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### Citizens Against Linscott v. Board of Commissioners Appellant's Reply Brief 2 Dckt. 47909

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

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CITIZENS AGAINST  
LINSCOTT/INTERSTATE ASPHALT  
PLANT, an unincorporated non-profit  
association organized under the laws of the  
State of Idaho,

Petitioner/Appellant/Cross-Appellant,

vs.

BONNER COUNTY BOARD OF  
COMMISSIONERS, a public agency of the  
State of Idaho,

Respondent/Cross-Appellant,

and

FRANK and CAROL LINSCOTT, and  
INTERSTATE CONCRETE AND ASPHALT  
COMPANY,

Intervenors/Cross-Appellants.

**Supreme Court**  
**Docket No. 47909-2020**

Bonner County  
Case No. CV09-19-0629

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**CROSS-APPELLANT'S REPLY BRIEF**

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**Appeal from the District Court of the First Judicial District of  
The State of Idaho, in and for the County of Bonner,  
Honorable Jeff M. Brudie, Presiding**

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**1. Introduction.**

Interstate offers this reply in support of its cross-appeal regarding the issue of Citizens' standing. Citizens' reply brief conflates the distinct standards: (i) alleging potential harm sufficient for standing (I.C. § 67-6521(1)(a)); and (ii) evidence of actual harm or prejudice to a substantial right, required to obtain a remedy (I.C. § 67-6535(3)). Even if the Court finds Citizens has met the burden of I.C. § 67-6521(1)(a) the appeal is still properly dismissed for failure to meet the burden of I.C. § 67-6535(3).

**2. Legal Authority.**

**2.1 Citizens does not have standing to bring this appeal.**

There is no disagreement, in Idaho an "affected person" has standing if he or she alleges the proposed development has the potential to harm the person's real estate interests. I.C. §67-6521(1)(a); and see, Hawkins v. Bonneville County Bd. Of Com'rs, 151 Idaho 228, 231, 254 P.3d 1224, 1227 (2011). While the potential for harm to a person's real property may be sufficient to satisfy the requirement for purposes of standing, actual harm must be established to obtain relief. See, Evans

v. Teton Cty., 139 Idaho 71, 76, 73 P.3d 84, 89 (2003). Citizens’ arguments improperly intertwine these distinct concepts.<sup>1</sup>

The question of Citizens’ standing should be resolved through the Court’s application of I.C. § 30-27-105 (2015) to the facts at bar. This is an issue of first impression, as noted by the District Court. The statutory language is plain, an unincorporated association is “an entity distinct from its members...” Id. Citizens’ distinct identity is relevant to the plain language of I.C. §67-6521(1)(a), requiring that the affected person have a bona fide interest in affected real property. There is no dispute--Citizens does not have an interest in any real property. And, Interstate would urge the Court to take a closer look at the language of I.C. §67-6521(1)(a) in light of the association’s distinct identity.

If the Court finds that associational standing survives the statutory amendment, it should be concluded that Citizens’ generalized accusations of harm to its members are insufficient. The District Court concluded that individual members did assert potential injury, and that their participation was not required in

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<sup>1</sup> Interstate takes issue with the accusation that it has misstated the law or ignored applicable authority. Interstate addresses Citizens’ failure to meet the requirements of I.C. § 67-6535(3) and I.C. § 67-5279(4) in Section 4.4, separate from its argument on standing, Section 4.7. Given Citizens’ confusion of the issues it is unsurprising that it did not appreciate the significance of the separation of these arguments in Interstate’s brief.

order to grant the relief sought.<sup>2</sup> (R. 289) However, the harms alleged are so general that they cannot be found to relate to any member's particular property. For example, the allegation that property values will be impacted by the plant is found at A.R. 1074. This is a narrative referencing a study that is neither in the record nor incorporated by any reference.<sup>3</sup> The narrative leaps, without foundation, to the conclusion that the effect of values on properties in the "studies" is the same as the effect on members' properties. But, it does not identify any member's property, and does not make any comparable analysis to a property near or adjacent to the plant that operates in Sandpoint.

The recurring theme of Citizens' argument is that the batch plant *could* affect property rights. Citizens asks this Court to find that these generalized accusations are sufficient to establish that its members have, and thus, it has standing. Interstate submits that the general allegations of harm are not sufficient to establish standing, particularly in light of Citizens' distinct identity and the absence of any bona fide interest in real property. E.g. Student Loan Fund of Idaho, Inc., v. Payette County, 125 Idaho 824, 828, 875 P.2d 236, 240 (1994) [it is the

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<sup>2</sup> The three prong test of associational standing is: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." Beach Lateral Water Users Ass'n v. Harrison, 142 Idaho 600, 604, 130 P.3d 1138, 1142 (2006), citing Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441, 53 L.Ed.2d 383, 394 (1977).

<sup>3</sup> The record contains three documents prepared by Blue Ridge Environmental Defense League (A.R. 768, A.R. 933, A.R. 1084) none of which relate in any way to the alleged loss of property value.



“palpable injury’ peculiar to the plaintiff that is essential to standing” not generalized grievances]. But, even if this Court concludes that Citizens’ standing is established by the potential for generalized harm to its members’ property, this finding is insufficient to meet Citizens’ separate burden under I.C. § 67-6535(3), and its appeal is properly dismissed.

## **2.2 Attorneys’ Fees**

For clarity, Interstate does not seek an award of attorneys’ fees on its cross-appeal.

Respectfully submitted this 7<sup>th</sup> day of October, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and complete copy of the foregoing to be served electronically through the iCourt system on October 7, 2020, to:

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