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IN THE
COURT OF APPEALS OF INDIANA

Greg Serbon and John Allen,

Appellants / Cross-Appellees-Plaintiffs,

v.

City of East Chicago, Indiana, City of East Chicago Common Council; Monica Gonzalez, Lenny Franciski, Terrence Hill, Stacy Winfield, Robert Garcia, Gilda Orange, Dwayne Rancifer, Jr., Emiliano Perez, and Kenneth Monroe, in their official capacities as City of East Chicago Common Council Members; Anthony Copeland, in his official capacity as City of East Chicago Mayor; City of East Chicago Police Department; and Hector Rosario, in his official capacity as City of East Chicago Chief of Police,

Appellees / Cross-Appellants-Defendants,

State of Indiana,

Intervenor.

August 15, 2022

Court of Appeals Case No. 21A-PL-1046

Appeal from the Lake Superior Court

The Honorable Thomas P. Hallett, Judge

Trial Court Cause No. 45D03-1805-PL-45

Tavitas, Judge.

Case Summary

[1] Greg Serbon and John Allen ("the Plaintiffs") filed a complaint against the City of East Chicago, the City's Common Council and its members in their official capacities, the City's Mayor, Police Department, and Chief of Police (collectively "the City"). The Plaintiffs alleged in their complaint that certain portions of East Chicago Ordinance 17-0010 ("the Ordinance") violate Indiana Code Chapter 5-2-18.2 ("Chapter 18.2"), which requires local officials to cooperate with federal immigration authorities. After both parties filed cross-motions for summary judgment, the trial court ruled that the Plaintiffs did not have standing to bring a federal constitutional challenge but did have standing to challenge the Ordinance under Indiana law. The trial court determined that Sections 3, 6(a), and 6(c) of the Ordinance violate Indiana Code Section 5-2-18.2-3 and enjoined the City from enforcing these provisions.

[2] The Plaintiffs appeal and argue that the trial court should have determined that Sections 9(c) and 10 of the Ordinance also violate Chapter 18.2. The City cross-appeals and argues that the Plaintiffs lack standing and that the Ordinance does not violate Chapter 18.2. We agree with the City that the Plaintiffs—who do not live in the City, do not pay taxes to the City, and have shown no cognizable harm to either themselves or the public—do not have standing to challenge the Ordinance. Accordingly, we reverse the judgment of the trial court and remand with instructions to dismiss the Plaintiffs' complaint for lack of standing.

Issues

[3] We find one issue to be dispositive: whether the Plaintiffs have standing to challenge the Ordinance.

Background

[4] Illegal immigration is a divisive political issue. In response to more stringent enforcement of federal immigration laws, many cities claimed to be "sanctuary cities" that would not cooperate with federal immigration authorities. *See* Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements,* 52 U.C. Davis L. Rev. 549, 554 (2018) (noting that the term "sanctuary city" typically refers to "jurisdictions declining to participate in federal immigration enforcement"). In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), which includes a provision that made it illegal for state or local governments to "prohibit, or in any way restrict, any government entity or official from sending to, or receiving from [federal immigration authorities] information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373. IIRIRA does not require local governments to enforce federal immigration laws but does require certain cooperation. *See* Pratheepan

Gulasekarama, et al., *Anti-Sanctuary and Immigration Localism*, 119 Colum. L. Rev. 837, 845 (2019).[1]

[5] When federal efforts to combat sanctuary cities proved of limited success, several states adopted "anti-sanctuary city laws," which prohibit local governmental units and state educational institutions from restricting their cooperation with federal immigration authorities. *Id*. at 848. Indiana is one such state. *Id*. at 848 n.55.

A. Indiana Code Chapter 5-2-18.2

[6] In 2011, Indiana enacted Chapter 5-2-18.2 ("Chapter 18.2"),[2] an anti-sanctuary city provision. The relevant portions of Chapter 18.2 include Indiana Code Section 5-2-18.2-3 which provides:

> A governmental body[3] or a postsecondary educational institution[4] may not enact or implement an ordinance, a resolution, a rule, or a policy that prohibits or in any way restricts

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[1] IIRIRA has also faced challenges in the courts. *See Cnty. of Santa Clara v. Trump*, 275 F. Supp. 3d 1196, 1216 (N.D. Cal. 2017) (finding that 8 U.S.C. § 1373 was likely contrary to the Tenth Amendment prohibition against the federal government commandeering local jurisdictions), *aff'd in part, vacated in part, remanded sub nom. City & Cnty. of San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018) (not reaching the commandeering question).

[2] Both the Ordinance and Chapter 18.2 are divided into sections. For the purposes of clarity, we refer to the statutory sections to include the chapter, e.g., "Section 18.2-5." We refer sections of the Ordinance with that designation, e.g., "Ordinance Section 1."

[3] A "governmental body" includes: "an agency, a board, a branch, a bureau, a commission, a council, a department, an institution, an office, or another establishment of any of the following: (1) The executive branch[;] (2) The judicial branch[;] (3) The legislative branch[;] (4) A political subdivision." Ind. Code § 5.2.18.2-1 (incorporating the definition set forth in Ind. Code § 5-22-2-13).

[4] For purposes of Chapter 18.2, "'postsecondary educational institution' refers to any state educational institution . . . or private postsecondary educational institution that receives state or federal funds." I.C. § 5-2-18.2-2.2.

> another governmental body or employee of a postsecondary educational institution, including a law enforcement officer,[5] a state or local official, or a state or local government employee, from taking the following actions with regard to information of the citizenship or immigration status, lawful or unlawful, of an individual:
>
> (1) Communicating or cooperating with federal officials.
>
> (2) Sending to or receiving information from the United States Department of Homeland Security.
>
> (3) Maintaining information.
>
> (4) Exchanging information with another federal, state, or local government entity.

[7] Section 4 of Chapter 18.2 next provides: "A governmental body or a postsecondary educational institution may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law." I.C. § 5-2-18.2-4.

[8] At issue in the present case is Section 5 of Chapter 18.2 ("Section 18.2-5"), which provides a means of enforcing Chapter 18.2. Specifically, Section 18.2-5 states: "If a governmental body or a postsecondary educational institution

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[5] Indiana Code Section 5-2-18.2-2 states that "[f]or purposes of this chapter, 'law enforcement officer' has the meaning set forth in IC 5-2-1-2," which in turn defines a "law enforcement officer" as:

> [A]n appointed officer or employee hired by and on the payroll of the state, any of the state's political subdivisions, a hospital police department [ ], or a public or private postsecondary educational institution whose board of trustees has established a police department under IC 21-17-5-2 or IC 21-39-4-2 who is granted lawful authority to enforce all or some of the penal laws of the state of Indiana and who possesses, with respect to those laws, the power to effect arrests for offenses committed in the officer's or employee's presence.

I.C. § 5-2-1-2(1).

violates this chapter, *a person lawfully domiciled in Indiana may bring an action to compel* the governmental body or postsecondary educational institution to comply with this chapter." I.C. § 5-2-18.2-5 (emphasis added). If, in such an action, the trial court "finds that a governmental body or postsecondary educational institution knowingly or intentionally violated section 3 or 4 of this chapter, the court shall enjoin the violation." I.C. § 5-2-18.2-6.

B. The Welcoming City Ordinance

[9] On June 26, 2017, the City Council of East Chicago passed the Ordinance at issue in the present case: Ordinance 17-0010, titled "Welcoming City Ordinance." Appellant's App. Vol. II p. 77. The relevant portions of this Ordinance provide:

> **Section 3. Requesting information prohibited.**
>
> No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by an order issued by a court of competent jurisdiction. Notwithstanding this provision, the Corporation Counsel may investigate and inquire about citizenship or immigration status when relevant to potential or actual litigation or an administrative proceeding in which the City is or may be a party.
>
> *****
>
> **Section 6. Immigration enforcement actions-Federal responsibility.**

No agency or agent shall stop, arrest, detain, or continue to detain a person after that person becomes eligible for release from custody or is free to leave an encounter with an agent or agency, based on any of the following:

1) an immigration detainer;

2) an administrative warrant (including but not limited to entered [sic] into the Federal Bureau of Investigation's National Crime Information Center database); or

3) any other basis that is based solely on the belief that the person is not present legally in the United States, or that the person has committed a civil immigration violation.

a. No agency or agent shall be permitted to accept request[s] by ICE or other agencies to support or assist in any capacity with immigration enforcement operations, including but not limited to requests to provide information on persons who may be the subject of immigration enforcement operations (except as may be required under section 11 of this ordinance), to establish traffic perimeters, or to otherwise be present to assist or support an operation. In the event an agent receives a request to support or assist in an immigration enforcement operation he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the agency director through the chain of command.

b. No agency or agent shall enter into an agreement under Section 1357(g) of Title 8 of the United States Code or any other federal law that permits state or local government entities to enforce federal civil immigration laws.

c. Unless presented with a valid and properly issued criminal warrant, no agency or agent shall:

1. Permit ICE agents access to a person being detained by, or in the custody of, the agency or agent;

2. Transfer any person into ICE custody;

3. Permit ICE agents use of agency facilities, information (except as may be required under section 11 of this ordinance), or equipment, including any agency electronic databases, for investigative interviews or other investigative purpose or for purposes of executing an immigration enforcement operation; or

4. Expend the time of the agency or agent in responding to ICE inquiries or communicating with ICE regarding a person's custody status, release date, or contact information.

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Section 10. Information regarding citizenship or immigration status.

Nothing in this chapter prohibits any municipal agency from sending to, or receiving from, any local, state, federal agency, information regarding an individual's citizenship or immigration status. All municipal agents shall be instructed that federal law does not allow any such prohibition. "Information regarding an individual's citizenship or immigration status," for purposes of this section, means a statement of the individual's country of citizenship or a statement of the individual's immigration status.

Appellant's App. Vol. II p. 77-83.[6]

[6] The City of Gary, Indiana enacted an ordinance that is substantively identical to the Ordinance at issue here. Several individuals, including Serbon, filed a complaint against the City of Gary seeking declaratory and injunctive relief and claimed, as the Plaintiffs do here, that the Gary ordinance violated Chapter 18.2. On appeal from the denial of the City of Gary's motion for summary judgment, a panel of this Court held

Facts and Procedural History

[10] Serbon is a resident of Lake County, but he is not a resident of the City of East Chicago. Serbon is often in the City for extended periods of time. Allen is also a resident of Lake County. He too is not a resident of the City, although he often enters the city limits.

[11] On May 9, 2018, Serbon and Allen filed suit against the City, seeking declaratory and injunctive relief, claiming that the Ordinance was in violation of Chapter 18.2. The Plaintiffs alleged that they had standing pursuant to Section 18.2-5 and public standing. The Plaintiffs did not allege or claim, that they live in, pay taxes in, or vote in the City. Nor do they claim that they have been personally harmed by the Ordinance. Instead, the Plaintiffs claim that the Ordinance violates Chapter 18.2 and that they, therefore, may bring an action to enforce Chapter 18.2 and enjoin any violations thereof. The State of Indiana intervened on behalf of the Plaintiffs in October 2018.[7]

[12] Both parties eventually moved for summary judgment, and, on April 29, 2021, the trial court entered an order providing in relevant part:

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that several portions of the Gary ordinance violated Chapter 18.2. *See City of Gary v. Nicholson*, 181 N.E.3d 390 (Ind. Ct. App. 2021), *trans. granted*. Our Supreme Court granted transfer in *Nicholson* and ordered that the plaintiffs' case be dismissed for lack of standing. *City of Gary v. Nicholson*, ___ N.E.3d ___, 2022 WL 2841364 (Ind. July 21, 2022).

[7] On November 9, 2018, the City filed a notice of removal, in which they sought to have the case removed to the federal District Court for the Northern District of Indiana. After extended briefing, the District Court determined that the Plaintiffs did not have standing to bring their claims in federal court and returned the case to the Lake Superior Court. *See Serbon v. City of E. Chicago*, No. 2:18-CV-427-JVB-JEM, 2020 WL 2744287 (N.D. Ind. May 27, 2020).

1. There is no issue of material fact in that both motions constitute facial challenges to East Chicago Ordinance 17-0010 ("Ordinance") and Ind. Code § 5-2-18.2 et. seq.

2. Plaintiffs have standing to bring this action under Ind. Code § 5-2-18.2-5 and Ind. Code § 5-2-18.2-6.

3. Plaintiffs have failed to prove that they have standing to bring this action with respect to their federal constitutional challenge to East Chicago Ordinance 17-0010.

4. East Chicago Ordinance 17-0010 §3, §6(a), and §6(c) violate Ind. Code §5-2-18.2-3.

5. After Plaintiffs commenced this action, the East Chicago Police Department issued its notice in compliance with Ind. Code § 5-2-18.2-7.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for Summary Judgment and Defendants' Motion for Summary Judgment are hereby granted in part and denied in part.

IT IS FURTHER ORDERED that Defendants are hereby enjoined and prohibited from enforcing or otherwise applying East Chicago Ordinance 17-0010 §3, §6(a), and §6(c).

Appellants 'App. Vol. II pp. 28-29. This appeal ensued.[8]

Standard of Review

[13] When this Court reviews a grant or denial of a motion for summary judgment, we stand in the shoes of the trial court. *Minser v. DeKalb Cnty. Plan Comm'n*, 170

[8] We held oral argument in this case on June 14, 2022. We thank counsel for their advocacy.

N.E.3d 1093, 1098 (Ind. Ct. App. 2021). Summary judgment is appropriate only "if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id*.; *see also* Ind. Trial Rule 56(C). The party moving for summary judgment bears the burden of making a prima facie showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Minser*, 170 N.E.3d at 1098. The burden then shifts to the non-moving party to show the existence of a genuine issue of material fact. *Id*.

[14] The dispositive issue here is whether the Plaintiffs have standing. "Standing is a legal question we review de novo." *City of Gary v. Nicholson,* No. 22S-MI-252, ___ N.E.3d ___, 2022 WL 2841364 at *1 (Ind. July 21, 2022) (citing *Holcomb v. Bray*, 187 N.E.3d 1268, 1275 (Ind. 2022)).

Analysis

[15] The trial court determined that the Plaintiffs have standing to challenge the ordinance under Section 18.2-5. The City, as cross-appellant, challenges that determination.[9] Because standing is a "threshold issue," *Solarize Indiana, Inc. v. S. Indiana Gas & Elec. Co.*, 182 N.E.3d 212, 216 (Ind. 2022), we address it first. Because we conclude that the Plaintiffs lack standing, it is the only issue we address.

[9] Although the trial court ruled in favor of the Plaintiffs on this issue, the Plaintiffs nevertheless argue in their appellant's brief that they do have standing. In response to the City's cross-appeal, the Plaintiffs expand on this argument in their cross-appellee brief.

Standing

[16] Standing "determines whether a litigant is entitled to have a court decide the substantive issues of a dispute." *Solarize*, 182 N.E.3d at 216. To be entitled to such a substantive judicial decision, "a plaintiff must be a 'proper person' to invoke the court's authority." *Id*. (quoting *Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019)). The standing required to invoke a court's authority can be conferred either through common law, *id*. (citing *Schloss v. City of Indianapolis*, 553 N.E.2d 1204, 1206 (Ind. 1990)), or by statute. *Id*. (citing *In re Guardianship of A.J.A.*, 991 N.E.2d 110, 113 (Ind. 2013)).

[17] A review of Indiana case law shows that our courts have recognized four types of standing: (1) common-law standing, sometimes referred to as judicial standing or constitutional standing; (2) public standing; (3) the related concept of taxpayer standing; and (4) statutorily defined standing. Regardless of the type of standing invoked, an allegation of injury to the party invoking standing is a constitutionally irreducible minimum requirement. *See Nicholson*, ___ N.E.3d at ___, 2022 WL 2841364 at *1 ("Indiana law is clear that standing requires an injury[.]"). Here, the Plaintiffs argue that they have both public standing and statutorily defined standing.

Plaintiffs Do Not Claim They Have Common-Law Standing

[18] Even though the Plaintiffs admit that they do not have common-law standing, a discussion of common-law standing is informative in our analysis regarding the doctrine of standing and its constitutional basis. The common-law standing

rule "requires a party to 'demonstrate a personal stake in the outcome of the litigation and . . . show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct.'" *Solarize*, 182 N.E.3d at 217 (quoting *Bd. of Comm'rs of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 168 (Ind. 2017)). The common-law standing rule derives from our state constitution's separation-of-powers clause. *Solarize*, 182 N.E.3d at 216 (citing Ind. Const. art. III, § 1; *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995)). Justice Slaughter, who concurred in *Solarize*, preferred the term "constitutional standing" when referring to what the majority called common-law standing. *Id*. at 220 (Slaughter, J., concurring). Although the majority in *Solarize* preferred the term "common-law standing," it recognized that "Indiana's standing requirements have been fleshed out by caselaw applying . . . general constitutional principles." *Id*. at 216 n.2 (citing *State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003)).

[19] Although Indiana courts have no "case or controversy" requirement as do Article III federal courts, *see In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991), the separation-of-powers clause in the Indiana Constitution performs a similar function to the federal case-or-controversy requirement. *See Cittadine,* 790 N.E.2d at 979 ("the distribution of powers provision in Article 3, Section 1, of the Indiana Constitution" performs a function "analogous" to Article III of the federal Constitution); *Horner,* 125 N.E.3d at 589 (observing that "the express distribution-of-powers clause in [the Indiana Constitution] performs a similar function [as the case-and-controversy requirement of Article III], serving as a

principal justification for judicial restraint") (lead opinion of Massa, J., with Goff, J. concurring).[10]

[20] Important to our decision today, under the common-law/constitutional doctrine of standing, "the legislature cannot expand—or restrict—beyond constitutional limits the class of persons who possess standing." *Solarize*, 182 N.E.3d at 216. Thus, the constitutional underpinnings of common-law standing act as a limit regarding those to whom the legislature may confer, or deny, standing.

[21] As noted, the Plaintiffs do not claim that they have standing under common law. Instead, they argue that they have public standing and statutory "domicile standing" pursuant to Section 18.2-5. We address each contention in turn.

Plaintiffs Claim They Have Public Standing

[22] Our Supreme Court in *Cittadine* summarized the doctrine of public standing as follows:

> Indiana cases recognize certain situations in which public rather than private rights are at issue and hold that the usual standards for establishing standing need not be met. This Court held in those cases that when a case involves enforcement of a public

[10] In *Horner*, Justice Massa, with Justice Goff concurring, concluded that taxpayer standing and public standing are distinct doctrines and criticized *Cittadine* for conflating the two doctrines. *Horner*, 125 N.E.3d at 594. Applying the taxpayer standing doctrine, the lead opinion concluded that the plaintiffs had taxpayer standing. *Id.* at 594-95. Chief Justice Rush, with Justice David concurring, determined that the taxpayers had standing but did not agree with Justice Massa's criticism of *Cittadine*. *Id.* at 608-09. Justice Slaughter dissented, believing that, even under taxpayer standing, the plaintiffs should have to show individualized injury, which was absent. *Id.* at 611-12.

> rather than a private right the plaintiff need not have a special interest in the matter nor be a public official.

790 N.E.2d at 980 (quoting *Schloss*, 553 N.E.2d at 1206 n.3).[11]

[23] Thus, the public standing doctrine eliminates the requirement that the plaintiff have an interest in the outcome of the litigation different from that of the general public. *Id*.

[24] Still, those availing themselves of the public standing doctrine remain subject to various requirements. *Cittadine*, 790 N.E.2d at 983. "[T]o the extent that persons claiming public standing may be seeking only declaratory relief, they must be persons 'whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise[.]'" *Id*. (quoting I.C. § 34-14-1-2). And although "the public standing doctrine allows litigation to go forward to enforce certain public rights and duties when the plaintiff's injury is no greater than that of any member of the general public, . . . *a redressable injury is still required*." *Gaddis v. McCullough*, 827 N.E.2d 66, 77 (Ind. Ct. App. 2005) (emphasis added) (citing *Embry v. O'Bannon*, 798 N.E.2d 157, 159-60 (Ind. 2003)).

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[11] The lead opinion in *Horner* also stated that it would give "no precedential weight to *Cittadine* on the question of standing." 125 N.E.3d at 984. Even if this language signals an intent to overrule *Cittadine*, it did not garner the vote of more than two justices. In fact, Chief Justice Rush, with Justice David concurring, cited *Cittadine* with approval. *Horner*, 125 N.E.3d at 608. More recently, in *Solarize*, an opinion by Chief Justice Rush in which all Justices except Justice Slaughter concurred, the Court cited and relied on *Cittadine. See Solarize*, 182 N.E.3d at 217. Thus, it appears that *Cittadine* remains good law.

[25] Accordingly, even if plaintiffs claim public standing, there must be some injury, even if that injury is common to any member of the public. *See id.; see also Nicholson*, ___ N.E.3d at ___, 2022 WL 2841364 at *2 ("Although our public-standing doctrine is unsettled in Indiana, at a minimum it requires some type of injury."); *Horner*, 125 N.E.3d at 609 (Rush, C.J., concurring in part, with David, J. joining in part) (referring to public standing as an exception to the general standing rule because "the plaintiff must show a public, rather than a private, injury"). Because of the potentially broad scope of the public standing doctrine, it is limited to "extreme circumstances." *Cittadine*, 790 N.E.2d at 983 (citing *Pence*, 652 N.E.2d at 488); *accord Horner*, 125 N.E.3d at 593 (lead opinion of Massa, J., with Goff, J. concurring).

[26] Here, the Plaintiffs contend that they have public standing because they have an interest, as citizens, in common with all other citizens, to ensure that the law—Chapter 18.2—is faithfully obeyed, regardless of whether they are residents, taxpayers, or voters in the City. In support of this, the Plaintiffs rely on our Supreme Court's decision in *Cittadine*. In that case, the plaintiff was a member of the "motoring public." *Cittadine*, 790 N.E.2d at 984. The plaintiff filed suit against the Indiana Department of Transportation ("INDOT") seeking to require INDOT to enforce a statute that "prohibited railroads from allowing obstructions to block motorists' views for a distance of 1500 feet in each direction of an intersection of public roadways with railroad tracks." *Id.* The trial court dismissed the plaintiff's claim for lack of standing. On appeal, our Supreme Court concluded that "Cittadine's claim, which involves the

enforcement of a public right, qualifies for the public standing doctrine. His action is thus not prevented by the requirement that he have an interest in the outcome of the litigation different from that of the general public." *Id*. Ultimately, however, the Court concluded that the plaintiff's claim was moot due to an intervening change in the statute. *Id*. at 985.

[27] The Plaintiffs claim that *Cittadine* is directly on point, i.e., that they, like Cittadine, seek the enforcement of a public right and that they need not have any interest in the outcome of the litigation different from that of the general public. The City argues that the Plaintiffs do not have public standing.[12] We agree.

[28] As noted, for public standing, there must be some redressable injury, even if it is an injury common to the public. *See Gaddis*, 827 N.E.2d at 77 (citing *Embry*, 798 N.E.2d at 159-60). The only injury the Plaintiffs refer to is the simple fact that the Ordinance allegedly conflicts with Chapter 18.2. The Plaintiffs have not shown how any potential conflict between the Ordinance and Chapter 18.2 has resulted in any injury to the public at large. A potential conflict between an ordinance and a statute, without more, does not necessarily harm the public. *See State ex rel. Steinke v. Coriden*, 831 N.E.2d 751, 755-56 (Ind. Ct. App. 2005) (holding that the alleged failure by members of the Worker's Compensation Board to abide by statutory membership requirements did not confer public

[12] Although the Plaintiffs did not argue public standing in their opening brief, this does not constitute waiver because the Plaintiffs, as cross-appellees, may respond to the arguments made by the City as cross-appellants.

standing on an attorney who practiced before the Board). The Plaintiffs designated no evidence indicating that the public has been harmed in any way by the Ordinance or its alleged conflict with Chapter 18.2.[13] The facts here are distinguishable from *Cittadine*, where the failure to enforce the statute posed a danger to motorists at railroad crossings.

[29] Our Supreme Court recently came to the same conclusion in an almost-identical case. In *Nicholson*, the plaintiffs brought an action claiming that the City of Gary's "welcoming city ordinance" violated Chapter 18.2. The *Nicholson* Court concluded that the plaintiffs in that case did not have public standing, writing:

> 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.

Nicholson, 2022 WL 2841364 at *2.

[13] The Plaintiffs do note that federal immigration authorities prioritize removal of those illegal immigrants convicted of violent offenses, but they refer to no evidence showing that the Ordinance has caused an increase in crime or violent crime in the City.

[30] The facts of the present case are indistinguishable from those in *Nicholson*. We therefore conclude that the Plaintiffs here, like the plaintiffs in *Nicholson*, do not have public standing to challenge the Ordinance.

Plaintiffs Claim They Have Statutory Standing

[31] The Plaintiffs also argue that they have standing to challenge the Ordinance as conferred by Section 18.2-5. As recognized in *Solarize*, "in certain instances, the legislature has established standing requirements." 182 N.E.3d at 217. The Plaintiffs argue that Section 18.2-5 is an instance in which the General Assembly has established standing requirements. The City contends that the legislature cannot extend standing beyond that permitted by common-law standing.

[32] In support of their argument that the legislature may confer standing on any party, regardless of injury, the Plaintiffs cite *Huffman v. Ind. Dep't of Transp.*, 811 N.E.2d 806 (Ind. 2004). In *Huffman,* a private citizen challenged the issuance of a permit to discharge waste into Indiana waters. Because the Administrative Orders and Procedures Act ("AOPA") specifically identified those who could pursue an administrative proceeding, the Court in *Huffman* held that the plaintiff did not have to establish common-law standing in addition to the statutorily-defined standing. *Id*. at 809-10.

[33] The Plaintiffs argue that the same is true in the present case—they do not have to establish common-law standing because Section 18.2-5 sets forth those who may bring an action to compel compliance with Chapter 18.2—any person

lawfully domiciled in Indiana. The question at issue in *Huffman*, however, was who could seek **administrative** review of an administrative order under AOPA, not whether the petitioner had standing to seek **judicial** review. *Huffman*, therefore, does not support the Plaintiffs' argument that the General Assembly may confer standing to anyone seeking judicial relief regardless of injury.

[34] The City argues that Section 18.2-5 creates a private cause of action but does not, and cannot, confer standing to all Indiana residents regardless of injury. We agree that Section 18.2-5 creates a private cause of action and does not confer standing to those who cannot otherwise establish standing.

[35] The interpretation of statutes is a function for the courts, and our goal in statutory interpretation is to determine, give effect to, and implement the intent of the legislature as expressed in the plain language of its statutes. *Metro. Dev. Comm'n v. Powell*, 162 N.E.3d 1100, 1103 (Ind. Ct. App. 2020) (citing *Indiana Ins. Guar. Ass'n v. Smith*, 82 N.E.3d 383, 386 (Ind. Ct. App. 2017)). The best evidence of the intent of the legislature is the language of the statute, and we will give the words of the statute their plain and ordinary meaning. *Id*. (citing *Kenwood Holdings, LLC v. Properties 2006, LLC*, 19 N.E.3d 342, 343 (Ind. Ct. App. 2014)). Accordingly, if the language of the statute is clear and unambiguous, it is not subject to judicial interpretation. *Id*. (citing *Kenwood Holdings*, 19 N.E.3d at 353).

[36] The language of Section 18.2-5 makes no mention of standing. It simply provides that, if a governmental body violates Chapter 18.2, "a person lawfully

domiciled in Indiana **may bring an action** to compel the governmental body or postsecondary educational institution to comply with this chapter." I.C. § 5-2-18.2-5 (emphasis added). Statutes are not self-executing. Instead, when a civil cause of action is premised on an alleged violation of a duty imposed by statute, we must first determine whether the statute in question confers a private right of action. *Roberts v. Sankey*, 813 N.E.2d 1195, 1198 (Ind. Ct. App. 2004). This determination begins with an examination of legislative intent. *Id*. "This primarily includes looking to whether the statute is designed to protect the general public and whether the statutory scheme contains an enforcement mechanism or remedies for violation of the duty." *Id*.

[37] Section 18.2-5 clearly creates a cause of action to enforce the provisions of Chapter 18.2 but makes no mention of the word standing or injury. In contrast, Indiana Code Section 36-7-4-1603, which governs who may seek judicial review of a zoning decision, explicitly states "[t]he following have **standing** to obtain judicial review . . . ." (emphasis added). And Indiana Code Section 4-21.5-5-3 states who has "**standing** to obtain judicial review of an agency action . . . ." This demonstrates that our General Assembly recognizes and implements the limits or conditions of standing, yet it did not do so in Section 18.2-5.[14] We,

[14] We acknowledge that, in *Solarize*, our Supreme Court referred to Indiana Code Section 13-30-1-1, as an example of statutorily-defined standing. 182 N.E.3d at 217. This statute explains who "may bring an action for declaratory and equitable relief in the name of the state of Indiana" against various entities "for the protection of the environment of Indiana from significant pollution, impairment, or destruction." I.C. § 13-30-1-1. The language of this statute does not refer to "standing" explicitly. Indiana Code Section 13-30-1-1, however, does not permit anyone to bring an action regardless of injury. Instead, the statute allows various persons and entities to bring an action for the protection of Indiana's environment. Thus, the statute requires

therefore, conclude that, although Section 18.2-5 clearly creates a private cause of action to enforce the provisions of Chapter 18.2, it does not confer standing on every legally domiciled Indiana resident regardless of whether the resident has been harmed or injured by the alleged non-compliance with Chapter 18.2. *See Nicholson*, 2022 WL 2841364 at *2 ("'[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.").

[38] To hold otherwise would extend standing to such an extent that it would violate the separation-of-powers provision of the Indiana Constitution. Our Supreme Court held in *Solarize* that "the legislature *cannot expand*—or restrict—beyond constitutional limits the class of persons who possess standing." 182 N.E.3d at 217 n.2. Were we to conclude that Section 18.2-5 conferred standing to all residents regardless of harm to them or to the public, it would expand standing well beyond that permitted by our Constitution.

[39] As our Supreme Court stated in *Nicholson*:

> Indiana law is clear that standing requires an injury. *See, e.g.,* [*Holcomb v. Bray*, 187 N.E.3d 1268, 1286 (Ind. 2022) (citing *Solarize Indiana, Inc. v. Southern Indiana Gas and Elec. Co.*, 182

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an injury, i.e., environmental harm, which satisfies the injury requirement. This contrasts with Section 18.2-5, which mentions no harm or injury requirement at all.

The same is true with regard to Indiana Code Section 8-1-3-1, the statute at issue in *Solarize*. Although that statute does not refer to "standing" per se, it too requires that the party seeking judicial review of an IURC decision be "adversely affected" by the decision. I.C. § 8-1-3-1.

> 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.

Nicholson, 2022 WL 2841364, at *1; *see also TransUnion LLC v. Ramirez*, ___ U.S. ___, 141 S. Ct. 2190, 2205 (2021) (holding that merely because a statute grants a person a statutory right and authorizes a person to sue to vindicate that right does not grant to such a plaintiff automatic standing); *Raines v. Byrd*, 521 U.S. 811, 820 n.3, 117 S. Ct. 2312, 2318 (1997) (holding that a statute cannot eliminate "standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing").

[40] Per *Nicholson*, even if Section 18.2-5 were intended to grant standing to any person lawfully domiciled in Indiana, such an extraordinarily broad grant of standing is constitutionally impermissible. *See Nicholson*, 2022 WL 2841364, at *2; *Solarize*, 182 N.E.3d at 216 n.3 (holding that the legislature cannot expand—or restrict—beyond constitutional limits the class of persons who possess standing).

[41] Our holding does not denote that the Ordinance, or other similar measures, cannot be challenged as being contrary to Section 18.2. A party who is directly harmed or injured by the Ordinance's alleged conflict with Chapter 18.2 would conceivably have common-law standing, and a resident of the City who pays taxes might have taxpayer standing if, under the Ordinance, the City was

spending public funds contrary to statute. *See Steinke*, 831 N.E.2d at 756 (noting that challenge to Board's alleged non-compliance with the statute was not foreclosed because "any injured worker harmed by the Board's alleged violations may seek to enforce this statute in the absence of public standing."). All we hold today is that the Plaintiffs in the case at bar, who neither live in nor pay taxes to the City, have failed to establish personal or public injury, and failed to show any extreme circumstances sufficient to justify judicial intervention. Accordingly, the Plaintiffs do not have standing to challenge the Ordinance.

Conclusion

[42] The Plaintiffs do not live in the City; they do not pay taxes to the City; they are not affected in any way by the Ordinance that operates only in the City. The Plaintiffs have not shown how the Ordinance has caused any harm to them or the public. Furthermore, although Section 18.2-5 clearly creates a private cause of action to enforce Chapter 18.2, it does not—and cannot—confer standing on all Indiana residents regardless of injury to the Plaintiffs or the public at large. Because the Plaintiffs do not have standing to challenge the Ordinance, we reverse the judgment of the trial court and remand with instructions that the trial court dismiss the Plaintiffs' complaint for lack of standing.

[43] Reversed and remanded.

Riley, J., and May, J., concur.