FILED, Clerk of the Supreme Court, 09 May 2024, **089378**

SUPREME COURT OF NEW JERSEY

Docket No. 089378

NEW JERSEY COALITION OF AUTOMOTIVE RETAILERS, INC., a non-profit New Jersey Corporation Plaintiff-Respondent, v. FORD MOTOR COMPANY d/b/a LINCOLN MOTOR COMPANY, Defendant-Petitioner.	A Petition for Certification from the April 4, 2024 Judgment of the SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION Docket No. A-001051-22 CIVIL ACTION

PETITION FOR CERTIFICATION AND APPENDIX BY DEFENDANT/PETITIONER FORD MOTOR COMPANY d/b/a LINCOLN MOTOR COMPANY

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REASONS WHY CERTIFICATION SHOULD BE ALLOWED

The Court should accept this appeal for four important reasons.

First, this case is an ideal vehicle for the Court to address and clarify the doctrine of statutory standing in New Jersey. The lack of precedent from this Court on that issue led the Appellate Division to conflate *statutory* standing with the prudential doctrine of *associational* standing in this case.

Statutory standing addresses whether the Legislature "has accorded *this* injured plaintiff the right to sue the defendant to redress his injury." *Graden v. Conextent Systems, Inc.*, 496 F.3d 291, 295 (3d Cir. 2007). It fundamentally asks whether the plaintiff "has a cause of action under the statute." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). The doctrine of statutory standing recognizes that when the Legislature creates statutory duties, it may also limit who can enforce them. *See Miller v. Redwood Toxicology Lab., Inc.*, 688 F.3d 928, 936 (8th Cir. 2012) (describing statutory standing as "whether the statute gives that plaintiff authority to sue").

The trial court recognized in this case that the Legislature restricted who has the right to sue under the New Jersey Franchise Practices Act ("NJFPA"). Under the statute's text, only a *franchisee* may bring an action against *its franchisor* for an alleged violation of the statute. For that reason, the trial court held that the New Jersey Coalition of Automotive Retailers ("NJCAR")—

which is *not* a franchisee—lacked statutory standing to sue Ford Motor Company for alleged violations of the NJFPA.

In reversing the trial court, the Appellate Division mistakenly blurred the concepts of statutory standing and associational standing. The Court should grant certification to provide clear guidance that these are distinct concepts and to clarify the framework for applying statutory standing in future cases.

Second, the Court should accept this appeal to resolve the split in authority that the Appellate Division's decision created. A decision from the U.S. District Court for the District of New Jersey held that, as a matter of New Jersey law, NJCAR lacks statutory standing to assert the same NJFPA claims it brought against Ford in this lawsuit. *See N.J. Coal. of Auto. Retailers, Inc. v. Mazda*, Civ. A. No. 18-14563, 2023 WL 2263741 (D.N.J. Feb. 28, 2023). The Appellate Division held the opposite. Now that courts have reached different conclusions on the same legal issue of who has the right to sue under the NJFPA, this Court should weigh in as the final arbiter of New Jersey law.

Third, the Appellate Division's decision has significant implications for how the NJFPA is enforced. By allowing associations to sue franchisors, the Appellate Division opened the door to a flood of previously unavailable lawsuits. Until this case, courts in New Jersey had steadfastly refused to expand the class of parties who can sue to enforce the NJFPA beyond

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franchisees. *See Tynan v. General Motors Corp.*, 248 N.J. Super. 654 (App. Div. 1991); *Horn v. Mazda Motor of America*, 265 N.J. Super. 47 (App. Div. 1993). The Appellate Division's decision is a break from earlier decisions.

Permitting associations to step into the shoes of franchisees significantly increases the likelihood of NJFPA lawsuits. A suit brought by an association, instead of a franchisee, deprives the defendant-franchisor of a complete statutory defense available when a plaintiff-franchisee has breached the terms of its franchise. *See Mall Chevrolet, Inc. v. General Motors LLC*, __ F.4th __, 2024 WL 1819822, at *12 (3d Cir. Apr. 26, 2024). Associational lawsuits also insulate individual franchisees from legitimate, individualized discovery and prevent franchisors from litigating against the real parties in interest. These differences significantly change the statutory balance that the Legislature created and greatly incentivize associations to file lawsuits under the NJFPA.

Finally, although this case primarily implicates issues of statutory standing, the Court should also accept this appeal to clarify the proof needed to establish associational standing. NJCAR admitted that there was no evidence in the summary judgment record that any of its members suffered the harms that the NJFPA was meant to eliminate. Thus, although NJCAR *alleged* that Ford had treated its members unequally, NJCAR conceded that it had no *evidence* of any actual inequalities. The Appellate Division did not consider

this problem and instead applied a standard more appropriate for a motion to dismiss. This Court's review is needed to clarify the burden on associations to produce evidence that substantiates their standing.

STATEMENT OF THE MATTER INVOLVED

I. Statutory Framework

NJCAR alleges that Ford violated the NJFPA, a statute that was enacted to "regulat[e] the responsibilities of both the franchisee and the franchisor." *Coast Auto. Grp., Ltd. v. VW Credit, Inc.*, 119 F. App'x 419, 423 (3d Cir. 2005) (citing *Westfield Ctr. Serv. Inc. v. Cities Service Oil Co.*, 86 N.J. 453, 463-64 (1981)). As part of that goal, the NJFPA states that:

> It shall be a violation of [the NJFPA] for any motor vehicle franchisor, directly or indirectly, through any officer, agent, or employee . . . [t]o fail or refuse to sell or offer to sell to all motor vehicle franchisees in a line make every motor vehicle sold or offered for sale to any motor vehicle franchisee of the same line make, or to fail or refuse to sell or offer to sell such motor vehicles to all motor vehicle franchisees at the same price for a comparably equipped motor vehicle, on the same terms, with no differential in discount, allowance, credit or bonus, and on reasonable, good faith and non-discriminatory allocation and availability terms.

N.J.S.A. 56:10-7.4(h).

The NJFPA sets forth a specific procedure for franchisees to assert violations of any of the statute's provisions. In particular, the NJFPA provides that "[a]ny franchisee may bring an action against its franchisor for violation

of this act in the Superior Court of the State of New Jersey to recover damages sustained by reason of any violation of this act and, where appropriate, shall be entitled to injunctive relief." N.J.S.A. 56:10-10. The NJFPA also allows a successful franchisee to recover costs and attorney's fees.

The NJFPA further states that "[i]t shall be a defense for a franchisor, to any action brought under this act by a franchisee, if it be shown that said franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto." N.J.S.A. 56:10-9. This section has been interpreted to provide "a complete defense to a franchisor in 'any action' brought under the NJFPA where the franchisee has itself committed a material breach of the franchise agreement." *Coast Auto. Grp.*, 119 F. App'x at 423.

II. NJCAR and the Lincoln Commitment Program

NJCAR is a trade organization for automotive dealerships in New Jersey. (Pa32.)[1] It is not a dealership or franchisee of any automobile manufacturer, and it does not have any contracts to sell vehicles. (Pa181, Pa206.) Some of NJCAR's members are Lincoln dealerships. (Pa32.) On behalf of these dealerships, NJCAR asserts that a program offered by Ford's

[1] Citations are to the appendix and the opening brief filed by NJCAR in the Appellate Division.

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Lincoln brand, called the Lincoln Commitment Program, violates N.J.S.A. 56:10-7.4(h).

The Lincoln Commitment Program is an optional, yearly program under which dealers may voluntarily agree to provide better service and experiences to customers through amenities such as car washes, loaner vehicles, and newer facilities. (Pa186-187, Pa189-191.) Lincoln dealers may choose to participate in none, some, or all of the Program's elements based on their individual determinations of what would be best for their businesses. (Pa191.) The Program's amenities are designed to increase sales for Lincoln and its dealer network. (Pa190.)

Because providing the Program amenities necessarily results in costs for dealers, the Lincoln Commitment Program helps the dealers offset those costs. (Pa190.) Ford offers dealers the opportunity to earn funds to offset these costs because it recognizes that these amenities are designed to benefit the Lincoln brand. (Pa190.) NJCAR alleges that these offset payments violate the NJFPA. Although NJCAR is suing Ford to prevent Ford from running the Lincoln Commitment Program, every Lincoln dealer in New Jersey admittedly wants to continue to have the opportunity to earn offsets through the Program. (Pa128.)

NJCAR admitted it did not have any actual evidence (as opposed to mere allegations) that any of its Lincoln-affiliated dealers are suffering any real or

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threatened injuries from Ford's operation of the Lincoln Commitment Program. (Pa182.) In particular, NJCAR has no evidence about the financial impact, if any, that the Lincoln Commitment Program has had on any of its members. (Pa182.) NJCAR also does not have evidence comparing the financial performance of members who chose to participate in the Lincoln Commitment Program with those who did not. (Pa182.)

III. Procedural History

NJCAR filed its original complaint against Ford on January 31, 2020, and an amended complaint against Ford on August 7, 2020, alleging that Ford violated N.J.S.A. 56:10-7.4(h). (Pa1-14, Pa31-38.) Following discovery, NJCAR and Ford each moved for summary judgment. (Pa71-72, Pa178.) On October 21, 2022, the trial court held argument, granted Ford's motion for summary judgment, and denied NJCAR's motion for summary judgment. (T34:3-37:2.) The trial court entered separate orders reflecting those oral rulings the same day. (Pa296-298.)

NJCAR appealed, arguing that the trial court erred in holding that it lacked standing to assert its claims against Ford. NJCAR also asked the Appellate Division to address the merits of its claims against Ford in the first instance. On April 4, 2024, following oral argument, the Appellate Division held that NJCAR had associational standing to pursue its claims against Ford.

The Appellate Division therefore reversed the judgment of the trial court and remanded for a consideration of NJCAR's claims on the merits.

QUESTIONS PRESENTED

1. Did the Appellate Division err in holding that NJCAR has standing to bring claims under the NJFPA against Ford because the NJFPA's text and structure make clear that only individual franchisees can bring such claims?

2. Did the Appellate Division err in holding that NJCAR had associational standing where NJCAR admitted it lacked any evidence to carry its burden on summary judgment to demonstrate the impact of Ford's Lincoln Commitment Program on its members and therefore could not show that any of its members were actually injured?

ERRORS COMPLAINED OF

1. The Appellate Division erroneously held that New Jersey's standing doctrine allowed NJCAR to bring claims against Ford on behalf of its members. The express language of the NJFPA allows only franchisees to sue. The statute confirms this conclusion by providing franchisors with a defense to liability that makes sense only if the NJFPA limits plaintiffs to franchisees, not an association standing in their place. In reaching the contrary conclusion, the Appellate Division ignored its prior decisions in *Tynan v. General Motors Corp.*, 248 N.J. Super. 654 (App. Div. 1991), and *Horn v. Mazda Motor of*

America, 265 N.J. Super. 47 (App. Div. 1993). In both of those decisions, the court held that the NJFPA permits only franchisees to pursue statutory claims against their franchisors. The Appellate Division's decision also creates a split in authority with a federal decision applying New Jersey law, which held that NJCAR did *not* have standing to pursue the same statutory claims it asserts against Ford. *See N.J. Coal. of Auto. Retailers, Inc. v. Mazda*, Civ. A. No. 18-14563, 2023 WL 2263741 (D.N.J. Feb. 28, 2023).

2. The Appellate Division incorrectly held that NJCAR had sufficiently established that its members were harmed by Ford's Lincoln Commitment Program, such that NJCAR had standing on behalf of its members, even though NJCAR admitted that it had no information about the impact of the Lincoln Commitment Program on its members. Thus, even apart from the question of statutory standing, NJCAR fails to meet the test for associational standing.

COMMENTS WITH RESPECT TO THE APPELLATE DIVISION OPINION

I. The Appellate Division Ignored the NJFPA's Language and Structure in Holding that NJCAR Has Statutory Standing.

A. The plain language of the NJFPA limits proper plaintiffs to franchisees, not trade associations suing on their behalf.

The Legislature carefully delineated the parties to actions under the NJFPA. The statute allows only a "franchisee [to] bring an action against its

franchisor." N.J.S.A. 56:10-10. A "franchisee" is "a person to whom a franchise is offered or granted," and a "franchisor" is "a person who grants a franchise to another person." N.J.S.A. 56:10-3(c) & (d). The statute permits no one other than a "franchisee" to pursue a claim under the NJFPA.

Contrary to this unambiguous statutory language, the Appellate Division held in this case that a trade association *also* can bring an action under the NJFPA. (Aa5.) The Appellate Division reached that conclusion because, in its view, the NJFPA does not "explicitly preclude associational standing." (Aa12.)

The Appellate Division's statutory interpretation was incorrect. Courts must presume that the Legislature means what it says in its statutes. "[T]he best indicator of the Legislature's intent is the statutory language," and "[i]f the plain language leads to a clear and unambiguous result, then [the court's] interpretive process is over." *Matter of Ridgefield Park Bd. of Educ.*, 244 N.J. 1, 18 (2020) (cleaned up). In the NJFPA, the Legislature explicitly and unambiguously limited plaintiffs under the NJFPA to franchisees. The Appellate Division failed to give effect to that express legislative choice, expanding a statutory cause of action beyond what the Legislature provided.

The Legislature could have chosen to create a more expansive cause of action under the NJFPA. For example, the Legislature could have permitted any "injured person," "person claiming to be aggrieved," or "interested party"

to bring an NJFPA claim, as it does in other statutes. *See* N.J.S.A. 56:4-2; N.J.S.A. 10:5-13; N.J.S.A. 40:55D-17(a). Or the Legislature could have drafted the NJFPA to permit any "person" to bring a claim, as the Delaware and Pennsylvania legislatures did in their states' franchise acts, *see* 6 Del. Code § 4916(a); 63 P.S. § 818.329, or expressly allowed an association to bring claims, as the Georgia legislature has done in its franchise act, *see* Ga. Code § 10-1-623(e). But the Legislature made a different choice, unambiguously limiting NJFPA actions to "franchisee[s]" against their "franchisor[s]." N.J.S.A. 56:10-10; *see also Florida Auto. Dealers Ass'n, Inc. v. Ford Motor Co.*, Case No. 23-cv-282, 2024 WL 836384 (N.D. Fla. Jan. 25, 2024) (holding that the association could not pursue claims against Ford under the Florida Motor Vehicle Dealer Act because "it is not a 'motor vehicle dealer' within the meaning of [the Act]"); *Mass. State Auto. Dealers Ass'n, Inc. v. Tesla Motors MA, Inc.*, 15 N.E.3d 1152, 1162 (Mass. 2014) (holding that the Massachusetts franchise protection statute "does not confer standing on a motor vehicle dealer to maintain an action for violation [of the statute] against a manufacturer with which the dealer is not affiliated"); *Statewide Rent-A-Car, Inc. v. Subaru of Am.*, 704 F. Supp. 183, 185 (D. Mont. 1988) (holding that prospective franchisee lacks standing under Montana statute).

The Appellate Division substituted its own judgment about the scope of NJFPA claims for the Legislature's clear statutory choice.

The Appellate Division also ignored its own earlier decisions, which has strictly construed the NJFPA's provisions and held that entities other than franchisees may *not* bring challenges under the statute. For example, in *Tynan*, the Appellate Division held that a prospective transferee of a franchise lacked standing to sue the franchisor for withholding consent to the transfer. 248 N.J. Super. at 666. Despite recognizing that the proposed transferee had good reasons for asserting his claims, the court held that those policy reasons could not overcome the Legislature's express limitation of allowing suits only by franchisees. *Id.* at 666-68. The same was true in *Horn*, where the Appellate Division held that a franchisee of one franchisor lacked standing to sue a *different* franchisor, with whom the franchisee did not have a contractual relationship. 265 N.J. Super. at 61. As the Court put it, "plaintiffs who are not franchisees do not have standing to invoke the protection of the New Jersey Franchise Practices Act." *Id.* In this case, the Appellate Division did not even cite, let alone attempt to distinguish, either *Tynan* or *Horn*.

The Appellate Division also did not address the recent federal court opinion in *Mazda*, where the district court held that "NJCAR lacks statutory standing for its claims against Mazda under the NJFPA because it is not a

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franchisee within the meaning of that statute." 2023 WL 2263741, at *6. The Appellate Division simply ignored that decision, even though it involved the same plaintiff, the same claims for alleged violations of N.J.S.A. 56:10-7.4(h), and the same question of statutory standing under the NJFPA. Instead, the Appellate Division cited a footnote in *N.J. Coalition of Automotive Retailers v. DaimlerChrysler Motors Corp.*, 107 F. Supp. 2d 495, 501 n.5 (D.N.J. 1999), a decision that dealt with the test for associational standing but did not address the question of statutory standing under the NJFPA at all. (Aa12-13.)

Prior to the Appellate Division's decision in this case, every court to consider the issue had held the plain text of the NJFPA permitted only franchisees, not other interested parties, to bring claims for violations of the statute. The Appellate Division's radical departure from that line of convincing authority and from the express language of the statute should be reversed.

B. The statutory defense provided by the NJFPA shows that franchisees are the only proper plaintiffs under the statute.

The Appellate Division's decision not only conflicts with the Legislature's choice to allow only a "franchisee [to] bring an action against its franchisor," N.J.S.A. 56:10-10, it is also incompatible with the statutory defense that the Legislature created under the NJFPA. In N.J.S.A. 56:10-9, the Legislature provided franchisors with a complete defense to liability if a plaintiff-franchisee is in material breach of the franchise agreement. *Coast*

Auto. Grp., 119 F. App'x at 423.[2] This provision reflects the Legislature's intent to regulate both franchisors *and* franchisees under the NJFPA, *id.*, and to "protect *innocent* franchisees, not those who are in material breach of their franchise agreements," *Mall Chevrolet, Inc. v. General Motors LLC*, Civ. A. No. 18-15077, 2021 WL 2581665, at *4 (D.N.J. June 23, 2021) (cleaned up); *see also Dunkin' Donuts of Am., Inc. v. Middletown Donut Corp.*, 100 N.J. 166, 177 (N.J. 1985).

The statutory defense provided by N.J.S.A. 56:10-9 underscores that the Legislature meant what it said when it permitted only a "franchisee [to] bring an action against its franchisor" under the NJFPA. N.J.S.A. 56:10-10. A franchisor can only make use of the defense if a *franchisee* is asserting the alleged NJFPA violation. In this case, for example, Ford could not show that NJCAR had "failed to substantially comply with requirements imposed by the franchise" agreement, because NJCAR *has* no such agreement with Ford. By permitting NJCAR to assert an NJFPA claim, and denying Ford the statutory defense under N.J.S.A. 56:10-9, the Appellate Division violated the principle that "each part or section" of a statute "should be construed in connection with

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[2] N.J.S.A. 56:10-9 provides that "[i]t shall be a defense for a franchisor, to any action brought under this act by a franchisee, if it be shown that said franchisee has failed to substantially comply with requirements imposed by the franchise and other agreements ancillary or collateral thereto."

every other part or section to provide a harmonious whole." *Burnet v. County of Bergen*, 198 N.J. 408, 421 (N.J. 2009).

The Appellate Division rejected this argument because Ford failed to show that "any Lincoln dealerships that are members of NJCAR, much less all of them, materially breached their agreements." (Aa14.) This reasoning missed the point of Ford's argument. Ford does not contend that it is entitled to judgment on NJCAR's claims because of material breaches by dealers. Instead, Ford pointed to the statutory defense to show why, as a matter of statutory construction, only franchisees are proper plaintiffs under the NJFPA. Neither the Appellate Division nor NJCAR have addressed this argument.

The Appellate Division was also wrong to point to the lack of evidence that Ford's dealers breached their franchises. (Aa14.) NJCAR brought this lawsuit to *avoid* involving franchisees in litigating against Ford. (Pb17.) In fact, NJCAR steadfastly refused to identify any dealer that the Lincoln Commitment Program allegedly harmed, citing a First Amendment privilege against disclosing the information in litigation. (Pa131a-32a, Pa139a-40a.)

According to the Appellate Division, Ford should nevertheless have identified and then litigated against the absent franchisees that NJCAR shielded, taking discovery about their views on the Lincoln Commitment Program and their compliance with their franchise agreements. That burden

goes far beyond what the NJFPA requires. Under N.J.S.A. 56:10-9, the defense is available only in an "action brought … by a franchisee." There is no textual basis to require Ford or any other franchisor to litigate against absent franchisees that are not parties to the NJFPA action. That is why NJCAR has itself maintained that "participation of [NJCAR's] individual members in the instant matter is unnecessary" and "irrelevant" to this case. (Pb22, Pa125-126.)

In N.J.S.A. 56:10-10, the Legislature expressly provided that only franchisees may bring NJFPA actions. In N.J.S.A. 56:10-9, the Legislature created a complete statutory defense to an NJFPA violation that functionally requires a franchisee to be the plaintiff. Taken together, the Legislature's intent to limit statutory standing to franchisees is clear and unambiguous.

C. New Jersey's liberal approach to standing does not negate the Legislature's choice of proper plaintiffs to an NJFPA action.

The Appellate Division based its conclusion that NJCAR has standing to sue Ford on New Jersey's relatively liberal approach to standing. (Aa12.) But that approach does not give courts the power to ignore the Legislature's express limits on the availability of statutory remedies. Instead, courts have regularly adhered to the Legislature's express words, even when policy considerations would counsel otherwise.

That was precisely the situation in *Tynan*. There, a prospective transferee of a car dealership franchise argued that, even if it did not qualify as a

franchisee for purposes of the NJFPA, it still had standing as a third-party beneficiary. 248 N.J. Super. at 666. The prospective transferee made a number of policy arguments, including that "a franchisor could, contrary to the Legislature's intent, arbitrarily reject transferees." *Id.* The prospective transferee argued that "a franchisor could wrongfully withhold consent to transfer if the contract purchaser had no standing to sue and the existing franchisee lacked the resources or willpower to challenge the rejection." *Id.* at 666-67. Although the Appellate Division recognized the validity of these policy concerns, it nevertheless held that the express statutory language controlled and precluded a non-franchisee from bringing an NJFPA action. *Id.*

The NJFPA's limitation on proper plaintiffs is not unique. In other circumstances, courts in New Jersey have enforced the Legislature's limits on who may pursue statutory remedies. For example, in *Triffin v. Bridge View Bank*, 330 N.J. Super. 473 (App. Div. 2000), the Appellate Division considered whether the Uniform Commercial Code gave the assignee of a dishonored check standing against the payor bank to enforce the bank's statutory liability for missing the deadline to return or dishonor the check. The court recognized that the statute was created to benefit "those entities in the check collection and payment process who are entitled to rely on the payor bank's adherence to the midnight deadline requirement." *Id.* at 477 (adopting analysis from *Am.*

Title Ins. Co. v. Burke & Herbert Bank & Trust Co., 813 F. Supp. 423, 428 (E.D. Va. 1993)). But the court concluded that "standing to sue for [a statutory] violation is limited to those entities who, by virtue of their relation to the check transaction, either did suffer, or might have suffered, a loss" that the statute was meant to prevent against. *Id.* The court concluded that "[l]imiting standing in this manner does not, in any way, diminish the deterrent sting of [the statute]'s strict liability rule, for it simply entrusts enforcement of this rule to those with the greatest incentive to enforce compliance." *Id.* at 478.

The Appellate Division should have reached the same result here and enforced the Legislature's view of the proper plaintiff to advance a statutory claim. Instead, the Appellate Division ignored the plain text of the NJFPA to effectuate a broad standing policy. This error should be reversed.

II. NJCAR Lacks Associational Standing Because It Cannot Show Its Members Were Injured.

Even apart from the defects in NJCAR's statutory standing, the Appellate Division should have affirmed the trial court's grant of summary judgment because NJCAR also could not meet the elements of associational standing. Although "an association may have standing solely as the representative of its members," to establish associational standing, the association must still "allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of

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the sort that would make out a justiciable case had the members themselves brought suit." *Matter of Ass'n of Trial Lawyers of Am.*, 228 N.J. Super. 180, 186 (App. Div. 1988).

The Appellate Division did not directly address this requirement. Instead, while noting the dispute about injury, the Appellate Division simply proclaimed that NJCAR is not seeking an "advisory opinion," and that "there appears to be a justiciable controversy." (Aa10.) But the Appellate Division ignored NJCAR's own admissions that it has no evidence that any of its Lincoln-affiliated dealers are suffering any real or threatened injuries. (Pa182.) NJCAR has *no* evidence about the financial impact, if any, that the Lincoln Commitment Program has had on any of its members. (Pa182, Pa136, Pa141.) NJCAR has not even attempted to calculate the net economic effect of the Lincoln Commitment Program on the participating dealers, including whether the Program's costs and the offset payments from Ford result in any financial benefit or loss for any particular dealer. (Pa136, Pa143.) NJCAR admitted that it did not ask a single dealer for that information. (Pa141.)

Even more detrimental to NJCAR's cause is its admission that every Lincoln dealer in New Jersey actually *wants* to continue having the opportunity to earn the offset funds through the Lincoln Commitment Program. (Pa181, Pa128.) And at every juncture, NJCAR refused to identify by

name a single Lincoln dealer who would benefit from the Lincoln Commitment Program being declared invalid. (Pa140.) NJCAR even implicitly admitted that, while NJCAR thinks ending the program would benefit its members, not all Lincoln dealers "acknowledge" or "understand" that. (*Id.*) Therefore, while NJCAR may have alleged some sort of speculative injury on behalf of its members, it has failed to substantiate any of its claims. This failure defeats any claim of associational standing.

CONCLUSION

For these reasons, this Court should grant the petition and reverse the Appellate Division's judgment.

Respectfully submitted,

May 6, 2024

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CERTIFICATION

The undersigned counsel certifies that this Petition presents a substantial question and is filed in good faith and not for the purposes of delay.

Respectfully submitted,

May 6, 2024

/s/ Leah A. Mintz

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