Received: 4/21/2025 5:25 PM

IN THE
INDIANA SUPREME COURT

Case No. 23A-MI-01729

Monroe County Board of Zoning Appeals,	)	On Petition to Transfer from the Indiana Court of Appeals
Appellant,	)	Appeal from the Monroe Circuit Court Cause No. 53C06-2209-MI-001773
v.	)	Hon. Kara E. Krothe, Judge
Bedford Recycling, Inc.,	)	
Appellee.	)	

MOTION OF PACIFIC LEGAL FOUNDATION TO APPEAR AS AMICUS CURIAE IN SUPPORT OF APPELLEE BEDFORD RECYCLING, INC.

FRANK D. GARRISON
Indiana Bar No. 34024-49
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, Virginia 22201
Telephone: (202) 888-6881
FGarrison@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

Amicus curiae, Pacific Legal Foundation, by counsel, pursuant to Rule 41 of the Indiana Rules of Appellate Procedure, respectfully moves for leave to file the accompanying amicus brief in support of Bedford Recycling's Petition to Transfer and states as follows:

1. The primary issue in this case is whether an administrative agency may revoke a final adjudicative decision—here, a granted conditional use permit—based solely on its own reassessment of applicable law, without statutory authority or judicial review.

2. This case raises fundamental questions about the limits of agency power, finality of administrative decisions, and the rule of law in Indiana. It concerns the proper division between executive agencies and courts when agencies exercise delegated powers.

3. Amicus curiae Pacific Legal Foundation ("PLF") is a nonprofit, public interest legal organization founded in 1973. PLF litigates nationwide to defend individual liberty, economic freedom, and the structural limits on government power embedded in federal and state law. PLF's attorneys have served as lead counsel or counsel for amici in numerous landmark cases before the United States Supreme Court and state courts, including *Sackett v. EPA*, 566 U.S. 120 (2012) (challenging EPA's ability to issue unilateral administrative compliance orders without judicial review), *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (addressing governmental overreach in the regulatory context), and *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020) (amicus brief on separation of powers and agency structure). Through

this work, PLF has developed deep expertise on how limits on agency power protect individual rights and ensure lawful governance.

4. PLF's institutional interest in this case is to ensure that administrative agencies remain within their delegated authority and do not circumvent judicial oversight or statutory constraints by relabeling final adjudications as "legal errors" subject to executive reversal. The circumstances presented here raise serious concerns about the erosion of finality, predictability, and procedural fairness in local permitting regimes.

5. PLF offers a unique perspective not presented by the parties. Drawing on Indiana precedent, administrative law doctrine, and comparative case experience, PLF will frame the BZA's self-reversal as inconsistent with the principles of statutory delegation, the role of judicial review under Ind. Code § 36-7-4-1601 (2011), and the reliance interests inherent in adjudicated permit approvals.

6. The proposed brief will focus on the structural harms posed by a zoning board's self-reversal, the need for courts to independently assess agency authority, and the consequences for regulated parties when final decisions are subject to discretionary undoing. PLF has reviewed the filings to date pursuant to Appellate Rule 46(E)(2) and will avoid duplicating arguments made elsewhere.

7. PLF's position aligns with that of Petitioner Bedford Recycling. PLF agrees that transfer should be granted to clarify that local agencies may not revoke final adjudicative decisions absent express statutory authorization.

WHEREFORE, Pacific Legal Foundation respectfully requests that the Court grant it leave to appear as amicus curiae and file the accompanying amicus brief in support of Bedford Recycling's Petition to Transfer.

DATED: April 21, 2025

Respectfully submitted,

/s/ *Frank D. Garrison*

FRANK D. GARRISON
Indiana Bar No. 34024-49
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, Virginia 22201
Telephone: (202) 888-6881
FGarrison@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF SERVICE

Undersigned counsel certifies that, on April 21, 2025, the foregoing was electronically filed using the Court's IEFS system and service was made on the following through E-service using the IEFS:

Dustin L. Plummer
Patrick A. Ziepolt
Mallor Grodner Plummer LLP
511 S. Woodcrest Drive
Bloomington, IN 47401

David B. Schilling
Justin D. Roddye
Monroe County Legal Department
100 W. Kirkwood Avenue, Room 200
Bloomington, IN 47404

/s/ *Frank D. Garrison*
FRANK D. GARRISON

Received: 4/21/2025 5:25 PM

IN THE
INDIANA SUPREME COURT

Case No. 23A-MI-01729

Monroe County Board of Zoning Appeals,	)	On Petition to Transfer from the Indiana Court of Appeals
Appellant,	)	Appeal from the Monroe Circuit Court Case No. 53C06-2209-MI-001773
v.	)	Hon. Kara E. Krothe, Judge
Bedford Recycling, Inc.,	)	
Appellee.	)	

BRIEF OF PACIFIC LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF APPELLEE

ALLISON D. DANIEL*
Temp. Admission No. 9801-95-TA
FRANK D. GARRISON
Indiana Bar No. 34024-49
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, Virginia 22201
Telephone: (202) 888-6881
ADaniel@pacificlegal.org
FGarrison@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

**Admitted on Temporary Admission*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Indiana Constitution

Statutes

Other Authorities

STATEMENT OF INTEREST

Amicus curiae Pacific Legal Foundation adopts the statement of interest set forth in its Motion to Appear.

INTRODUCTION AND SUMMARY OF ARGUMENT

Indiana's administrative system draws clear boundaries between those who interpret the law and those who execute it. Zoning boards are entrusted with the limited power to decide land use applications, not to sit in judgment over their own final decisions. When agencies assume the role of both adjudicator and appellate reviewer—undoing settled outcomes without statutory authority—they upset the balance of power that safeguards individual rights and ensures governmental accountability. That is what happened here.

The Monroe County Board of Zoning Appeals ("BZA") revoked Bedford Recycling's conditional use permit eleven months after its approval, acting as a self-appointed appellate court without statutory authorization. This unauthorized reversal offends the structural separation of powers embedded in Indiana's legal system, exceeds the BZA's delegated authority, and undermines due process.

This Court should grant transfer to clarify that local zoning boards cannot usurp judicial oversight by revisiting final adjudications absent clear legislative sanction. Nothing in the zoning code authorizes a board to revoke a final permit approval based on reinterpreted legal standards, and prior cases—*Essroc* included—do not hold otherwise. The BZA's overreach threatens the balance between delegated authority and accountability, risking economic instability and eroding the rule of law.

Zoning decisions carry legal finality not only because they resolve specific disputes, but because they shape long-term investment and land-use planning. By accepting the BZA's framing of its action as a correction of "legal error," the Court of Appeals allowed the agency to nullify final legal rights without meaningful scrutiny. If left uncorrected, this precedent would empower agencies to reverse prior decisions based on shifting political pressures—undermining the predictability that property owners and communities depend on.

ARGUMENT

A. Boards of Zoning Appeals Possess Only Powers Expressly Granted by the Legislature

Indiana's constitutional framework embraces separation of powers not merely as a formality, but as a fundamental safeguard against concentrated authority. Ind. Const. art. III, § 1. Although this provision primarily governs state-level departments, *Willsey v. Newlon*, 316 N.E.2d 390, 391–92 (Ind. Ct. App. 2d Dist. 1974), its structural principles nevertheless govern how administrative power is delegated, exercised, and constrained at all levels of government. This Court has consistently enforced these boundaries, recognizing that administrative agencies "can do the things authorized by the Legislature and beyond that it cannot legally go. Its authority is not expanded by the 'common law.'" *Smith v. Thompson Const. Co.*, 69 N.E.2d 16, 17 (Ind. 1946). The Monroe County BZA's revocation of Bedford Recycling's permit represents a fundamental breach of the separation-of-powers framework. By reopening and reversing a final adjudication without statutory

authorization, the BZA acted beyond its delegated authority and intruded into the judiciary's exclusive domain.

The Indiana General Assembly has established a comprehensive statutory framework that strictly delineates the powers of zoning boards, leaving no room for self-appointed appellate authority. *See* Ind. Code § 36-7-4. This Court has long held that administrative agencies possess only those powers "expressly granted or necessarily implied" by statute, *Kyle v. Malin*, 8 Ind. 34, 37 (1856), and that the power to undo a final act "will not be implied from the mere grant of power," *Cress v. State*, 152 N.E. 822, 826 (Ind. 1926). Nothing in the Indiana Code authorizes the Monroe County BZA to function as an appellate body over its own final adjudications.

The BZA's statutory authority is limited to hearing and deciding applications for variances, special exceptions, and conditional uses through properly noticed public hearings. *See* I.C. §§ 36-7-4-918.2–918.6. Once exercised, this adjudicative power is exhausted, and the decision becomes final, subject only to judicial review. I.C. § 36-7-4-1601. The Indiana Court of Appeals reinforced this limitation in *Boffo v. Boone County Board of Zoning Appeals*, 421 N.E.2d 1119, 1127 (Ind. Ct. App. 1981), permitting reconsideration only when "a material change in the circumstances" altered the factual basis of the original decision. In *Boffo*, the BZA had initially denied a landfill permit but later approved a second application for the same use after the applicant constructed berms and fencing—physical improvements that materially changed the site's environmental impact. The court upheld the second decision not because the BZA had inherent power to reconsider, but because the second

application presented materially different facts and thus constituted a distinct adjudication under the board's existing statutory authority to hear special exceptions. *See* I.C. § 36-7-4-918.2. Critically, *Boffo* tethered reconsideration to such factual changes, not reinterpretation of unchanged facts or law.

The same structural limit appeared again in *State ex rel. ANR Pipeline Co. v. Indiana Department of State Revenue*, 672 N.E.2d 91 (Ind. T.C. 1996), where the court invalidated the Department's attempt to revoke a final determination issued two years earlier. There, the Department of State Revenue audited ANR Pipeline for gross income tax liability related to pipeline capacity leases. Following that audit, the Department issued a Letter of Findings concluding that ANR's income from those transactions was not taxable. *Id.* at 92. Relying on that favorable ruling, ANR filed claims for refunds of taxes previously paid under protest. *Id.* The Department then issued a second Letter of Findings reversing its original position—without citing new law or facts—and denied the refund claims, asserting that its initial ruling contained a legal error. *Id.* at 93. While the court acknowledged in passing that agencies may, in some cases, correct errors of law, it held that such authority must come from the legislature. *Id.* at 95. Because the Department acted without statutory authorization, its reversal was "void and of no effect." *Id. ANR Pipeline* thus confirms what *Boffo* makes clear: once an agency's adjudicative authority has been fully exercised, it cannot be revived or reversed based on amended legal reasoning unless the legislature has specifically authorized such a process.

This limitation on agency power also defines the outer boundary of permissible "corrections." While Indiana courts have recognized that zoning boards may correct clerical or ministerial errors in final orders, such authority does not extend to substantive legal or policy reversals. In *Miller v. St. Joseph County Area Board of Zoning Appeals*, the court noted in dicta that a board may amend its decision to correct a clerical mistake, such as a misstatement or omission, but acknowledged that this authority arises only from general administrative law principles, not from any statute governing local zoning boards. 809 N.E.2d 356, 359 n.1 (Ind. Ct. App. 2004). To support this point, *Miller* cited *Equicor Development, Inc. v. Westfield–Washington Township Plan Commission*, 758 N.E.2d 34 (Ind. 2001), but *Equicor* does not authorize local boards to invoke AOPA's provisions. Instead, this Court in *Equicor* held only that courts may look to AOPA "for guidance" in reviewing agency decisions; it did not apply AOPA directly or extend its procedural rules to local zoning bodies. *Id.* at 37–38. At most, *Miller* reflects a limited, non-statutory recognition that zoning boards may correct minor drafting oversights—but it nowhere suggests that boards may revoke final adjudications based on revised legal reasoning. To the contrary, such corrections are permissible only when they do not alter the substance of the decision and are expressly authorized by statute. I.C. § 4-21.5-3-31. Nothing in *Miller* or *Equicor* supports the BZA's self-reversal in this case.

Here, the BZA acted without a new application or intervening factual changes, relying solely on a revised legal interpretation of the same ordinance applied to the same facts presented in September 2021. *See* Op. at 5, 8. Unlike *Boffo*, where physical

alterations justified reconsideration, the BZA's action was a second adjudication without statutory sanction, effectively seizing the judiciary's role as the arbiter of legal errors. This unauthorized self-reversal contravenes this Court's clear directive that agency authority "is not expanded by the 'common law.'" *Smith*, 69 N.E.2d at 17. By acting as its own appellate tribunal, the BZA breached Indiana's separation of powers framework, undermining the constitutional balance that reserves legal review for the courts. Most troubling, the BZA's revocation occurred while competitor Republic Services' judicial challenge to the original decision was actively pending. *See* Op. at 5 (noting judicial review under Cause No. 53C06-2110-MI-2052). The BZA thus effectively circumvented judicial review by mooting the very case that would have determined the legality of its initial decision.

This circumvention threatens administrative law's ideals of "openness, participation, and oversight," as agencies could evade judicial accountability by reversing challenged decisions. Bryan Clark & Amanda C. Leiter, *Regulatory Hide and Seek: What Agencies Can (and Can't) Do to Limit Judicial Review*, 52 B.C. L. Rev. 1687, 1693 (2011) (warning that agency revisions during judicial review erode oversight); *see also Sackett v. EPA*, 566 U.S. 120 (2012) (rejecting agency's unilateral action without judicial review). If upheld, the Court of Appeals' decision would set a dangerous precedent, allowing agencies to sidestep litigation by revising final actions, undermining the judiciary's constitutional role and contradicting this Court's principle that agencies lack implied powers to undo final decisions. *Cress*, 152 N.E. at 826.

B. The Court of Appeals' Expansion of *Essroc* Disrupts the Separation of Powers and Invites Administrative Overreach

The Court of Appeals mistakenly treated *Essroc Cement Corp. v. Clark Cnty. Board of Zoning Appeals*, 122 N.E.3d 881 (Ind. Ct. App. 2019), as authorizing zoning boards to revoke their own final adjudications. But *Essroc* involved no such thing. There, the issue was whether the Clark County BZA correctly determined that a proposed hazardous waste incinerator required M3 zoning rather than falling within the preapproved M2 classification. *Id.* at 884. The dispute arose after the applicant received a non-binding staff zoning letter suggesting the use was permitted in an M2 zone, but no permit had been issued, and the BZA had not yet rendered any final decision. The BZA conducted a hearing and made its own initial determination within its ordinary adjudicative process. *Id.* at 885–86. The Court of Appeals upheld the BZA's reading of the ordinance as reasonable and supported by the record, but it did not endorse any general power to revoke final decisions. *Id.* at 890. Although *Essroc* briefly suggested in passing that an agency might correct "an error of law" in its own decision, *id.* at 896, that statement was neither central to the holding nor grounded in any statutory text. It referenced no statute authorizing zoning boards to revisit final adjudications, and the facts of the case involved no such reopening.

Despite this narrow holding, the Court of Appeals here cited *Essroc* as if it stood for the proposition that zoning boards can reopen final adjudications to correct legal error—again, an interpretation with no basis in the zoning code or in *Essroc* itself. The zoning statutes impose finality once a board rules, with further recourse available only through judicial review under I.C. § 36-7-4-1601.

Even on its own terms, *Essroc* does not justify the BZA's actions here. Unlike that case, this case involves a fully adjudicated, unanimously approved permit that the BZA later revoked eleven months later without any new facts, evidence, or law. *See* Op. at 5. That is, the BZA's action was not a clarification of zoning classifications but a post hoc reversal of a final decision. That distinction is critical, and the Court of Appeals erred by collapsing it.

The BZA's brief contends that the revocation was lawful because the ordinance definition had been misconstrued. But even if the Board misunderstood the definition in 2021, that kind of legal error must be addressed through judicial review—not a do-over by the same body. *See State ex rel. ANR Pipeline Co.*, 672 N.E.2d at 95.

This Court should clarify that *Essroc* does not create a freestanding exception to finality. If final decisions may be revoked, the legislature must say so. In its silence, the law provides only one mechanism for error correction: judicial review under I.C. § 36-7-4-1601. Administrative convenience cannot override constitutional structure or statutory design. *See* Gary Lawson, *The Rise and Rise of the Administrative State*, 107 Harv. L. Rev. 1231, 1248–49 (1994) (arguing that administrative actions exceeding statutory or constitutional limits, driven by convenience, violate separation of powers principles).

C. Courts Must Independently Scrutinize Agency Claims of Authority

Judicial oversight is the linchpin of Indiana's administrative framework. Agencies may interpret statutes in the first instance, but courts must decide whether the agency has acted within the bounds of its lawful authority. As this Court recently

reaffirmed in *Noblesville, Indiana Board of Zoning Appeals v. FMG Indianapolis, LLC*, 217 N.E.3d 510, 514 (Ind. 2023), courts owe no deference to an agency's conclusions on questions of law, particularly when jurisdictional limits are at stake. Yet in this case, the Court of Appeals accepted, without meaningful scrutiny, the BZA's assertion that it had merely corrected a "legal error." In doing so, the court abdicated its duty to test the limits of administrative power against the text and structure of the law.

Further, Indiana law does not permit agencies to define their own jurisdiction. Jurisdictional constraints are non-waivable and must be policed by the courts, not the agencies themselves. *See, e.g., Town Council of New Harmony v. Parker*, 726 N.E.2d 1217, 1223 n.8 (Ind. 2000). The zoning code confirms this principle: under Indiana Code § 36-7-4-1614(d)(3), courts reviewing BZA decisions must set them aside if issued "in excess of statutory jurisdiction." That standard applies with particular force where an agency purports to reassert jurisdiction—pending judicial appeal—and revoke its own final adjudication absent any statutory mechanism to do so. The BZA's invocation of terms like "ultra vires" and "error of law" cannot bootstrap jurisdiction where none exists. As the U.S. Supreme Court has explained, labels—such as "jurisdictional" or "nonjurisdictional"—do not transform the nature of power or eliminate the need for independent review." *City of Arlington v. FCC*, 569 U.S. 290, 301 (2013) ("Once those labels are sheared away, it becomes clear that the question in every case is, simply, whether the statutory text forecloses the agency's assertion of authority, or not.").

Nor does the record support the BZA's claim that its action was a limited legal correction. The agency's reasoning in 2022 differed materially from its earlier approval, citing new concerns such as environmental risks and political opposition. *See* Op. at 13-15. Those concerns were not before the Board in 2021 and reveal not a recognition of clear legal error, but a shift in policy preferences. The surrounding context reinforces that conclusion: the reversal came after a competitor challenged the permit in court and after Monroe County attempted—but failed—to amend the ordinance. *See* Appellee's Br. at 14, citing Appellant's App. Vol. III at 148. The BZA's review was not an internal correction prompted by a clear statutory misreading; it was a discretionary change of course under external pressure.

The proper judicial inquiry here should have examined whether the BZA's characterization of its action matched reality. In *State ex rel. ANR Pipeline Co.*, the Tax Court refused to accept an agency's claim that it was correcting a legal error when the record showed it was instead adopting a new policy interpretation. 672 N.E.2d at 94–95. The court rejected the agency's explanation that its purpose was to correct a "mistake of law," finding that the reasoning "belie[d] that characterization." *Id.* at 94. The Court of Appeals should have engaged in similar scrutiny here. Allowing agencies to revoke final adjudications by recharacterizing policy changes as legal corrections would effectively dissolve the principle of administrative finality that gives regulated parties certainty in their affairs.

Finally, as this Court explained in *Medical Licensing Board of Indiana v. Provisor*, 669 N.E.2d 406, 410 (Ind. 1996), courts must distinguish between agency

reasoning and agency power. The former may be protected from judicial second-guessing; the latter must be independently verified. Judicial review loses its meaning if courts allow agencies to self-declare jurisdictional justifications. Agencies may enforce the law. They may not reinterpret the limits of their authority to suit changing political priorities.

D. Administrative Overreach Undermines Finality, Due Process, and Structural Balance

The BZA's unauthorized self-reversal threatens more than abstract principles—it disrupts the bedrock values of finality, reliance, and procedural fairness that legitimate governance requires. By acting as its own appellate tribunal without statutory sanction, the BZA violated due process, deprived Bedford Recycling of its ability to rely on a final administrative determination, and subverted the structural balance between administrative and judicial roles.

Conditional-use permits, as quasi-judicial actions, carry an expectation of closure that allows property owners to plan investments and operations. I.C. § 36-7-4-918.2 grants the BZA authority to "approve or deny" conditional uses—not to repeatedly revisit those decisions. As this Court explained in *Smith*, once an administrative body exercises its grant of discretionary authority, "beyond that it cannot legally go." 69 N.E.2d at 17.

Bedford Recycling relied on the September 2021 permit approval and the BZA's final determination to plan its operations—only to have the BZA reverse its own determination in August 2022 with no intervening change in facts or law. This reversal breached the due process guarantee that shields citizens from arbitrary

deprivation of property interests. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Under the *Mathews* framework, the balance of factors—Bedford Recycling's substantial reliance interest, the minimal risk of error in the original determination given its unanimous approval, and the BZA's complete lack of statutory authority for its reversal—demonstrates that the BZA's action fails constitutional scrutiny.

This principle was underscored in *Dale Bland Trucking, Inc. v. Calcar Quarries, Inc.*, where the Indiana Court of Appeals rejected the Public Service Commission's attempt to retroactively "clarify" a 22-year-old permit transfer based on perceived ambiguity. 417 N.E.2d 1157 (Ind. Ct. App. 1981). The court emphasized that administrative finality is not a mere technicality but a necessary condition of fair governance: "[E]ventual finality of administrative decisions is indispensable to the interests of fair and impartial regulation," and that both parties and the public must be able to rely on settled outcomes. *Id.* at 1160. Like the agency in *Dale Bland*, the BZA here acted without legislative direction and after a significant period of repose, unsettling settled expectations in a way the law does not permit.

The economic harms caused by administrative unpredictability are not theoretical. When regulatory bodies can reverse final determinations without clear statutory authority, they create a chilling effect on investment and development. *See* Ilya Shapiro, *The Land Use Labyrinth: Problems of Land Use Regulation and the Permitting Process*, Fed. Soc'y Reg. Transparency Project (Mar. 8, 2018), https://rtp.fedsoc.org/paper/the-land-use-labyrinth-problems-of-land-use-regulation-and-the-permitting-process/ (discussing how inconsistent, discretionary land-use

regulations and complex permitting processes increase costs, delay development, and deter investment). As recognized by economists and policy experts, regulatory certainty is crucial for economic growth and property development. *See* Vanessa Brown Calder, *The Human Cost of Zoning Regulation*, Cato Inst. Blog (Apr. 19, 2017), https://www.cato.org/blog/human-cost-zoning-regulation (discussing studies that show how restrictive and unpredictable zoning regulations increase housing costs and reduce access to opportunity); *see also* Roderick M. Hills, Jr. & David Schleicher, *Building Coalitions Out of Thin Air: Transferable Development Rights and "Constituency Effects" in Land Use Law*, 12 J. Legal Analysis 79, 87–88 (2020) (noting that uncertainty in land-use approvals increases transaction costs and deters developers from pursuing beneficial projects due to risk of discretionary reversal).

Here, the Court of Appeals' blessing of the BZA's unilateral power grab, to revoke its final determinations based on pretextual "error correction," introduces precisely this kind of destabilizing uncertainty into Indiana's regulatory landscape. If zoning authorities may revoke final permits eleven months after approval—with no statutory basis and during pending judicial review—developers will inevitably discount the value of all permits and approvals, treating them as provisional rather than final. This undermines not just individual projects but the entire administrative system that depends on finality and predictability for efficient functioning.

This case tests whether Indiana will maintain its commitment to bounded governance and administrative regularity. The BZA's self-reversal, like unbounded municipal powers elsewhere, risks not just economic disruption but the erosion of the

rule of law itself—replacing predictable legal processes with administrative discretion untethered from statutory constraints. The judiciary must restore the proper balance by ensuring that administrative agencies respect the limits of their delegated roles.

CONCLUSION

The Court should grant transfer, reverse the Court of Appeals' decision, and hold that the BZA lacked authority under Indiana Code to revoke Bedford Recycling's permit eleven months after approval. This unauthorized act violated structural separation of powers principles, exceeded statutory limits, and undermined due process, threatening Indiana's zoning system.

Dated: April 21, 2025

Respectfully submitted,

/s/ *Allison D. Daniel*
ALLISON D. DANIEL*
Temp. Admission No. 9801-95-TA
FRANK D. GARRISON
Indiana Bar No. 34024-49
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd., Suite 1000
Arlington, Virginia 22201
Telephone: (202) 888-6881
ADaniel@pacificlegal.org
FGarrison@pacificlegal.org

Counsel for Amicus Curiae
Pacific Legal Foundation

**Admitted on Temporary Admission*

VERIFIED STATEMENT OF WORD COUNT

The undersigned counsel, pursuant to Appellate Rule 44(E), hereby verifies that the foregoing contains fewer than 4,200 words, exclusive of the items listed in Appellate Rule 44(C), as counted by the word processing system used to prepare the Brief (Microsoft Word).

/s/ *Allison D. Daniel*
Allison D. Daniel, # 9801-95-TA

CERTIFICATE OF SERVICE

Undersigned counsel certifies that, on April 21, 2025, the foregoing was electronically filed using the Court's IEFS system and service was made on the following through E-service using the IEFS:

Dustin L. Plummer
Patrick A. Ziepolt
Mallor Grodner Plummer LLP
511 S. Woodcrest Drive
Bloomington, IN 47401

David B. Schilling
Justin D. Roddye
Monroe County Legal Department
100 W. Kirkwood Avenue, Room 200
Bloomington, IN 47404

/s/ *Allison D. Daniel*
Allison D. Daniel, # 9801-95-TA