union, United Auto., Aerospace & Agricultural Implement Workers of Am. v. Brock,* 477 US 274, 289 (106 SCt 2523) (1986) (characterizing a class as "an ad hoc union of injured plaintiffs who may be linked only by their common claims," and comparing a class to a voluntary membership association); Moreley & Hessick, *Against Associational Standing,* 91 U. Chi. L. Rev. 1539, 1573 (2024) (associational standing "effectively allows a plaintiff association to present a court with a preformed class that neither satisfies Rule 23's substantive requirements for a class action nor is certified through the Rule's procedures"); 13A Fed. Prac. & Proc. Juris. § 3531.9.5 (3d ed. 2025) (comparing associational standing and class-representative standing, characterizing class actions as an "ad hoc association of unrelated persons" for purposes of litigation). Given the comparable nature and function of associational standing and class-representative standing, a decision to abandon associational standing in Georgia could cast a cloud over class-action practice.

C. Associational Standing Permits the More Efficient Litigation of Many Justiciable Controversies.

Allowing associations in some circumstances to assert the legal rights of their members is good policy. The United States Supreme Court and this Court have identified several "special features, advantageous both to the individuals represented and to the judicial system as a whole," of associational standing. *Brock,* 477 US at 289. *First,* associational standing facilitates litigation by parties with expertise and resources:

> [A]n association suing to vindicate the interests of its members can draw upon a preexisting reservoir of expertise and capital. Besides

> financial resources, organizations often have specialized expertise and research resources relating to the subject matter of the lawsuit that individual plaintiffs lack. These resources can assist both courts and plaintiffs.

Id. (cleaned up). *Second,* "the doctrine of associational standing recognizes that the primary reason people join an organization is often to create an effective vehicle for vindicating interests that they share with others." *Id.* at 290. Indeed, "[t]he only practical judicial policy when people pool their capital, their interests, or their activities under a name and form that will identify collective interests, often is to permit the association or corporation in a single case to vindicate the interests of all." *Joint Anti-Fascist Refugee Comm. v. McGrath,* 341 US 123, 187 (71 SCt 624) (1951) (Jackson, J., concurring). *Third,* associational standing permits an organization "in a single lawsuit [to] adequately represent many members with similar interests, thus avoiding repetitive and costly separate actions." *Aldridge,* 251 Ga. at 236. *Finally,* "[a]ssociations are generally less susceptible than individuals to retaliation by those officials responsible for executing the challenged policies," and for that reason, associational standing may allow members of an association who cannot readily assert their own claims—especially those deterred from standing upon their rights by a threat of government retaliation—to have their rights vindicated nonetheless. *Id.* at 237.

Policy preferences cannot, of course, overcome a clear constitutional provision to the contrary. But as we have explained, it is not clear and obvious that *Aldridge* was wrong to recognize associational standing, especially as it applies to membership trade associations. In the light of the policy interests promoted by associational standing, this Court should be especially reluctant to abandon the doctrine unless and until it is perfectly clear that it cannot comport with the constitutional limits of the judicial power.

CONCLUSION

Wasserman does not resolve the question of associational standing, and this case is not a good vehicle to resolve it. When the time comes for this Court to revisit the doctrine, it should stand by *Aldridge* and its recognition of associational standing under the principle of *stare decisis.*

This 21st day of April 2025.

This submission does not exceed the word limit imposed by Rule 20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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I further certify that there is a prior agreement with Appellants and the Appellee to allow documents in a PDF format sent via electronic mail to suffice for service under Supreme Court Rule 14.

This 21st day of April 2025.

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