No. _____

IN THE

Supreme Court of the United States

ANOKA HENNEPIN EDUCATION MINNESOTA (AMERICAN FEDERATION OF TEACHERS LOCAL 7007),
Petitioner,

v.

DON HUIZENGA, NANCY POWELL, JIM BENDTSEN, AND INDEPENDENT SCHOOL DISTRICT NO. 11,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Federal and state taxpayers generally lack Article III standing to challenge government policy based solely on their status as taxpayers, even when the policy is funded by tax dollars. Nevertheless, this Court's decision in *Crampton v. Zabriskie*, 101 U.S. 601 (1879), *discussed in Frothingham v. Mellon*, 262 U.S. 447, 486–87 (1923), has been understood to create an exception for municipal taxpayers. Although many jurists have noted the difficulty of squaring any such exception with the Article III principles articulated in the Court's more recent taxpayer-standing cases, the courts of appeals have uniformly declared themselves bound by the exception, while splintering over the exception's breadth.

The decision below exemplifies the problem. In direct conflict with the decisions of multiple circuits, the Eighth Circuit expanded the exception, permitting a municipal taxpayer to challenge any purported misuse of municipal funds—even if the challenged policy ensures the municipality is fully reimbursed for any expenditure it makes and even if the taxpayer cannot trace any challenged expenditure to municipal taxes as opposed to other revenue sources.

The questions presented are:

1. Should this Court repudiate the municipal-taxpayer exception to the general rule against taxpayer standing?
2. If there is a municipal-taxpayer exception to the general rule against taxpayer standing, must a municipal taxpayer challenging a municipal policy at least show that the policy imposes a measurable cost on the municipality and that the policy necessarily implicates funds attributable to municipal taxes?

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14.1(b)(i), Petitioner states that there are no parties to the proceeding other than those named in the caption of the case.

Petitioner (defendant-appellee below) is Anoka Hennepin Education Minnesota (American Federation of Teachers Local 7007). Respondents are Don Huizenga, Nancy Powell, and Jim Bendtsen (plaintiffs-appellants below); and Independent School District No. 11 (defendant-appellee below).

RELATED PROCEEDINGS

United States Court of Appeals for the Eighth Circuit:

Huizenga et al. v. Indep. Sch. Dist. No. 11 et al., No. 24-1862 (Aug. 11, 2025)

Huizenga et al. v. Indep. Sch. Dist. No. 11 et al., No. 21-2418 (Aug. 11, 2022)

United States District Court for the District of Minnesota:

Huizenga et al. v. Indep. Sch. Dist. No. 11 et al., Civ. No. 20-2445 (Mar. 29, 2024; June 18, 2021)

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INTRODUCTION

This case presents the ideal vehicle to resolve an issue that lower court judges, with increasing urgency, have been calling on this Court to address: Should the general rule against taxpayer standing continue to be impaired by an exception that permits *municipal* taxpayers to challenge government policies under circumstances where *federal* and *state* taxpayers are barred from doing so?

The municipal-taxpayer exception is an accident of history. Its origin lies in a single paragraph in an obscure decision of this Court, *Crampton v. Zabriskie*, 101 U.S. 601 (1879). *Crampton* did not so much as reference Article III, instead alluding to decisions from a handful of state courts that had permitted taxpayers to challenge government policies under state law. More importantly, *Crampton* failed to take account of the *principles* underlying Article III, including that federal courts are open only to those alleging actual particularized injuries, not undifferentiated grievances in common with people generally.

This Court last permitted a municipal taxpayer to bring suit *qua* taxpayer in the 19th century. Since then, the Court established the now-familiar rule barring *federal* taxpayer standing in *Frothingham v. Mellon*, 262 U.S. 447 (1923). And, more recently, a unanimous Court extended the bar on taxpayer standing to *state* taxpayers in *DaimlerChrysler v. Cuno*, 547 U.S. 332 (2006).

While *Cuno* closed one of the remaining avenues through which a litigant with a generalized political or ideological grievance could reach federal court, municipal-taxpayer standing remained open, as the Court had expressly distinguished municipal taxpayers from federal taxpayers in *Frothingham*. As a consequence, disgruntled citizens across the country have

continued to parlay their status as a taxpayer of a school district, city, county, or other municipality into a ticket to federal court.

Reviewing this history, the Seventh Circuit in *Protect Our Parks, Inc. v. Chicago Park District* observed that the municipal-taxpayer standing doctrine has become "increasingly anomalous." 971 F.3d 722, 733 (7th Cir. 2020) (Barrett, J.). The court noted that the doctrine is an especially stubborn anomaly because, given *Crampton*, only one body—this Court—is in a position to resolve it. *Id.* at 734 (explaining that it is "the Court's job, not ours" to bring municipal-taxpayer standing "into line with modern standing doctrine").

While some legal anomalies may be tolerable, the municipal-taxpayer exception is not. When Judge Williams became the first appellate judge to call on this Court to "aboli[sh] municipal taxpayer standing as a special doctrine," he did so not just because the exception is illogical, but because it poses real dangers, including "a serious risk of unjustified intrusions on local independence." *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 14 (D.C. Cir. 1988) (Williams, J., concurring).

The most recent jurist to call for abolition, Judge Quattlebaum, did so with more urgency. He expressed the hope that "the doctrine of municipal taxpayer standing will be revisited—sooner rather than later—by the Supreme Court" because "prolonging municipal taxpayer standing . . . [has] deputiz[ed] thousands of private attorneys general to bring to federal courts matters that . . . involve political disputes, not Article III cases or controversies." *Bauer v. Elrich*, 8 F.4th 291, 304–05 (4th Cir. 2021) (Quattlebaum, J., dissenting).

It would be reason enough to grant review to finally abolish the municipal-taxpayer exception. But even if

the Court elects not to eliminate the exception, there is an additional compelling reason to grant certiorari in this case. Perhaps because this Court has never attempted to harmonize the municipal-taxpayer exception with modern principles of Article III standing, the circuit courts have splintered badly over the exception's scope.

In its decision below, the Eighth Circuit went further than any other court in departing from Article III's requirements, creating two outcome-determinative circuit splits on implementing the municipal-taxpayer exception. *First*, the Eighth Circuit rejected any requirement that a municipal taxpayer show that a challenged policy imposes a real, dollars-and-cents cost to the public fisc. *Second*, the court rejected the commonsense requirement, adopted by the Seventh Circuit in *Protect Our Parks*, that where, as here, a municipality receives its revenues only partly through municipal taxes (with the rest coming from state, federal, or other non-municipal-tax sources), a municipal taxpayer must trace the costs of the challenged policy to municipal taxes and exclude the possibility that other revenues sustain the policy. Thus, even if this Court wishes to preserve the municipal-taxpayer exception in some form, this case provides an ideal vehicle for bringing clarity to this important area of the law.

It is past time for this Court to squarely address municipal-taxpayer standing and either abolish it or cabin it to minimize its deviation from Article III requirements. The petition should be granted.

OPINIONS BELOW

The Eighth Circuit's opinion below (App. 1a–17a) is reported at 149 F.4th 990. The district court's opinion granting Petitioner's motion for summary judgment (App. 21a–35a) is reported at 727 F. Supp. 3d 812.

JURISDICTION

The judgment of the court of appeals was entered on August 11, 2025. App. 19a. Petitioner's petition for en banc and panel rehearing was denied on October 2, 2025. App. 21a. On December 16, 2025, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including January 21, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISIONS

The relevant text of U.S. Const., Art. III, §§ 1–2, is set out at App. 59a–60a.

STATEMENT OF THE CASE

I. This Court's Taxpayer-Standing Cases.

A. The genesis of the municipal-taxpayer exception can be traced to this Court's 1879 decision in *Crampton*. There, the Court held that a municipal taxpayer could sue to enjoin a prospective municipal expenditure that the taxpayer alleged was unlawful. 101 U.S. at 609. It did so without referring to Article III or even to standing more generally. Instead, it cited only a single treatise, which in turn cited a handful of then-recent state supreme court cases that had allowed taxpayer challenges to government policies to proceed under state law. *See id.*; John F. Dillon, *Treatise on the Law of Municipal Corporations* 682 (§ 731) (1st ed. 1872).

The Court's next significant taxpayer-standing case came 44 years later in *Frothingham v. Mellon*, 262 U.S. 447 (1923). In *Frothingham*, the Court rejected the proposition that standing to sue the *federal* government for an allegedly unconstitutional expenditure of government funds could be based merely on a plaintiff's status as a *federal* taxpayer. The Court reasoned that a federal taxpayer's "interest in the moneys of the Treasury—partly realized from

taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity." *Id.* at 487.

At the same time, the *Frothingham* Court distinguished *Crampton* by asserting that a municipal taxpayer's interest in municipal funds is "direct and immediate" in a way that a federal taxpayer's interest in federal funds is not. *Id.* at 486. The Court also made a brief effort to supply a retroactive justification for *Crampton*'s outcome, saying that it could be explained by reference to a municipal taxpayer's "peculiar relation . . . to the [municipal] corporation, which is not without some resemblance to that subsisting between stockholder and private corporation." *Id.* at 487.

B. Since *Frothingham*, this Court has repeatedly reaffirmed the proposition that the federal courts are not open to hear generalized grievances, and that federal-taxpayer challenges to allegedly improper government expenditures represent the classic example of a generalized grievance. *See generally Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 136 (2011) (canvassing decades of cases).[1]

This Court has also made clear that this same proposition applies to state taxpayers. After the courts of appeals had divided as to the scope of state-taxpayer standing, this Court resolved the split in

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[1] The Court has acknowledged one narrow exception to the rule against federal-taxpayer standing for certain types of Establishment Clause challenges not at issue here. *See Flast v. Cohen*, 392 U.S. 83 (1968).

DaimlerChrysler Corp. v. Cuno, unanimously holding that the "rationale for rejecting federal taxpayer standing applies with undiminished force to state taxpayers." 547 U.S. at 345. Thus, like a federal taxpayer, a state taxpayer's interest in state treasury dollars is "'too indeterminable, remote, uncertain and indirect' to support standing to challenge 'their manner of expenditure.'" *Id.* (quoting *Doremus v. Bd. of Educ. of Hawthorne*, 342 U.S. 429, 433 (1952)).

The *Cuno* Court also identified an additional reason for barring *state* taxpayer suits: "[A]ffording state taxpayers standing to press [taxpayer] challenges simply because their tax burden gives them an interest in the state treasury would interpose the federal courts as 'virtually continuing monitors of the wisdom and soundness' of state fiscal administration, contrary to the more modest role Article III envisions for federal courts." *Id.* at 346 (quoting *Allen v. Wright*, 468 U.S. 737, 760 (1984)); *see also Ariz. Christian*, 563 U.S. at 132–33, 146 (emphasizing federalism and separation-of-powers interests in state-taxpayer case).

II. Factual and Procedural History.

Respondent Independent School District No. 11 (District) is a municipal entity that receives about 19% of its budgeted funds from municipal taxes collected from its residents through property tax levies. App. 33a. The vast majority of the other 81% of budgeted funds come from the State of Minnesota. *Id.*

Since the 1970s, the District has entered into a series of collective-bargaining agreements (CBAs) with Anoka Hennepin Education Minnesota (AHEM), a union that represents teachers in the District. This dispute centers on Article IV, Section 13, of the agreement, titled "AHEM Leave." That provision permits the Dis-

trict's approximately 3,000 teachers to collectively use up to 100 days per year "for AHEM business" without loss of pay, and it makes that leave self-financing by requiring that "AHEM reimburs[e]" the District for the "required substitute cost." App. 64a. The District unilaterally sets the substitute cost and may adjust it to ensure that AHEM bears every expense of union leave. App. 29a. The same substitute rate is used for other purposes, such as when the District wishes to buy back excess sick leave from its employees. *Id.*

Thus, as the court of appeals acknowledged, AHEM "reimburses the one expense occasioned by the union leave policy"—the cost of substitute teachers—rendering the policy completely budget neutral as intended. App. 5a.

Respondents Don Huizenga and Jim Bendtsen reside within the District and pay taxes to it.[2] In 2020, they brought several claims in the district court challenging the AHEM leave provision of the CBA, contending that it violates the First Amendment to the U.S. Constitution, certain provisions of the Minnesota Constitution, and Minnesota labor-relations law. They brought these claims solely in their capacities as state and District taxpayers, as they have no other connection to the District or the AHEM leave provision. They sought an injunction to prevent the District from allocating tax dollars toward AHEM leave, as well as a declaratory judgment that the AHEM leave provision of the CBA is unlawful.

At the pleading stage, the district court granted AHEM's motion to dismiss for lack of standing. App. 47a–58a. On appeal, the Eighth Circuit affirmed in part and reversed in part. It affirmed the district court

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[2] A third Respondent, Nancy Powell, moved out of the District during the pendency of this litigation. App. 4a–5a.

insofar as the plaintiffs' claims were based on *state*-taxpayer standing. App. 41a–42a. But it remanded the case on *municipal*-taxpayer standing, holding that the plaintiffs had pleaded facts sufficient to survive a motion to dismiss on that theory. App. 45a–46a.

The parties engaged in full discovery after which the district court granted AHEM's motion for summary judgment, again solely on standing. It held that the plaintiffs failed to establish standing because the challenged AHEM leave provision in the CBA costs the District nothing, App. 28a–32a, and because "[m]unicipal taxpayers have standing to sue only when they have . . . adequately shown that *municipal* tax dollars" (as opposed to revenues the municipality receives from state, federal, or other sources) will be spent on the activity they challenge, a showing the plaintiffs failed to make, App. 32a–34a (quoting *Protect Our Parks*, 971 F.3d at 736 (emphasis added)).

Back on appeal, a divided panel of the Eighth Circuit reversed. The court was required to accept the existence of a municipal-taxpayer exception to Article III standing, in line with prior circuit precedent, which in turn relied on *Crampton* and *Frothingham*. *Booth v. Hvass*, 302 F.3d 849, 852 (8th Cir. 2002). But the court below broadened the exception beyond that of any other circuit in two ways.

First, the court found that the plaintiffs had standing to challenge the AHEM leave provision even though it costs the District nothing. The court of appeals observed that "[t]he circuits are split on whether the 'good-faith pocketbook action' requirement" from this Court's decision in *Doremus*—*i.e.*, whether a plaintiff must show that the defendant government incurs an out-of-pocket loss by reason of the challenged policy—"extends to municipal taxpayer standing." App. 6a.

The court of appeals held that municipal taxpayers did not need to satisfy that requirement. It reasoned that it was "not decisive" that the provision is costless because, as the court saw it, all the plaintiffs had to allege was even a transitory "misuse" of municipal funds. App. 5a. It reached this result by reasoning that municipal-taxpayer standing in federal court should track shareholder-derivative standing in state court, pointing to this Court's observation in *Frothingham* that a taxpayer's relationship to municipal government "is not without some resemblance to that subsisting between stockholder and private corporation." App. 7a (quoting *Frothingham*, 262 U.S. at 487). According to the court of appeals, since "shareholders" generally "may bring derivative suits for knowing violations of the law even when the unlawful actions profit the corporation," so too can municipal taxpayers. App. 7a (citing *Metro Commc'n Corp. BVI v. Advanced Mobilecomm Techs. Inc.*, 854 A.2d 121, 131 (Del. Ch. 2004)).

Second, the court found that it did not matter that the plaintiffs were unable to show that the District's expenditures on teachers' salaries and benefits could be traced to a uniquely municipal, rather than a substantially commingled, source of tax dollars. App. 9a–10a. The court acknowledged that the Seventh Circuit requires that municipal taxpayers "show that municipal tax dollars are being spent on the illegal activities" and exclude the possibility that other revenue sources are supporting those activities. App. 9a (citing *Protect Our Parks*, 971 F.3d at 734–36). But it expressly split with the Seventh Circuit on that point, again based solely on *Frothingham*'s fleeting reference to shareholder-derivative lawsuits. App. 10a.

Judge Shepherd dissented. He noted that the court of appeals' theory of municipal-taxpayer standing runs afoul of the requirement in *Doremus* that a tax-

payer must demonstrate *some* "direct dollars-and-cents" injury to have standing. App. 13a. The majority went astray, he explained, by expanding *Frothingham*'s corporate-shareholder analogy in "complete isolation" from the intervening century of "standing jurisprudence." App. 14a–15a. Since Judge Shepherd would have denied standing because the plaintiffs had not shown a dollars-and-cents injury, he did not reach the question of whether the Eighth Circuit should follow *Protect Our Parks*' traceability requirement. App. 17a.

The Eighth Circuit denied AHEM's petition for en banc and panel rehearing. App. 21a.

REASONS FOR GRANTING THE PETITION

As this Court has repeatedly held, federal- and state-taxpayer standing flout Article III's irreducible constitutional requirements of injury in fact, causation, and redressability. The same *should* be true for municipal-taxpayer standing. Instead, the courts of appeals have uniformly held that municipal taxpayers can pursue generalized grievances in federal court. The lower courts have permitted municipal-taxpayer suits based on elusive language from this Court's decision in *Frothingham* that, in the course of *rejecting* a *federal* taxpayer's bid for standing, distinguished *Crampton*—a precedent approaching its sesquicentennial that allowed a municipal-taxpayer suit to proceed without even alluding to Article III or its particularized-injury requirement.

Lacking guidance, the courts of appeals have applied the municipal-taxpayer exception inconsistently. Some require municipal taxpayers to show that a challenged municipal policy inflicts a dollars-and-cents injury to the public fisc and that it necessarily implicates municipal tax dollars, as opposed to other

revenue sources. The Eighth Circuit in this case rejected both of those limits, pushing the doctrine yet further afield of Article III.

This petition provides an ideal vehicle for the Court to address these important, recurring issues.

I. Municipal-Taxpayer Standing Contravenes Article III.

A substantial body of law defines the proper scope of Article III's "judicial power." "To establish standing, . . . a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). The municipal-taxpayer exception runs afoul of each element of that "irreducible constitutional minimum of standing." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

A. Municipal-Taxpayer Standing Violates Bedrock Article III Principles, This Court's Taxpayer-Standing Precedents, and Pre-Ratification Historical Practice.

Article III demands that a plaintiff demonstrate an injury in fact—*i.e.*, an injury that is *not* "generalized," "undifferentiated," or insufficiently "particularized." *All. for Hippocratic Med.*, 602 U.S. at 381; *accord Lujan*, 504 U.S. at 575. Likewise, the plaintiff's injury must be "actual or imminent" rather than "conjectural or hypothetical." *Cuno*, 547 U.S. at 344; *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009). This Court has held that neither state nor federal taxpayers can satisfy this requirement in a suit against the government for the illegal expenditure of taxpayer funds. *See Frothingham*, 262 U.S. at 487; *Cuno*, 547 U.S. at 345.

For closely related reasons, state and federal taxpayers also flunk Article III's causation and redressability requirements. *See Ariz. Christian*, 563 U.S. at 143.

This Court has not yet said the same of municipal taxpayers. "Yet it has never explained why municipal taxpayers are differently situated" in these respects. *Protect Our Parks*, 971 F.3d at 734. Indeed, the Court signaled the opposite when it held in *Cuno* that the longstanding "rationale for rejecting federal taxpayer standing" articulated in *Frothingham* "applies with undiminished force to state taxpayers." 547 U.S. at 345. As explained further below, in holding that this rationale was "undiminished" when applied to taxpayers suing their state governments—many of which are less populous than large counties and cities—the Court in *Cuno* kicked the legs out from under *Frothingham*'s language regarding municipal taxpayers.

1. This Court's rule for state-taxpayer standing is clear. In *Cuno*, taxpayers challenged tax incentives offered by the State of Ohio to DaimlerChrysler as violating the Commerce Clause. The Court rejected their standing, holding that any injury from that policy was (1) insufficiently "concrete and particularized" because it was shared "in common with people generally" and (2) "conjectural or hypothetical" because it was "unclear that tax breaks of the sort at issue here do in fact deplete the treasury," as any injury "depends on how legislators respond to a reduction in revenue" resulting from the policy. *Id.* at 344.

The Court also warned that indulging such speculation would contravene core principles of federalism. "[A]ffording state taxpayers standing to press such challenges simply because their tax burden gives them an interest in the state treasury would interpose the federal courts as 'virtually continuing monitors of the wisdom and soundness' of state fiscal ad-

ministration, contrary to the more modest role Article III envisions for federal courts." *Id.* at 346 (quoting *Allen*, 468 U.S. at 760); *see also Ariz. Christian*, 563 U.S. at 132–33, 146.

Expanding on that analysis in *Arizona Christian*, the Court observed that a challenge based on "'future taxation, of any payment out of funds,' was too 'remote, fluctuating and uncertain' to give rise to a case or controversy." *Ariz. Christian*, 563 U.S. at 135 (quoting *Frothingham*, 262 U.S. at 487). And, even if it were not so speculative, any injury that could be proven "is still of a general character, not particular to certain persons." *Id.* at 138.

But taxpayer standing's Article III problems do not end there, as taxpayer plaintiffs also "cannot satisfy the requirements of causation and redressability." *Id.* at 143. Taxpayers generally cannot show that a specific policy has increased their tax liabilities. *Id.* at 137; *see also Cuno*, 547 U.S. at 344, 350. Likewise, taxpayers cannot prove that an adverse court decision would prompt the government to lower their taxes (rather than, say, to repurpose the same tax dollars). *Cuno*, 547 U.S. at 350; *accord Ariz. Christian*, 563 U.S. at 138.

2. There is no reason this "same logic" would not "appl[y] with equal force to municipal taxpayers." *Bauer*, 8 F.4th at 304 (Quattlebaum, J., dissenting). Just as with federal and state taxpayers, a single municipal taxpayer's interest in the public treasury is minute and indeterminable. It is also shared with every other taxpayer in the municipality. Put another way, how public funds are spent is a matter of general, not individualized, concern. And just as with federal and state taxpayers, it is "speculation and conjecture to allege that because a government approves certain spending, a taxpayer will incur losses in the way of increased taxes." *Id.* Thus, "[t]he rule against taxpayer standing,

a rule designed both to avoid speculation and to insist on particular injury," *Ariz. Christian*, 563 U.S. at 138, plainly forecloses municipal-taxpayer standing.

So too do the federalism concerns animating *Cuno* apply to municipal-taxpayer standing. At the state level, taxpayer suits "interpose the federal courts as 'virtually continuing monitors of the wisdom and soundness' of fiscal administration" by state policymakers. *Cuno*, 547 U.S. at 346 (quoting *Allen*, 468 U.S. at 760). The same problems emerge at the municipal level. Municipalities "are created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them in its absolute discretion." *Nixon v. Mo. Muni. League*, 541 U.S. 125, 140–41 (2004) (quoting *Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 607–08 (1991)). Municipal-taxpayer suits interfere with that discretionary grant of policymaking authority. As a result, "judicial intrusion on municipal officials (without a real injury) . . . [is] as troubling as intrusion on state ones." *D.C. Common Cause*, 858 F.2d at 12 (Williams, J., concurring).

Municipal taxpayer standing, "in effect, sanction[s] individuals who have any grievance with the fiscal policy of their local governments . . . , to bring those concerns to federal court." *Bauer*, 8 F.4th at 304 (Quattlebaum, J., dissenting). That policy conflicts with the fundamental requirements of Article III. And it undermines basic federalism principles by inviting the federal judiciary to interfere in everyday local fiscal decisions, which is "contrary to the more modest role Article III envisions for federal courts." *Cuno*, 547 U.S. at 346.

3. Municipal-taxpayer standing likewise finds no support in pre-ratification practice. In England at the time of the Founding, it was "settled" that where a municipal corporation holding property in trust abus-

es its powers, the corporation "can be made to account to the crown, on an information, *but not to private persons in a suit in equity*." Dillon 681 n.1 (§ 730) (emphasis added); *accord* James Grant, *A Practical Treatise on the Law of Corporations in General* *138 (1854) ("[W]hen a corporation is trustee of funds for public purposes, they cannot be made accountable to any private person in suit in equity, though they may be accountable to the crown on an information.").

Thus, whether gauged by basic Article III principles, by this Court's federal- and state-taxpayer-standing cases, or by pre-ratification practice, municipal-taxpayer standing is an aberration.

4. Nothing in this Court's past fleeting discussions of municipal-taxpayer standing can overcome these fundamental obstacles.

a. Most significantly, *Crampton*'s and *Frothingham*'s reasoning was methodologically flawed.

First came *Crampton*, where the Court offered only ipse dixit. "Of the right of resident tax-payers to invoke the interposition of a court of equity to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they in common with other property-holders of the county may otherwise be compelled to pay," the Court asserted, "there is at this day no serious question." 101 U.S. at 609. The basis? "The right has been recognized by the State courts in numerous cases." *Id.* In lieu of citing those cases, the Court directed "[t]hose who desire to consult the leading authorities on this subject" simply to "Mr. Dillon's excellent treatise on the Law of Municipal Corporations." *Id.* Dillon, in turn, discussed only various *state courts'* rationales for permitting taxpayer suits under state law. Dillon 682–85 (§§ 731–35). Unsurprisingly, none of those then-recent state-court decisions grounded their holding in Article III of the

U.S. Constitution. *See, e.g.*, *Mayor & City Council of Balt. v. Gill*, 31 Md. 375, 394–95 (Md. 1869).

Crampton thus failed to appreciate that "[t]he mid-nineteeth century saw the first cases in the United States which granted standing to taxpayers." Comment, *Taxpayers' Suits: A Survey and Summary*, 69 Yale L.J. 895, 898 (1960). Moreover, the 19th-century state courts that permitted taxpayer suits did so based primarily on a policy rationale—that a taxpayer suit was "the most direct, speedy and efficacious" way to challenge an unlawful municipal expenditure, *e.g.*, *Colton v. Hanchett*, 13 Ill. 615, 618 (Ill. 1852)—not on a principle in any way derived from the values that Article III expresses.

Frothingham followed. There, the plaintiff brought suit in her capacity as a federal taxpayer, not as a municipal taxpayer. And, in addressing the matter actually before it, the Court's reasoning was perfectly sound. As noted above, the Court *denied* standing, doing so because a federal taxpayer's "interest in the moneys of the Treasury—partly realized from taxation and partly from other sources—is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation, of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity." 262 U.S. at 487.

On the way to reaching that result, however, the Court apparently recognized the need to say something about *Crampton*. The difficulty for the *Frothingham* Court was that *Crampton* itself did not address the factors just canvassed. Thus, the *Frothingham* Court was forced to supply a post hoc rationale for *Crampton.* In a brief passage, the Court did just that, positing that municipal taxpayers have a "peculiar relation . . . to the [municipal] corporation, which is not

without some resemblance to that subsisting between stockholder and private corporation." *Id.*

But the Court did not seem entirely convinced by the comparison it was positing. It stated *not* that municipal taxpayers are truly analogous to stockholders of private corporations, but only, rather weakly, that they are "not without some resemblance" to them. And in fact, municipal taxpayers are *not* analogous to private-corporation stockholders for the simple reason that municipal corporations, unlike private for-profit corporations, are *nonstock* entities and thus don't issue shares to anyone. They thus lack owners analogous to corporate shareholders who might plausibly be considered to have individualized and discrete allocable interests in the entity's finances.

b. The Court in *Frothingham* also emphasized "[t]he interest of a taxpayer of a municipality in the application of its moneys," which it asserted "is direct and immediate" in contrast to the interest of federal taxpayers. *Id.* at 486. But the suggestion that municipal taxpayers' relationship to their municipalities is inherently more intimate cannot hold up to scrutiny, particularly given societal changes in the century since that decision.

First, now that this Court has clarified that the rule against taxpayer standing applies "with undiminished force" to states, *Cuno*, 547 U.S. at 345, "it is hard to draw a meaningful distinction between the stakes of taxpayers in litigation based solely on geography," *Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 221 (6th Cir. 2011) (en banc) (Sutton, J., concurring). After all, in 2011, "[t]hirty-two cities [had] populations larger than at least one State, and New York City, the largest municipality in the country, h[eld] more people than 39 States." *Id.* These figures are effectively unchanged since then.

Relatedly, many city and county budgets eclipse state ones. The City of Philadelphia, for example, has an annual budget of about $6.8 billion,[3] while neighboring Delaware's budget comes in at about $6.5 billion.[4] More dramatically, the combined sum of the fifteen smallest state budgets is smaller than New York City's.[5] It is thus "illogical to treat the taxpayers of those large municipalities differently than those of smaller states." *Bauer*, 8 F.4th 304 (Quattlebaum, J., dissenting).

Second, the sources of municipal funds have changed since *Frothingham*. It was easier at the time of *Frothingham* to "speak of city and state treasuries as distinct." *Smith*, 641 F.3d at 222 (Sutton, J., concurring); *see* Charles Hamilton McKnight, *Municipal Finance*, Cornell Law, Historical Theses and Dissertations Collection, Paper No. 222 at 7 (1891) (noting that municipal "[f]unds are generally raised by direct taxation, or borrowing and issuing bonds for the payment thereof"). That is why the Court in *Frothingham* contrasted municipal funds with federal funds by suggesting that only the latter consisted of "moneys of the [t]rea-

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[3] *See* Press Release, City of Phila., City of Philadelphia Approves $6.8 Billion 'One Philly 2.0' FY26 Budget (June 12, 2025), https://www.phila.gov/2025-06-12-city-of-philadelphia-approves-6-8-billion-one-philly-2-0-fy26-budget (last visited Jan. 12, 2026).

[4] *See* Nat'l Ass'n of State Budget Officers, *Proposed and Enacted Budgets, Delaware*, https://www.nasbo.org/mainsite/resources/proposed-enacted-budgets/delaware-budget (last visited Jan. 12, 2026).

[5] *Compare* Off. of N.Y. State Comptroller, *Review of the Financial Plan of the City of New York, Report 9-2026,* 3 (Aug. 2025), https://www.osc.ny.gov/files/reports/osdc/pdf/report-9-2026.pdf (reflecting $119.7 billion budget), *with* Wikipedia, *List of U.S. State Budgets*, https://en.wikipedia.org/wiki/List_of_U.S._state_budgets (collecting links to state budget documents) (last visited Jan. 12, 2026).

sury . . . partly realized from taxation and partly from other sources." 262 U.S. at 486–87. But today, municipal budgets are thoroughly dependent on state and federal grants. Indeed, "many school district budgets consist primarily of state and federal dollars." *Smith*, 641 F.3d at 222 (Sutton, J., concurring). Just so here, where approximately 81% of the District's budget consists of state and federal monies. App. 33a.

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In short, *Cuno* and a century of Article III standing jurisprudence have "upended" whatever could be said in favor of *Frothingham*'s attempt to retroactively justify *Crampton*. *Herrera v. Wyoming*, 587 U.S. 329, 341–42 (2019). Neither *Frothingham*'s reliance on state-court decisions nor its assertion about the intimacy of municipal taxpayers' relationships to their local governments withstands the slightest inspection. This Court should thus "formalize what is evident" from *Cuno* and hold that *Crampton*—and the passage from *Frothingham* attempting to rationalize it—be "regarded as retaining no vitality." *Id.* at 342 (quoting *Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 361 (1984)).

B. Only This Court Can Eliminate Municipal-Taxpayer Standing.

For decades now, lower-court judges have noted municipal-taxpayer standing's incompatibility with Article III. Judge Williams was the first to question the doctrine, observing that "the evolution of standing doctrine has significantly undermined the original case for municipal taxpayer standing." *D.C. Common Cause*, 858 F.2d at 12 (Williams, J., concurring). At the same time, Judge Williams recognized that "a circuit court should follow even heavily battered Supreme Court authority." *Id.* at 11. Thus, based on his beliefs that the municipal-taxpayer exception both has fallen out of step with more recent precedents and creates "a

serious risk of unjustified intrusions on local independence," Judge Williams called on this Court to effectuate its "abolition." *Id.* at 14.

Judge Sutton raised similar concerns. "Whatever the virtue of a line between state- and municipal-taxpayer standing at its birth[,]" he observed, "the point of the demarcation is difficult to grasp today." *Smith*, 641 F.3d at 221 (Sutton, J., concurring). Judge Sutton concluded that there "is much to be said for reconsidering the municipal-taxpayer-standing doctrine, or, if not that, at least for recalibrating it to account for the world the way it is." *Id.* at 222. But, echoing Judge Williams, he acknowledged that "[i]f any modification to the doctrine is appropriate, it must come from the Court" and not "lower courts like ours." *Id.* Nearly a decade later, a panel of the Sixth Circuit renewed Judge Sutton's criticism. *Davis v. Detroit Pub. Schs. Cmty. Dist.*, 835 F. App'x 18, 23 n.4 (6th Cir. 2020) ("[W]e question whether the Supreme Court's reasoning in permitting municipal taxpayer standing remains a viable basis for that doctrine today.").

Similarly, in *Protect Our Parks*, then-Judge Barrett observed that, while the court of appeals was of course bound by this Court's decisions even when of ancient vintage, this "Court has not actually relied on municipal taxpayer standing in decades." 971 F.3d at 733. The court went on to observe that the doctrine is "increasingly anomalous," because this Court has "repeatedly emphasized that neither state nor federal taxpayers can satisfy this standard in a suit against the government for the illegal expenditure of taxpayer funds." *Id.* "Yet it has never explained why municipal taxpayers are differently situated." *Id.* at 734. As the court of appeals concluded, this Court "might find that difficult to do." *Id.*

Then-Judge Ketanji Brown Jackson likewise observed that "modern standing principles have continued to develop in the decades since" municipal-taxpayer standing was permitted by this Court—"while the municipal taxpayer doctrine has not budged." *Feldman v. Bowser*, 315 F. Supp. 3d 299, 312 n.5 (D.D.C. 2018).

And, most recently, Judge Quattlebaum argued that "[m]unicipal taxpayer standing is not materially different from state or federal taxpayer standing." *Bauer*, 8 F.4th at 303 (Quattlebaum, J., dissenting). Nonetheless, he acknowledged that lower courts are "constrained to follow" this Court's precedents and apply the exception. *Id.*

All told, as lower-court judges have reiterated time and again, only this Court can end the practice of treating municipal taxpayers differently from state and federal taxpayers for purposes of Article III standing. This case provides a perfect opportunity to do so.

II. Two Circuit Splits on the Scope of the Municipal-Taxpayer Exception Independently Justify This Court's Review.

While this Court's century-old decisions in *Crampton* and *Frothingham* have indicated that municipal taxpayers can challenge municipal policies in federal court in some circumstances, the Court has never set forth the contours of such a municipal-taxpayer exception. That has left the lower courts to do their best to reconcile the exception with this Court's subsequent caselaw requiring a plaintiff to show that she has suffered a personalized injury in fact.

Faced with an assignment akin to squaring a circle, it is unsurprising that the courts have fractured. Indeed, as the Eighth Circuit acknowledged below, there are now two separate circuit splits on the scope of mu-

nicipal-taxpayer standing. These circuit splits provide an independent basis for this Court's review, even if the Court elects not to consider whether to jettison the doctrine entirely.

A. The Circuits Are Divided About Whether a Municipal-Taxpayer Plaintiff Must Show that the Municipality Incurs an Out-of-Pocket Loss Because of the Challenged Policy.

The first circuit split recognized by the Eighth Circuit is whether a municipal-taxpayer plaintiff must bring a "good-faith pocketbook action"—*i.e.*, whether the plaintiff must show that the municipality incurs an out-of-pocket loss by reason of the challenged policy. App. 6a. The phrase "good-faith pocketbook action" comes from this Court's 1952 decision in *Doremus*, where the Court held that state taxpayers lacked standing to challenge the reading of Old Testament verses at the start of the school day. The Court explained that while a state taxpayer could in theory bring such a lawsuit (since the Court had not yet repudiated state-taxpayer standing), the taxpayer can do so "only when it is a good-faith pocketbook action." 342 U.S. at 434. The Court defined a "good-faith pocketbook action" as a "direct dollars-and-cents injury" to the state. *Id.*[6]

As the Tenth Circuit has chronicled, "[a] majority of . . . circuits to have addressed the issue apply *Doremus* and hold that municipal taxpayers possess standing only for good-faith pocketbook actions." *Am. Humanist Ass'n v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1258 (10th Cir. 2017). Thus, for example,

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[6] Although the courts of appeals initially were split on whether *Doremus* was a state-taxpayer standing case or a municipal-taxpayer standing case, this Court has clarified that it was the former. *Cuno*, 547 U.S. at 345.

the Third Circuit applied *Doremus* to hold that a municipal-taxpayer plaintiff could not challenge a holiday display exhibited by the municipality, as the plaintiffs "failed to establish that the Township has spent any money, much less money obtained through property taxes," on the display. *ACLU-NJ v. Township of Wall*, 246 F.3d 258, 263 (3d Cir. 2001) (Alito, J.); *see also Nichols v. City of Rehoboth Beach*, 836 F.3d 275, 280–81 (3d Cir. 2016). The Seventh Circuit has rejected a similar bid for municipal-taxpayer standing. *See ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 268–70 (7th Cir. 1986).

The Second, Fifth, Ninth, and D.C. Circuits are in accord, with each requiring an out-of-pocket loss to the municipality in order for a taxpayer plaintiff to sue. *Thomson v. County of Franklin*, 15 F.3d 245, 253 (2d Cir. 1994) ("[M]unicipal taxpayer has standing to challenge the imposition of an allegedly illegal expenditure when she brings a 'good-faith pocketbook action.'"); *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995) (municipal taxpayer must "show that tax revenues are expended on the disputed practice"); *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 793 (9th Cir. 1999) (en banc) ("*Doremus* . . . controls the requirements for taxpayer standing in this case."); *D.C. Common Cause*, 858 F.2d at 4 ("Although *Doremus* involved only state taxpayers, the pocketbook injury requirement also applies to municipal taxpayers.").

The Eighth Circuit, however, has now come out the other way, holding that a municipal taxpayer can challenge a municipal policy *without* bringing a "good-faith pocketbook action." Recall that the AHEM leave policy at issue in this case is designed to (and in fact does) fully reimburse the school district for the only expenditure caused by the policy: the cost of hiring substitute teachers. *See supra* p. 7. As Judge Shep-

herd observed in his dissent below, in the circuits that have applied *Doremus*' "good-faith pocketbook action" requirement to municipal-taxpayer cases, a taxpayer plaintiff could not challenge the AHEM leave policy in federal court, as the school district suffers no "direct dollars-and-cents injury" as a result of the policy. App. 13a–15a. Indeed, the Seventh Circuit has confronted a situation materially identical to this one, concluding that a taxpayer *qua* taxpayer could not challenge a holiday display because, as relevant here, the incremental costs of the display were "defrayed by voluntary contributions from city residents." *City of St. Charles*, 794 F.2d at 268. Yet the Eighth Circuit in this case held that the plaintiffs could challenge the AHEM leave policy in federal court simply because the policy involves an "expenditure" that "is solely occasioned by the activities complained of"—even though the expenditure is fully reimbursed. App. 8a.

As for the Sixth Circuit, its divided decision in *Smith v. Jefferson County Board of School Commissioners*, 641 F.3d 197 (6th Cir. 2011) (en banc), has added an additional layer to lower courts' confusion about municipal-taxpayer standing. In *Smith*, the Sixth Circuit suggested that *Doremus*' "good-faith pocketbook action" requirement for state-taxpayer-standing cases was inapplicable to municipal-taxpayer-standing cases. *Id.* at 212. But it did so in confronting an Establishment Clause claim that involved a classic pocketbook injury to the municipality: a challenge to the municipality's decision to outsource all of its alternative-school services to a religiously affiliated school, which of course required the municipality to pay the religiously affiliated school without reimbursement. *See id.* at 215. The opinions below in this case evince courts' uncertainty about how to apply *Smith*: While the majority heavily relied on *Smith* to support its holding that the plaintiffs had standing to challenge

the AHEM leave policy, App. 5a, 8a, the dissent found *Smith* "distinguishable" because "the union reimburses the school district dollar-for-dollar for its substitute-teacher expenditures," App. 15a.

Regardless of whether the split is counted as 6-2 (with the Sixth Circuit in alignment with the Eighth Circuit) or 6-1 (with the Sixth Circuit's position unclear), the bottom line is that there is a split in the courts of appeals on whether a municipal-taxpayer plaintiff must show that the municipality incurs an out-of-pocket loss as a result of the challenged policy. That split is outcome determinative in this case, as the court of appeals acknowledged that the AHEM leave policy does not result in any out-of-pocket loss to the school district.

B. The Circuits Are Divided About Whether a Municipal-Taxpayer Plaintiff Must Show that the Challenged Policy Is Financed by Uniquely Municipal Tax Dollars.

The Eighth Circuit opened a second circuit split by holding that a municipal-taxpayer plaintiff does *not* need to trace a challenged expenditure to municipal tax dollars. That split, too, is outcome determinative here, since only a small portion of the District's budgeted funds consist of dollars raised by the District's tax levies. *See supra* p. 6. That means that the challenged policy is not in any way dependent on municipal-taxpayer dollars for its existence, as state funds are more than sufficient to sustain the program.

In *Protect Our Parks*, the Seventh Circuit stated the prevailing rule especially clearly. "It is not enough to simply allege that the City is spending money," the court of appeals wrote. 971 F.3d at 735. "[T]he existence of municipal taxpayer standing depends on where the money comes from." *Id.* "Municipal taxpayers have standing to sue only when they have both

identified an action on the city's part that is allegedly illegal and adequately shown that city tax dollars will be spent on that illegal activity." *Id.* at 736. Applying that rule, the court of appeals held that the plaintiffs lacked standing to challenge the City of Chicago's construction of the Obama Presidential Center, as "the parties fail to grapple with the possibility that the relevant funds come from a source other than tax dollars." *Id.* at 735. "[T]hat possibility isn't remote," the court explained, as "nearly a third of the City's revenue comes from nontax sources" including federal and state grants, and this share was easily sufficient to pay for the entire construction project. *Id.*; *see also Woodring v. Jackson County*, 986 F.3d 979, 984–85 (7th Cir. 2021) (denying standing to a municipal taxpayer under the *Protect Our Parks* rule).

The Seventh Circuit has good company, as other courts apply a similar rule. *Am. Humanist Ass'n*, 859 F.3d at 1260 (requiring proof that expenditures were from "district tax funds rather than" other sources); *Cantrell v. City of Long Beach*, 241 F.3d 674, 683–84 (9th Cir. 2001) (similar); *ACLU-NJ*, 246 F.3d at 263 (absence of any indication that "Township has spent . . . money obtained through property taxes" provided independent basis to deny standing to plaintiff whose claim to standing rested on paying municipal property taxes).

Applying that rule in this case would have doomed the plaintiffs' challenge to the AHEM leave policy. Even assuming that the school district's (reimbursed) expenditures to substitute teachers could serve as the basis of a taxpayer claim challenging the policy, *contra supra* Part II.A, it is possible that "the relevant funds come from a source other than [municipal] tax dollars," *Protect Our Parks*, 971 F.3d at 735. Indeed, the District's non-municipal funds would be amply sufficient

to draw on for those expenditures. The Eighth Circuit, however, rejected the municipal-funds rule, justifying that departure by relying on *Frothingham*'s tentative comparison of municipal taxpayers to stockholders and reasoning that "[a] stockholder's legal interest in the corporation's management of its funds is not diluted by outside funds." App. 10a.[7] Notably, while the court below over-read that part of *Frothingham*, it ignored that *Frothingham* found it relevant to denying standing to the federal-taxpayer plaintiff there that federal revenues derive not only from taxes but also "partly from other sources." *Supra* at pp. 16, 19.

If permitted to stand, the Eighth Circuit's holding that a taxpayer plaintiff can challenge a municipal policy without having to show that the policy requires the expenditure of municipal tax dollars would render the plaintiff's "taxpayer" status mere happenstance, thus rendering a municipal *taxpayer* no more appropriate a plaintiff than a municipal *citizen*. That is reason enough to condemn the Eighth Circuit's holding. *See Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 216–27 (1974) (rejecting citizen standing). But in all events, the shareholder-derivative-suit analogy on which the lower court relied does not even work in plaintiffs' favor here. To bring a shareholder-derivative suit in federal court, a shareholder plaintiff must still show that she has Article III standing to sue, such as by demonstrating that she has a "financial stake in the litigation." *Gollust v. Mendell*, 501 U.S. 115, 125 (1991); *see also All. for Hippocratic Med.*,

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[7] The Eighth Circuit also pointed to two cases it contended were inconsistent with the Seventh Circuit's reasoning. App. 10a (citing *Cammack v. Waihee*, 932 F.2d 765, 771 (9th Cir. 1991), and *D.C. Common Cause*, 858 F.2d at 11). While the court misread both cases, the key point for present purposes is that the existence of a circuit split is now indisputable.

602 U.S. at 393 n.5. So, for the analogy to shareholder-derivative suits to hold, a municipal taxpayer must likewise establish a personal Article III interest in the lawsuit. But the plaintiffs here have sought to evade even that minimal requirement by challenging a policy without showing that *any* of their municipal tax dollars are at stake. By endorsing that evasion, the Eight Circuit has given rise to a second circuit split.

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In total, the Eighth Circuit has dispensed with both guardrails set by other courts of appeals to cabin municipal-taxpayer standing. Left unchecked, the Eighth Circuit's holding—that any municipal taxpayer can enter federal court and challenge even a fully-reimbursed municipal expenditure with no cost traceable to municipal tax dollars—threatens to "convert the Judiciary into an open forum for the resolution of political or ideological disputes about the performance of government." *United States v. Richardson*, 418 U.S. 166, 192 (1974) (Powell, J., concurring).

This Court's review is needed.

III. Municipal-Taxpayer Standing Is Important and Recurring, and This Case Is an Ideal Vehicle to Address It.

Even before this case, the question of whether there is a municipal-taxpayer exception to the general rule against taxpayer standing in federal court—and, if so, what the scope of that exception is—cried out for this Court's review. Every court of appeals has concluded that, under *Crampton* and/or *Frothingham*, it is duty bound to permit municipal taxpayers to sue in at least some circumstances. *Donnelly v. Lynch*, 691 F.2d 1029, 1032 (1st Cir. 1982), *rev'd on other grounds*, 465 U.S. 668 (1984); *United States v. City of New York*, 972 F.2d 464, 466 (2d Cir. 1992); *City of Rehoboth Beach*, 836 F.3d at 280 (3d Cir. 2016); *Koenick v. Felton*, 190 F.3d

259, 263 (4th Cir. 1999); *Ehm v. San Antonio City Council*, 269 F. App'x 375, 377 (5th Cir. 2008); *Am. Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278, 287 (6th Cir. 2009); *Protect Our Parks*, 971 F.3d at 736 (7th Cir. 2020); *Booth*, 302 F.3d at 853 (8th Cir. 2002); *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1532 (9th Cir. 1985); *Am. Humanist Ass'n*, 859 F.3d at 1257 (10th Cir. 2017); *Pelphrey v. Cobb Cnty.*, 547 F.3d 1263, 1280 (11th Cir. 2008); *D.C. Common Cause*, 858 F.2d at 3 (D.C. Cir. 1988). But this Court has provided only the most cursory explanation for why municipal-taxpayer standing is warranted at all, and it is in a decision—*Frothingham*—that "antedate[s] current jurisprudence on standing to sue." *Cuno*, 547 U.S. at 354 (Ginsburg, J., concurring).

Municipal-taxpayer suits have consequences. Even where such suits ultimately fail on the merits, they force municipalities to expend substantial resources to defend their policies against objections that are suited for the political arena, not the federal courtroom. *See, e.g.*, *Smith v. Jefferson Cnty. Bd. of. Sch. Comm'rs*, 788 F.3d 580, 582–85 (6th Cir. 2015) (granting summary judgment to defendant in challenge to school-board contract with religiously affiliated school, but only after 12 years of litigation); *Hawley v. City of Cleveland*, 24 F.3d 814, 815–16 (6th Cir. 1994) (granting summary judgment to defendants in challenge to city's decision to provide airport space to church on allegedly favorable financial terms, but only after 11 years of litigation). Moreover, it is not just municipalities who face these drains on their resources. As here, private organizations who contract with municipalities are frequently named as defendants in such lawsuits as well and thus must incur litigation costs of their own. *See, e.g.*, *Hawley*, 24 F.3d at 816 (Catholic Diocese of Cleveland named as defendant because terms of its lease with city for airport space were challenged).

Where such a suit succeeds and a federal court enjoins a municipal policy at the behest of a non-injured litigant, the damage to Article III values is even more acute. After all, the fundamental point of the separation-of-powers principle that underlies Article III's case-or-controversy requirement is to keep the federal courts out of the business of making political judgments that the Founders intended to leave to the democratic process. *See Schlesinger*, 418 U.S. at 227.

The Eighth Circuit's opinion in this case only heightens the need for this Court to step in. That is both because there are now two acknowledged circuit splits on the scope of the doctrine, *see supra* Part II, and because the Eighth Circuit's position on those circuit splits, taken individually or collectively, has opened the door to far more taxpayer-filed challenges to municipal policies in federal court. What Judge Quattlebaum wrote in 2021 is even more true now: Municipal-taxpayer standing "should be reconsidered by the Supreme Court"—and "sooner rather than later"—because "prolonging municipal taxpayer standing . . . [has] deputiz[ed] thousands of private attorneys general to bring to federal courts matters that . . . involve political disputes, not Article III cases or controversies." *Bauer*, 8 F.4th at 302, 304–05 (Quattlebaum, J., dissenting).

This case is also an ideal vehicle to address municipal-taxpayer standing for at least three reasons.

First, the courts below fully considered the standing issue. Indeed, the plaintiffs' standing was the only issue decided by the Eighth Circuit in its published opinion. App. 3a–11a (majority), 11a–17a (dissent).

Second, as the decisions below make clear, there is no confusion or uncertainty about how the challenged AHEM leave policy operates. App. 8a, 15a, 64a. In contrast, most lower-court cases that decide municipal-taxpayer standing do so at the motion-to-dismiss

stage and are therefore sometimes litigated on hypothesized or vague facts.

Third, this case squarely presents the questions of whether a municipal-taxpayer plaintiff must show that (1) the municipality incurs an out-of-pocket loss because of the challenged policy and (2) uniquely municipal taxpayer dollars finance the challenged policy, as opposed to commingled funds that would be sufficient to finance the policy even without any contribution from municipal tax sources. Either of these questions is outcome determinative in this case. Thus, if the Court were to grant certiorari and conclude that a municipal-taxpayer exception should survive in some form, this case would provide a vehicle for the Court to define the contours of the exception and give lower courts the guidance they sorely need.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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January 21, 2026

APPENDIX

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APPENDIX A

United States Court of Appeals
For the Eighth Circuit

No. 24-1862

Don Huizenga; Nancy Powell; Jim Bendtsen
Plaintiffs-Appellants

v.

Independent School District No. 11;
Anoka Hennepin Education Minnesota,
(American Federation of Teachers Local 7007)
Defendants-Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: March 18, 2025
Filed: August 11, 2025

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

BENTON, Circuit Judge.

Three residents sued a school district and teachers' union about their union leave and reimbursement plan, alleging constitutional and statutory violations. The district court granted summary judgment, ruling that the residents lacked Article III standing. They appeal. Having jurisdiction under 28 U.S.C. § 1291, this court reverses and remands.

I.

Don Huizenga, Nancy Powell, and Jim Bendtsen were residents and taxpayers of Independent School District No. 11 ("the district"). The collective-bargaining representative of its teachers is Anoka-Hennepin Education Minnesota ("the union"). Their agreement allows teachers to take, collectively, 100 days per year of paid leave to work for the union. The union must reimburse the district's costs for hiring substitute teachers during union leave. The union does not reimburse the district for the (higher) pro rata cost of salaries and benefits for teachers on union leave.

Disagreeing with the teachers' alleged political and campaign advocacy during union leave, the residents sued the union under 42 U.S.C § 1983. They alleged a violation of the Free Speech Clause. *See Janus v. AFSCME, Council 31,* 585 U.S. 878, 930 (2018). The residents also alleged violations of the Minnesota Constitution and the state Public Employee Labor Relations Act.

The district court dismissed the case for lack of standing. This court reversed and remanded. *Huizenga v. Indep. Sch. Dist. No. 11,* 44 F.4th 806, 812 (8th Cir. 2022) (holding, at a threshold inquiry for a motion to dismiss, that the residents adequately alleged municipal taxpayer standing). On remand, the district court granted summary judgment, dismissing the residents' claims due to a lack of Article III standing. *Huizenga v. Indep. Sch. Dist. No. 11,* 727 F.Supp.3d 812, 820 (D. Minn. 2024). The residents appeal.

This court reviews both standing and grants of summary judgment de novo. *Heglund v. Aitkin Cnty.,* 871 F.3d 572, 577 (8th Cir. 2017) (standing); *Torgerson v.*

City of Rochester, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (summary judgment).

II.

"Article III restricts federal courts to the resolution of cases and controversies." *Davis v. FEC,* 554 U.S. 724, 732 (2008). The party invoking federal jurisdiction has the burden to establish standing. *Lujan v. Defs. of Wildlife,* 504 U.S. 555, 561 (1992). Only one plaintiff needs standing. *Biden v. Nebraska,* 600 U.S. 477, 489 (2023). For standing, the plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins,* 578 U.S. 330, 338 (2016). The injury in fact requires the plaintiff to show "'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent.'" *Id.* at 339, *quoting Lujan,* 504 U.S. at 560.

In general, the taxpayer's interest "in seeing that Treasury funds are spent in accordance with the Constitution does not give rise to the kind of redressable 'personal injury' required for Article III standing." *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.,* 509 F.3d 406, 419–20 (8th Cir. 2007), *quoting Hein v. Freedom From Religion Found., Inc.,* 551 U.S. 587, 599 (2007). Municipal taxpayer standing is an exception to this general rule. *See Frothingham v. Mellon,* 262 U.S. 447, 486–87 (1923) (decided with *Massachusetts v. Mellon*). Municipal taxpayer standing arises from the "peculiar" relationship of taxpayers to their municipality, like that "subsisting between stockholder and private corporation." *Id.* at 487. Because municipal taxpayers have a "direct and immediate" interest in municipal

expenditures, they "may sue to enjoin an illegal use of the moneys of a municipal corporation." *Id.* at 486.

To have municipal taxpayer standing, a plaintiff (1) "must actually be a taxpayer of the municipality that she wishes to sue" and (2) "must establish that the municipality has spent tax revenues on the allegedly illegal action." *Huizenga,* 44 F.4th at 811, *quoting Protect Our Parks, Inc. v. Chicago Park Dist.,* 971 F.3d 722, 734 (7th Cir. 2020). At summary judgment, a plaintiff must support standing "with sufficient probative evidence that would permit a finding in the plaintiff's favor." *See Davidson & Assocs. v. Jung,* 422 F.3d 630, 638 (8th Cir. 2005).

A.

The residents must establish they are taxpayers of the municipality they are suing—in this case, the district. Huizenga and Bendtsen are municipal taxpayers of the district. They belong to a particular "taxpayer base" of district residents with a special "interest in the funds allocated to" the school district. *Huizenga,* 44 F.4th at 812.

Powell is no longer a municipal taxpayer of the district. After the complaint was filed, she moved away and no longer resides in the district. She cannot maintain claims for prospective injunctive relief. She asserts standing to seek a declaratory judgment and retrospective relief. However, the injury central to municipal taxpayer standing is the "misuse" of public funds by the municipality. *Frothingham,* 262 U.S. at 486. This "misuse," not any increase in taxes, allows resident taxpayers to "sue to enjoin an illegal use of the moneys" of a municipality. *Id.* An injunction against future misuse remedies the injury. *See D.C. Common Cause v. District of Columbia,* 858 F.2d 1, 8

(D.C. Cir. 1988) (noting that the request for restoration of moneys "would not redress the injury caused by past misuse of public funds"). Because Powell has left the taxpayer base, she cannot show a likelihood of future injury necessary to establish standing for declaratory and injunctive relief. *See City of Los Angeles v. Lyons,* 461 U.S. 95, 111 (1983). There is "no danger" of her taxes "being spent in violation of the Constitution." *Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs,* 641 F.3d 197, 209 (6th Cir. 2011) (en banc) (holding that plaintiff lacked standing because he was no longer a taxpayer of the municipality), *cert. denied*, 565 U.S. 820 (2011). Powell does not have municipal taxpayer standing.

B.

The other two residents—who are municipal taxpayers—must establish that the district spends tax revenues on the activities complained of. The union argues that the residents are unable to demonstrate a "measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of." *Doremus v. Bd of Educ. of Hawthorne,* 342 U.S. 429, 434 (1952). The union emphasizes that it reimburses the district for the cost of substitutes for teachers taking union leave. It concludes that the residents have not established an injury in fact because the union leave provision causes no incremental expenditure.

That the union reimburses the one expense occasioned by the union leave policy is not decisive, because whether the policy increases or decreases total costs to the district does not matter. *See Smith,* 641 F.3d at 215. What matters is the "misuse" of the municipality's funds. *Frothingham,* 262 U.S. at 486. The union leave policy causes a direct expenditure of dis-

trict funds, giving residents a direct interest as taxpayers. The residents meet the injury in fact requirement for Article III standing.

The district court relied on *Doremus v. Board of Education of Borough of Hawthorne*, 342 U.S. 429, 434–35 (1952), which addressed state taxpayer standing. The Court there held that state taxpayers have no standing based on taxpayer status alone. The Court's test was whether the state taxpayer "sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement." *Doremus,* 342 U.S. at 434, *quoting Frothingham,* 262 U.S. at 488. To satisfy this "direct injury" requirement, state taxpayers must bring a "good-faith pocketbook action." *Doremus,* 342 U.S. at 434. The circuits are split on whether the "good-faith pocketbook action" requirement extends to municipal taxpayer standing (advocated by the dissent). *See Smith,* 641 F.3d at 212–13 (summarizing the views of five other circuit courts).

For state taxpayer standing, this court has defined "a good-faith pocketbook action" as "an injury to the taxpayer's 'direct and particular financial interest.'" *Booth v. Hvass,* 302 F.3d 849, 852 (8th Cir. 2002), *quoting Doremus,* 342 U.S. at 434–35. But this court has not interpreted *Doremus* to require a taxpayer to show an increase in her tax bill. *See Minnesota Fed'n of Teachers v. Randall,* 891 F.2d 1354, 1356–57 (8th Cir. 1989). *Cf. D.C. Common Cause,* 858 F.2d at 5 (applying *Doremus* to municipal taxpayer standing but requiring only "a measurable appropriation of public funds" for the injury requirement to be satisfied). Thus, to the extent that the "good-faith pocketbook action" requirement applies to municipal taxpayer standing, the requirement for taxpayers to show a "direct and particular financial interest" ap-

plies only so far as the taxpayer's interest is defined in *Frothingham*. The Court there held that the "interest of a taxpayer of a municipality in the application of its moneys is direct and immediate." *Frothingham,* 262 U.S. at 486. This comes from the "peculiar relation of the [municipal] taxpayer to the [municipality], which is not without some resemblance to that subsisting between stockholder and private corporation." *Id.* at 487. "Like a shareholder of a private corporation, a municipal taxpayer has an immediate interest in how the municipality spends resources that reflect his contributions." *Am. Atheists, Inc. v. City of Detroit Downtown Dev. Auth.,* 567 F.3d 278, 285 (6th Cir. 2009), *citing Frothingham,* 262 U.S. at 487. Generally, shareholders may bring derivative suits for knowing violations of the law even when the unlawful actions profit the corporation. *See Metro Commc'n Corp. BVI v. Advanced Mobilecomm Technologies Inc.,* 854 A.2d 121, 131 (Del. Ch. 2004). Analogously, the unconstitutional spending of taxpayer money is itself an injury to the municipal taxpayer. *See D.C. Common Cause,* 858 F.2d at 5 ("The injury—misuse of public funds—is redressed by an order prohibiting the expenditure."); *Cammack v. Waihee,* 932 F.2d 765, 772 (9th Cir. 1991) (same). All a taxpayer—"in his capacity as a district taxpayer"—needs to show is "a measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of." *Doremus,* 342 U.S. at 434 (second quotation); *Everson v. Bd. of Educ. of Ewing Twp.,* 330 U.S. 1, 3 (1947) (first quotation); *see also Pulido v. Bennett,* 848 F.2d 880, 886 (8th Cir. 1988) (denying state and municipal taxpayer standing when "no state or local tax funds" were used in the illegal activity).

If some expenditure is paid by local taxpayer dollars, municipal taxpayers do not have to show an overall "depletion of the public fisc." *Smith,* 641 F.3d at 215. In municipal "expenditure cases," plaintiffs "complain not that the government, having spent certain money, might demand more of them, but rather that it has misspent what it has already collected." *Id.* at 214–15. "In sum, the rule that plaintiffs must show depletion of the public fisc in order to access the courts has no foundation, explicit or implied, in the binding decisions of the Supreme Court." *Id.* at 215.

Here, the residents argue that the leave agreement forces municipal taxpayers to subsidize a union's political speech in violation of their First Amendment rights. *See Janus,* 585 U.S. at 920. The district makes an expenditure when it pays substitute teachers while full-time teachers take paid union leave to engage in political and campaign advocacy. The expenditure is solely occasioned by the activities complained of. Even though the union reimburses the cost of the substitute teacher, the residents have a "direct pecuniary injury" because their taxes directly support the activities complained of. *Doremus,* 342 U.S. at 434. The union notes that the residents alleged that the school district spends tax revenues "and the union does not fully reimburse that expense." *Huizenga,* 44 F.4th at 812. But the holding there was that, at that stage in the litigation, the residents satisfied their burden to establish standing. Here, because the residents have supported their allegation that the school district expends taxpayer funds on the activities complained of, they satisfy their burden at this stage as well.

The union also argues that any costs expended by the district are "ordinary costs" associated with operating a school district. *Doe v. Madison Sch. Dist. No.*

321, 177 F.3d 789, 794 (9th Cir. 1999) (en banc) (denying municipal taxpayer standing because the school district spent tax dollars on "ordinary costs of graduation that the school would pay" with or without the unconstitutional activity). Paying a substitute teacher may be an "ordinary" cost of the school district. But the spending the residents challenge is the payment of substitutes for teachers taking union leave. Here, the challenged expenditure of funds is not ordinary because it is "occasioned solely by the activities complained of." *Doremus,* 342 U.S. at 434.

C.

The union argues that municipal taxpayer standing requires a "fairly traceable" element, that the residents show their municipal taxpayer dollars are uniquely implicated. *See Spokeo,* 578 U.S. at 338. Teachers' salaries are paid from the district's General Fund. It intermingles state, federal, and local funds. Local taxes are around 18 percent of the General Fund. The union concludes that the residents cannot show that the expenditures from the union leave policy are "uniquely attributable" to local tax dollars.

The union relies on *Protect Our Parks, Inc. v. Chicago Park District*, 971 F.3d 722, 734–36 (7th Cir. 2020). That court held that municipal taxpayers must show that municipal tax dollars are being spent on the illegal activities. *Id.* at 735 ("It is not enough to simply allege that the City is spending money; the existence of municipal taxpayer standing depends on where the money comes from."), *approved in Woodring v. Jackson Cnty., Ind.,* 986 F.3d 979, 985 (7th Cir. 2021). The plaintiffs in *Protect Our Parks* failed to show that the activity complained of would be paid for with municipal taxes, since "nearly a third of the City's revenue comes from nontax sources." *Protect*

Our Parks, 971 F.3d at 735. Other circuits disagree. *See D.C. Common Cause,* 858 F.2d at 11 (finding municipal taxpayer standing even when the only expenditures were from funds appropriated by Congress); *Cammack,* 932 F.2d at 771 (finding municipal taxpayer standing where plaintiffs asserted that "state and municipal tax revenues" pay for the activity complained of).

In *Frothingham*, the Court analogized municipal taxpayers to the stockholders of a corporation. *Frothingham,* 262 U.S. at 487. A stockholder's legal interest in the corporation's management of its funds is not diluted by outside funds. *See, e.g.*, *Koster v. (Am.) Lumbermens Mut. Cas. Co.,* 330 U.S. 518, 523–24 (1947) (holding that shareholders with "only a small financial interest" in the corporation may still bring a derivative suit if they satisfy other procedural and jurisdictional requirements). Likewise, the residents' direct and immediate interest in school district expenditures is not diluted where the General Fund contains municipal, state, and federal funds. Municipal taxpayer standing allows taxpayers to challenge the misuse of municipal funds. Intermingled funds are still "resources that reflect [the taxpayer's] contributions." *Am. Atheists, Inc.,* 567 F.3d at 285. The residents meet any traceability requirement.[1]

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[1] The dissent adds that Huizenga and Bendtsen lack standing because funds are not expended "*on the allegedly illegal elements* of the disputed practice." *Protect Our Parks, Inc.,* 971 F.3d at 735. But this adds a requirement for municipal taxpayer standing that is not found in the decisions of the Supreme Court. To the extent that *Doremus* applies to municipal taxpayer standing, it requires only an expenditure of municipal funds "occasioned solely by the activities complained of." *Doremus,* 342 U.S. at 434.

III.

Huizenga and Bendtsen meet their burden of establishing Article III standing. They are municipal taxpayers of the district, and they show an expenditure of district funds occasioned solely by the activities complained of.

The district court did not address the residents' claims on the merits. This court is "a court of appellate review, 'not of first view.'" *MPAY Inc. v. Erie Custom Comput. Apps., Inc.,* 970 F.3d 1010, 1021 (8th Cir. 2020). If a district court has not addressed an issue, we ordinarily remand to give that court an opportunity to rule in the first instance. *Fergin v. Westrock Co.,* 955 F.3d 725, 730 n.3 (8th Cir. 2020).

* * * * * * *

The judgment is reversed, and the case remanded for further proceedings consistent with this opinion.

SHEPHERD, Circuit Judge, dissenting.

I respectfully dissent. In my view, the plaintiff taxpayers have failed to "show that the [district] has actually expended funds *on the allegedly illegal elements* of the disputed practice." See Protect Our Parks, Inc. v. Chi. Park Dist., 971 F.3d 722, 735 (7th Cir. 2020) (Barrett, J.) (quoting Nichols v. City of Rehoboth Beach, 836 F.3d 275, 282 (3d Cir. 2016)), cert. denied, 141 S. Ct. 2538 (2021). Thus, I would hold that the plaintiffs lack standing and affirm the district court.

Two theories have been advanced in this case to establish municipal taxpayer standing. First, the plaintiffs assert they have standing because, as taxpayers, they have been compelled to subsidize the union's political speech and activity. They argue that because

the district rents out its teachers to the union at the rate required to hire a substitute for each teacher rather than at the full amount of any given teacher's "per diem salary"—i.e., the amount, based on the teacher's salary, that a given teacher makes per day of teaching—the taxpayers are footing the bill for teachers' subsidized contributions to union activities. Alternatively, the panel determines municipal taxpayer standing exists under a slightly different theory. Ignoring the subsidy concept, the panel holds that the plaintiffs have standing because the district expends funds to pay for the substitute teachers, an expense, it argues, that is "occasioned solely by" the union activities. See ante, at 7a (citation omitted).

The plaintiffs' theory fails for lack of an expenditure. Because municipal taxpayer standing requires a plaintiff to "establish that the municipality has spent tax revenues on the allegedly illegal action," see Huizenga v. Indep. Sch. Dist. No. 11, 44 F.4th 806, 811 (8th Cir. 2022) (citation omitted), courts have generally looked for an expenditure or appropriation of municipal funds in order to find such standing, see, e.g., Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs, 641 F.3d 197, 214 (6th Cir. 2011) (en banc). But see Hawley v. City of Cleveland, 773 F.2d 736, 741-42 (6th Cir. 1985) (holding standing existed where the challenged activity involved a loss of revenue to the municipality's general fund). Under the subsidy theory, the district is essentially offering the union a discounted rate on its teachers, but it is not expending or appropriating money for union activities.

The panel's alternative theory is similarly inadequate. In my view, the panel's approach errs both in rejecting the requirement of a "direct dollars-and-cents injury," see Doremus v. Bd. of Educ., 342 U.S. 429, 434

(1952), and in disregarding the disconnect between the expenditure and the allegedly illegal action.

First, this Court errs by holding that the alleged misuse of a municipality's funds—even without any "direct dollars-and-cents injury," id.—is sufficient to establish municipal taxpayer standing. See ante, at 5a-6a. Explaining this error requires a brief history of the municipal taxpayer standing doctrine. More than 100 years have passed since the Supreme Court noted its approval of the municipal taxpayer standing doctrine in Frothingham. See 262 U.S. at 44; see also Crampton v. Zabriskie, 101 U.S. 601, 609 (1879) (holding there was "no serious question" about the rights of taxpayers to sue "to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt which they . . . may otherwise be compelled to pay"). In the century since, the Supreme Court has barely addressed municipal taxpayer standing. See Protect Our Parks, 971 F.3d at 733. However, it has addressed taxpayer standing more generally, including the standing of a taxpayer to sue a local governmental entity for enforcing an allegedly impermissible state statute. See Doremus, 342 U.S. at 430. In Doremus, the Court determined that a state taxpayer plaintiff must show that "the taxpayer's action . . . is a good-faith pocketbook action," or, in other words, that the plaintiff has "the requisite financial interest that is, or is threatened to be, injured by" the illegal government conduct. Id. at 434-35. While Doremus undoubtedly applies to state taxpayer standing, see DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 335 (2006), circuits are split over whether it applies to municipal taxpayer standing, see, e.g., Protect Our Parks, 971 F.3d at 734 (applying Doremus in analyzing municipal taxpayer standing); Smith, 641 F.3d at 212-13 (discussing approaches in other circuits).

I believe Doremus provides clarification on taxpayer standing generally and would thus apply it in the municipal taxpayer context. As other judges have noted, though the Supreme Court has significantly developed standing principles generally, the municipal-taxpayer standing doctrine has "stood still." See Smith, 641 F.3d at 221-23 (Sutton, J., concurring); see also Protect Our Parks, 971 F.3d at 733 (describing the rule as "increasingly anomalous"). In light of the "substantial body of law vigorously enforcing the principle that injuries cognizable under Article III cannot be 'generalized,' 'undifferentiated,' or insufficiently 'particularized,'" see Protect Our Parks, 971 F.3d at 733 (citation omitted), it is incongruous to turn a blind eye to Doremus and to hold that any misuse of funds—even one that has no effect or has a *positive* effect on the public fisc—provides a taxpayer with standing. This reading is consistent with Frothingham, under which it is presumed the doctrine applies only when the taxpayer's interest in the municipality's expenditure is "direct and immediate." See United States v. City of New York, 972 F.2d 464, 470 (2d Cir. 1992) (citation omitted); see also Frothingham, 262 U.S. at 486. It is also consistent with Frothingham's analogy to shareholders and a corporation, as corporate shareholder standing is likewise limited. See, e.g., Taha v. Engstrand, 987 F.2d 505, 507 (8th Cir. 1993) ("Shareholders . . . may not bring individual actions to recover what they consider their share of the damages suffered by the corporation."). And more recently, a plurality of the Supreme Court suggested municipal taxpayer standing should not be applied too broadly. See ASARCO Inc. v. Kadish, 490 U.S. 605, 613 (1989); see also Protect Our Parks, 971 F.3d at 734. Though it "is the [Supreme] Court's job, not ours" to amend the municipal taxpayer standing doctrine, see Protect Our Parks, 971 F.3d at 734, we need not ignore the Court's stand-

ing jurisprudence or consider this case in complete isolation. Thus, I would apply Doremus in this case and hold that, in the absence of a "direct dollars-and-cents injury" to the public fisc, the taxpayer plaintiffs cannot establish standing.

The panel comes to the opposite conclusion by relying on Smith, which similarly rejected an application of Doremus to municipal taxpayer standing. See ante, at 7a. But even if we were to assume the Sixth Circuit's decision in Smith is correct, the facts in Smith are distinguishable from those at hand. In Smith, taxpayers challenged the school district's decision to close its alternative school and to instead contract with an existing private alternative school that had some religious affiliations. 641 F.3d at 202-03. Because the school district's decision *saved* the district money, the district argued that plaintiffs did not have standing because the taxpayers failed to establish any depletion of the municipal fisc as a result of the governmental action. Id. at 210-11. The Sixth Circuit rejected this argument, declined to apply Doremus in the municipal taxpayer standing context, and determined that the taxpayers were not required to show that the government act "shr[a]nk[] the public treasury in order to establish standing" because taxpayer standing "will not turn on whether it was a bargain to violate the Constitution." Id. at 211.

Here, however, the union reimburses the school district dollar-for-dollar for its substitute-teacher expenditures. Thus, this Court need not be concerned with the "implementation problems" that worried the Smith majority, such as "[d]etermining whether a municipality 'lost' or 'saved' money." See id. 215. Here, every year, the school district comes out even because every day a teacher is at work in each classroom and

the union directly reimburses all associated costs to hire substitutes. The government does not "evade suit simply because it was cheaper to violate the Constitution," see id., it evades suit because the taxpayers have failed to show an injury, cf. Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc., 454 U.S. 464, 482 (1982) ("Art[icle] III requirements of standing are not satisfied by 'the abstract injury in nonobservance of the Constitution asserted by . . . citizens.'" (alteration in original)).

Even if I shared the majority's view of the Doremus question, however, I would still hold the plaintiffs lack standing because they have failed to "show that the municipality has actually expended funds *on the allegedly illegal elements* of the disputed practice." See Protect Our Parks, 971 F.3d at 735 (citation omitted). By the panel's analysis, the expenditure in this case is the payment for substitute teachers. Ante, at 8a. But it is not the hiring of substitute teachers that the plaintiffs take issue with, but rather the renting out of regular full-time teachers, at an allegedly subsidized price, to conduct union-related business. See Appellant Br. 30. Presumably, that is why the plaintiffs argued this under a subsidy theory. Given that the allegedly illegal conduct is the renting out of teachers at a subsidized rate for union work, and taxpayer dollars are not being spent on that, the plaintiffs' municipal taxpayer standing argument should fail. The Seventh Circuit addressed a similar issue in Protect Our Parks, 971 F.3d at 735. In that case, the plaintiff taxpayers took issue with the construction of a presidential center in a park. Id. Construction of the center was being funded by a foundation, not by the city, but the city was still "set to spend millions of dollars to prepare the . . . site for construction." Id. Though preparation for construction was presumably occasioned by con-

struction of the center itself, the Seventh Circuit rejected the plaintiff taxpayer's argument, determining that because "no tax dollars will be spent to build or operate the Center"—the allegedly illegal activity—the plaintiffs lacked standing. Id. Likewise here, the allegedly illegal activity is not the hiring of substitutes, but the renting out of full-time teachers for union activities during the school day. Because the district does not expend funds on that allegedly illegal element of the disputed practice, that is sufficient to defeat the plaintiffs' standing. See id.

Finally, because I would deny the plaintiffs standing on the above grounds, I would decline to reach the traceability question. See ante, at 9a-10a. Thus, I respectfully dissent.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 24-1862

Don Huizenga; Nancy Powell; Jim Bendtsen
Plaintiffs-Appellants

v.

Independent School District No. 11;
Anoka Hennepin Education Minnesota,
(American Federation of Teachers Local 7007)
Defendants-Appellees

Appeal from U.S. District Court
for the District of Minnesota
(0:20-cv-02445-JWB)

JUDGMENT

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

This appeal from the United States District Court was submitted on the record of the district court, briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is reversed and the cause is remanded to the district court for proceedings consistent with the opinion of this court.

August 11, 2025

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 24-1862

Don Huizenga, et al.

Appellants

v.

Independent School District No. 11 and
Anoka Hennepin Education Minnesota,
(American Federation of Teachers Local 7007)

Appellees

Appeal from U.S. District Court
for the District of Minnesota
(0:20-cv-02445-JWB)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

October 02, 2025

Order Entered in Accordance with Opinion:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Don Huizenga, Nancy Powell, and Jim Bendtsen,
Plaintiffs,

v.

Independent School District No. 11, and
Anoka-Hennepin Education Minnesota
(American Federation of Teachers Local 7007),
Defendants.

Civ. No. 20-2445 (JWB/ECW)

MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Douglas P. Seaton, Esq., and James V.F. Dickey, Esq., Upper Midwest Law Center, counsel for Plaintiffs.

Kristin C. Nierengarten, Esq., and Michael J. Waldspurger, Esq., Rupp, Anderson, Squires & Waldspurger, counsel for Defendant Independent School District No. 11.

David Aron, Esq., Eva Wood, Esq., and Margaret A. Luger-Nikolai, Education Minnesota; and Faaris Akremi, Esq., and Leon Dayan, Esq., Bredhoff & Kaiser, PLLC, counsel for Defendant Anoka-Hennepin Education Minnesota.

This is a Section 1983 lawsuit brought by certain municipal taxpayers against their school district and local teachers union. Plaintiffs Don Huizenga, Nancy Powell, and Jim Bendtsen challenge a provision in De-

fendant Independent School District 11's ("ISD 11") collective bargaining agreement with Defendant Anoka-Hennepin Education Minnesota ("AHEM"). AHEM is the local affiliate of a trade union representing educators in Minnesota. Under the collective bargaining agreement, the 3,000 teachers working for ISD 11 are collectively permitted to use up to 100 days per school year to conduct AHEM business. AHEM must reimburse the school district for the cost of substitute teachers for union leave time ("union leave" policy). Plaintiffs allege that the teachers engage in political advocacy during the union leave which violates Plaintiffs' free speech rights under both federal and state constitutions and violates the state Public Employer Labor Relations Act. Not all background facts will be recited here and can be found in other reported decisions. *See Huizenga v. Indep. Sch. Dist. No. 11*, 544 F. Supp. 3d 862 (D. Minn., June 18, 2021), *rev'd*, 44 F.4th 806 (8th Cir. 2022).

The district court at first dismissed this action for lack of standing, a ruling that was appealed and that the Eighth Circuit reversed. *Id*. The Eighth Circuit restricted its analysis to the face of the pleadings, finding that Plaintiffs' Complaint adequately alleged municipal taxpayer standing in ISD 11 sufficient to satisfy a threshold inquiry on a motion to dismiss. *Huizenga*, 44 F.4th at 811–12.

After remand from the Eighth Circuit, the parties conducted discovery and have cross-moved for summary judgment. (Doc. Nos. 91, 101.) Based on a fully developed record, Plaintiffs' claims are dismissed for lack of Article III standing.

Plaintiffs clearly enough identify the school district activity they challenge and most of the Plaintiffs appear to be municipal taxpayers in ISD 11. But what

Plaintiffs have not done sufficiently is to establish that municipal taxpayer revenues, as opposed to other revenue sources, were in fact spent on the ISD 11 contested activity. Accordingly, Plaintiffs lack standing and Defendant AHEM's motion for summary judgment is granted. Plaintiffs' motion for summary judgment is denied as moot.

ANALYSIS

Article III standing is a prerequisite to a federal court's subject matter jurisdiction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992). The party invoking federal jurisdiction bears the burden of establishing standing. *Bernbeck v. Gale*, 829 F.3d 643, 646 (8th Cir. 2016) (citing *Lujan*, 504 U.S. at 561). A plaintiff must generally show: (1) an injury in fact; (2) a causal connection between the injury and the challenged conduct of the defendant; and (3) a likelihood that a favorable ruling will redress the alleged injury. *Young Am. Corp. v. Affiliated Comput. Servs. (ACS), Inc.*, 424 F.3d 840, 843 (8th Cir. 2005). Article III requires "an injury [to] be *concrete*, particularized, and *actual* or imminent." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010) (emphasis added). "An alleged injury cannot be too speculative for Article III purposes." *Wallace v. ConAgra Foods, Inc.*, 747 F.3d 1025, 1030 (8th Cir. 2014).

The general rule is that plaintiffs cannot maintain a lawsuit basedsolely on their taxpayer status, but municipal taxpayer standing is the exception to that rule. *See Frothingham v. Mellon*, 262 U.S. 447, 487 (1923). Typically, citizens' financial interest in how a government spends their tax dollars is an issue of public concern best resolved in the political arena and not in the courts. The exception for municipal taxpayers is based on the "peculiar," more direct relation-

ship between a taxpayer and their municipality, establishing a "direct and immediate interest" in municipal expenditures that might violate the law. *Id*. at 486–87.

Even so, some appellate courts question this municipal taxpayer right as a kind of vestigial relic, given consistent Supreme Court rulings restricting generalized taxpayer standing at all other levels of government—county, state, and federal. *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 733–34 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 2583 (2021); *Smith v. Jefferson Cty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 221–23 (6th Cir. 2011) (en banc) (Sutton, J., concurring).

For municipal taxpayer standing, Plaintiffs must show "a good-faith pocketbook action," such that each plaintiff has a *direct and immediate* financial interest in challenging the municipality's supposedly illegal conduct. *Booth v. Hvass*, 302 F.3d 849, 852 (8th Cir. 2002) (citing *Doremus v. Bd. Of Educ.*, 342 U.S. 429, 434 (1952)). A good-faith pocketbook action consists of "a measurable appropriation or disbursement" of municipal taxpayer funds "occasioned solely by the activities complained of." *Doremus*, 342 U.S. at 434 (citing *Everson v. Bd. Of Educ.*, 330 U.S. 1 (1987)). So Plaintiffs "must actually be [] taxpayer[s] of the municipality" and "must establish that the municipality has spent [municipal] tax revenues on the allegedly illegal action" in a measurable manner. *Huizenga*, 44 F.4th at 811 (quoting *Protect Our Parks, Inc.*, 971 F.3d at 734) (quotations omitted) (brackets added).

At the motion to dismiss stage, where "general allegations of injury, causation, and redressability" were sufficient, the Eighth Circuit determined that Plaintiffs had adequately pled Article III standing as

municipal taxpayers. *Id.* at 811 (quotations omitted). Plaintiffs' standing rested on their contention that ISD 11 "spend[s] tax revenues on the allegedly illegal action"—political advocacy during union leave—"because the collective-bargaining agreement requires it to provide up to 100 days of paid leave, and the union does not fully reimburse that expense." *Id.* at 812 (quotations omitted).

With discovery complete, Plaintiffs can no longer rest merely on the sufficiency of general allegations. Plaintiffs must now establish standing "with the manner and degree of evidence" required at summary judgment. *Bernbeck*, 829 F.3d at 646 (quoting *Lujan*, 504 U.S. at 561). This means that Plaintiffs must set forth—either by affidavit or other evidence admissible at summary judgment—specific facts to satisfy each element of standing. *Lujan*, 504 U.S. at 561.

Under Eighth Circuit guidance, Plaintiffs must establish that they are municipal taxpayers in the school district and "that the school district spend[s] tax revenues on the allegedly illegal action because the collective-bargaining agreement requires it to provide up to 100 days of paid leave, and the union does not fully reimburse that expense." *See Huizenga*, 44 F.4th at 811. They must provide evidence that goes beyond "mere speculation, conjecture, or fantasy" for their claims to survive. *Clay v. Credit Bureau Enters.*, 754 F.3d 535, 539 (8th Cir. 2014).

Plaintiffs do not meet their burden. The record does not show that the municipality in the end spends *any* money on the union leave policy, let alone municipal tax revenues specifically. Without evidence of a clear "dollars-and-cents" expense traceable to their municipal tax payments, Plaintiffs fail to meet their burden of establishing standing.

I. Municipal Taxpayer Status

Plaintiff Nancy Powell's status bears separate attention as a municipal taxpayer. She claims standing through property taxes paid by her husband, Dean Powell, on property he owned before their marriage. The Powells have submitted property tax statements from Anoka County as support for their claim. Those statements name only Dean Powell as a county taxpayer. The Powells also each submitted personal declarations claiming Nancy Powell's interest in the property. (Doc. Nos. 24, 104, 105.) Personal declarations are not enough to establish a legal interest. Submitting nothing further, Nancy Powell has not established that she pays municipal taxes relevant to ISD 11. She lacks standing for this reason as well as for the other reasons below applicable to her co-plaintiffs.

II. No Expenditures Occasioned by the Union Leave Policy

Plaintiffs have not identified a measurable ISD 11 expenditure occasioned by the allegedly illegal union leave policy. The record shows generally the ISD 11 funding for teacher salaries and benefits but does not delineate which revenue sources support individual ISD 11 initiatives. Furthermore, there is a lack of detailed allocation within the funding that would enable tracing it back to specific sources of funding. So critically, in terms of Article III standing, it is not possible to link this funding directly to Plaintiffs' municipal tax contributions.

Plaintiffs' proffered evidence fares no better. Plaintiffs contend that the specific cost triggered by the union leave policy is the expense ISD 11 incurred in paying substitute teachers to cover for teacher absences under the union leave policy. Two things are

undisputed: first, ISD 11 unilaterally set the substitute teacher rate per the collective bargaining agreement; and second, AHEM fully reimbursed ISD 11 at that substitute teacher rate for all absentee time under the union leave policy. (Doc. No. 96, Ex. 3 at 8; Ex. 7 at 9:17–10:6.) The record reveals that AHEM paid the substitute teacher rate even on the days no substitute teacher was necessary, such as days when teachers had no student contact. (*Id.*)

ISD 11's substitute teacher rate did not exist merely to serve the interests of the union leave policy but was more broadly used across ISD 11. ISD 11 used the substitute teacher rate in two overarching scenarios. Teachers could pay the substitute rate if they wished to take extra personal days abutting scheduled school breaks. And teachers had the option of selling back their excess sick days at the value of the substitute teacher rate. (*See id.*, Ex. 1, art. XIV, § 2, subd. 3; Ex. 1, art. XIV, § 1, subd. 7.) Setting aside attorney arguments, the record contains no internal documents or testimony indicating that ISD 11 at any time incurred a financial deficit because of the union leave policy or that its accounting was flawed in that regard. Furthermore, no expert evidence is offered on the matter.

Plaintiffs' contention that expenses related to the union leave policy exceeded reimbursements relies on a table, attorney-created, that suggests a financial shortfall. (Doc. No. 103 at 5–6.) The table itself relies on unclear data and unfounded assumptions, and lists no actual expenses.[1] For instance, Plaintiffs seek to

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[1] Plaintiffs' calculations are rhetorically characterized as "subsidies" to AHEM, and not as specific costs incurred by ISD 11. In their analysis, Plaintiffs calculate what is referred to as an "actual subsidy" allegedly provided to AHEM. They determine this by establishing a "per diem [salary] range" for teachers who

compare ISD 11's annual salaries and benefits for union-member teachers to "per diem salaries," in arguing that the district's reimbursement rate for substitute teachers is insufficient and leads to a financial loss. Yet it is established that ISD 11 pays its teachers an annual salary, disbursed every two weeks, which is not affected by individual days taken off for whatever the reason. Plaintiffs have not directly challenged the rate ISD 11 independently sets for substitute teacher reimbursement—a rate determined to cover various scenarios of teacher absences and attendance. Plaintiffs' table provides no calculation of AHEM reimbursements for when there is no substitute teacher expense, as on days when there is no student contact. No assessment is presented on how those sums affect Plaintiffs' claimed loss calculus. Finally, as with teacher pay, benefits for teachers are determined on an annual basis and are not calculated or prorated daily, as Plaintiffs have suggested. The table and its reliance on unsupported data and assumptions does not establish standing.

The Seventh Circuit's recent decision in *Protect Our Parks*, 971 F.3d 722, cited favorably by the Eighth Circuit in its previous ruling, provides a useful comparison. *See Huizenga*, 44 F.4th at 811, 812. An advocacy group sought to prevent construction and operation of a center on city park ground, alleging violations of the public trust doctrine. But a separate foundation—not

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utilized leave, which is then multiplied by the number of leave days taken. From this total, they subtract the substitute teacher rate that AHEM reimburses. (Doc. No. 103 at 5–6.) This calculation is based on a spreadsheet crafted by counsel, which records these "actual per diem salaries." But the record lacks clear explanation of how they translated annual teacher salaries into daily rates. This detail is crucial, considering the obvious varying work schedules of teachers.

the city itself—was to pay for construction and operation costs. The Seventh Circuit held that although municipal money would be spent on support projects such as road management and utilities work, the plaintiffs did not allege that those expenditures violated public trust, so those payments could not be the basis for municipal taxpayer standing. *Protect Our Parks*, 971 F.3d at 735. Those expenses would not have been "occasioned by" the allegedly illegal act. *See id.* ("If the allegedly illegal conduct is the construction and operation of the Center, and taxpayer dollars aren't being spent on that conduct, then that alone is enough to defeat the plaintiffs' municipal taxpayer standing.").

Similarly, the record here reflects one expense "occasioned by" the allegedly illegal act—the union leave policy—which is payment of the substitute rate on days when regular teachers take union leave. It is undisputed that AHEM reimburses ISD 11 for that payment entirely. Plaintiffs have not shown that this policy results in the kind of actual and non-speculative injury necessary for establishing municipal taxpayer standing. There is no record of an actual unreimbursed expenses, or anything labeled a "subsidy" to AHEM due to the union leave policy, as Plaintiffs contend.

Plaintiffs' claim, at its core, is that ISD 11 should have received *more* reimbursement for union leave, and they contend that the amount ISD 11 *did* receive constitutes a financial shortfall that justifies municipal taxpayer standing. This claim does not present a concrete, direct, immediate, or measurable financial loss. Plaintiffs have not demonstrated that ISD 11 received less in substitute teacher reimbursements than was agreed upon, there is no allegation that the union unduly influenced the reimbursement rates set by ISD 11, nor is there a claim of any agreement between

the union and ISD 11 for the school district to subsidize the cost of union leave.

Plaintiffs' argument here is of the same kind made in households every day—that wages should be higher and expenses lower or that government spending should be more, less, or allocated differently. Without more, merely disagreeing with how the government determines rates or prices for its goods or services, including reimbursements, does not grant standing under Article III. It does not establish a loss or injury necessary for municipal taxpayer standing, even if supplemented by taxpayers' subjective assessments. Plaintiffs have not established municipal taxpayer standing under Article III.

III. No Traceable Use of Municipal Tax Dollars

Even accepting, for the sake of argument, the assertions that ISD 11 was under-reimbursed for union leave and that not receiving full reimbursement amounts to a financial loss, Plaintiffs' claim fails to establish municipal taxpayer standing for another reason. There is no proof that Plaintiffs' municipal tax payments directly financed the union leave policy, irrespective of the alleged financial shortfall.

Municipal taxpayer standing rests on the principle that taxpayers have a "direct and immediate interest" in how their municipal taxes are spent. *Huizenga*, 44 F.4th at 810; *see also Protect Our Parks*, 971 F.3d at 735 ("It is not enough to simply allege that [the municipality] is spending money; the existence of municipal taxpayer standing depends on where the money comes from."); *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613 (1989) (emphasizing that the interest must be "direct and immediate" to exempt municipal taxpayers from restrictions on generalized

suits based on taxpayer status). In the absence of a clear linkage between Plaintiffs' taxes and the municipal expenditure, standing for Plaintiffs is not established. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) ("[T]he relevant showing for purposes of Article III standing . . . is not injury to the environment but injury to the plaintiff.").

In examining ISD 11's financial records and sources of funding, there is no clear connection between municipal tax revenues and ISD 11's expenditure on the union leave policy. ISD 11 allocates funds from its General Fund to pay K–12 teachers, while the Community Services Fund covers the costs of Early Childhood Family Education and Adult Basic Education instructors. The record shows that during the 2020–2021 school year, the General Fund totaled $541,941,280. (Doc. No. 96, Ex. 3 at 6). Within the General Fund, $407,576,523 (75.2%) was provided by the State of Minnesota, $26,623,484 (4.9%) by the federal government, and $101,208,533 (18.7%) by local tax levies, with the remainder coming from other non-tax revenues. (*Id.*, Ex. 2 at 28.) The Community Services Fund totaled $21,935,724, with only 13.0% derived from local tax levies. (*Id.* at 52, 53.)[2]

ISD 11 allocated $180,780,264 (33.4% of the General Fund) toward salaries and benefits for K–12 teachers and an additional $1,767,815 (0.3%) for sub-

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[2] The percentages do not meaningfully vary across the three years for which budget data has been provided. (*See id.* (for the General Fund, 17.2% from 2018–2019 and 17.7% from 2019–2020; for the Community Services Fund, 13.0% from 2018–2019 and 12.0% from 2019–2020).) The 2020–2021 school year was the most recent school year completed before discovery started and is therefore used as a representative sample.

stitute teachers. (*Id*. at 28, 33.) These details underscore that the primary financial support for ISD 11 came from state and non-local sources rather than municipal taxes. The funds were pooled into a general, non-segregated fund. Tax dollars are not specifically earmarked for distinct expenditures, making it impossible to attribute any part of the spending directly to a particular source of income, such as municipal tax revenues. (*Id*., Ex. 3 at 6.)

Plaintiffs have not established a direct relationship between their municipal tax dollars and the specific expenditures of ISD 11 on teacher salaries, benefits, or the hiring of substitute teachers in instances of union leave. They have outlined and applied no methodology by which such a connection could be assessed. "Municipal taxpayers have standing to sue only when they have both identified an action on the [municipality]'s part that is allegedly illegal and adequately shown that [municipal] tax dollars will be spent on that illegal activity." *Protect Our Parks*, 971 F.3d at 736.

The Seventh Circuit, in addressing a similar situation involving a municipal taxpayer challenge and the presence of multiple sources of revenue, stated that "[i]t would be far too simplistic to conclude that the City is spending *tax* money on a project simply because it is spending *some* money on a project." *Id.* at 735–36 (emphasis in original). With less than a fifth of ISD 11's 2020–2021 General Fund coming from municipal tax dollars, and for other reasons stated, Plaintiffs fail to satisfy the requirements for municipal taxpayer standing under Article III.

Without the necessary standing under Article III, this Court lacks subject matter jurisdiction and does not reach Plaintiffs' claims on the merits.

ORDER

Based on the above and on all the files, records, and proceedings here, **IT IS HEREBY ORDERED** that:

1. Defendant Anoka-Hennepin Education Minnesota's Motion for Summary Judgment (Doc. No. 91) is **GRANTED** to the extent that Plaintiffs lack Article III standing and therefore subject matter jurisdiction is absent; and

2. Plaintiffs' Motion for Summary Judgment (Doc. No. 101) is **DENIED** as moot**.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Date: March 29, 2024 *s/ Jerry W. Blackwell*

JERRY W. BLACKWELL
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
District of Minnesota

Don Huizenga, Nancy Powell, Jim Bendtsen,
Plaintiffs,

v.

Independent School District No. 11,
Anoka-Hennepin Education Minnesota,
Defendants.

Case Number: 20-cv-2445 JWB/ECW

JUDGMENT IN A CIVIL CASE

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court**. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendant Anoka-Hennepin Education Minnesota's Motion for Summary Judgment (Doc. No. 91) is **GRANTED** to the extent that Plaintiffs lack Article III standing and therefore subject matter jurisdiction is absent; and

2. Plaintiffs' Motion for Summary Judgment (Doc. No. 101) is **DENIED** as moot**.**

Date: 3/29/2024 KATE M. FOGARTY, CLERK

APPENDIX F

United States Court of Appeals
For the Eighth Circuit

No. 21-2418

Don Huizenga; Nancy Powell; Jim Bendtsen
Plaintiffs-Appellants

v.

Independent School District No. 11;
Anoka Hennepin Education Minnesota,
(American Federation of Teachers Local 7007)
Defendants-Appellees

Appeal from United States District Court
for the District of Minnesota

Submitted: March 17, 2022
Filed: August 11, 2022
[Published]

Before GRUENDER, BENTON, and ERICKSON, Circuit Judges.

PER CURIAM.

Three Anoka County residents sued a school district and teachers' union about their union leave and reimbursement plan, alleging constitutional and statutory violations. The district court dismissed the case for lack of standing. The residents appeal. Having jurisdiction under 28 U.S.C. § 1291, this court reverses and remands.

Don Huizenga, Nancy Powell, and Jim Bendtsen are residents and taxpayers in Anoka County, Minnesota. Anoka-Hennepin Education Minnesota (AHEM) is the collective-bargaining representative of the teachers at Independent School District No. 11 (ISD 11). Their agreement allows ISD 11 teachers to take paid union leave to work for AHEM. The union reimburses the district's costs for hiring substitutes, but not the (higher) pro rata cost of salaries and benefits for teachers on union leave.

Disagreeing with the teachers' alleged political and campaign advocacy during union leave, the residents sued the union and the school district under 42 U.S.C. § 1983, alleging a violation of the Free Speech Clause. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018). The residents also allege violations of the Minnesota Constitution and the state Public Employee Labor Relations Act. The district court dismissed the federal claims for lack of standing, denying injunctive relief, and refusing supplemental jurisdiction of the state claims. The residents appeal, asking this court to reverse and to grant a preliminary injunction.

This court reviews de novo a dismissal for lack of standing. *Heglund v. Aitkin Cnty.*, 871 F.3d 572, 577 (8th Cir. 2017).

"Article III restricts federal courts to the resolution of cases and controversies." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 732 (2008). The party invoking federal jurisdiction has the burden to establish standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). For Article III standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a fa-

vorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

Generally, "[a]bsent special circumstances . . . standing cannot be based on a plaintiff's mere status as a taxpayer." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011). "[I]nterest in the moneys of the Treasury" does not present "a 'judicial controversy' appropriate for resolution in federal court but rather a 'matter of public . . . concern' that could be pursued only through the political process." *Id.* at 135 (quoting *Frothingham v. Mellon*, 262 U.S. 447, 487-89 (1923) (decided with *Massachusetts v. Mellon*)). The residents assert standing under two exceptions to this rule.

I.

The residents assert standing as state taxpayers under *Flast v. Cohen*, 392 U.S. 83 (1968). The same principles limiting federal taxpayer challenges are "equally true when a state Act is assailed." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006) (quoting *Doremus v. Board of Educ. of Borough of Hawthorne*, 342 U.S. 429, 434 (1952)). *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 613-14 (1989) (opinion of Kennedy, J.) (noting that the Court has likened state taxpayers to federal taxpayers for standing purposes) (citing *Doremus*, 342 U.S. at 434).

The Court in *Flast* held that a taxpayer has standing because the "Establishment Clause of the First Amendment does specifically limit the taxing and spending power" of Congress. *Flast*, 392 U.S. at 105. But *Flast* is a "narrow exception" to the "general rule against taxpayer standing." *See Bowen v. Kendrick*, 487 U.S. 589, 618 (1988). The Court and this court have never applied *Flast* to any alleged spending vio-

lations except those invoking the Establishment Clause. *See Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 609 (2007) (plurality opinion) (explaining that the Court has "declined to lower the taxpayer standing bar in suits alleging violations of any constitutional provision apart from the Establishment Clause.").

The residents do not claim a violation of the Establishment Clause. They seek to apply *Flast* to a First Amendment compelled-speech claim, but cite no supporting authority. "Federal appellate courts have followed the Supreme Court's lead in refusing to expand the exception adopted in *Flast*." *Tarsney v. O'Keefe*, 225 F.3d 929, 937 (8th Cir. 2000) (collecting cases). *See also Americans United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 419-20 (8th Cir. 2007) (reiterating that *Flast* and *Doremus* exceptions for standing are limited to federal or state expenditures "contrary to the Establishment Clause").

Additionally, "*Flast* limited taxpayer standing to challenges directed 'only [at] exercises of congressional power.'" *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 479 (1982) (quoting *Flast*, 392 U.S. at 102). The residents here challenge spending that is not legislatively mandated, but comes from an agreement between AHEM and ISD 11. In *Hein* the plurality of the Court rejected standing for even an Establishment Clause claim when taxpayers "could cite no statute whose application they challenge." *Hein*, 551 U.S. at 607.

II.

The residents allege municipal taxpayer standing. Municipal taxpayer standing arises from the "peculiar" relationship of taxpayers to their municipality, like that "subsisting between stockholder and private corporation." *Frothingham*, 262 U.S. at 487. Because municipal taxpayers have a "direct and immediate" interest in municipal expenditures, they "may sue to enjoin an illegal use of the moneys of a municipal corporation." *Id.* at 486. *See also DaimlerChrysler*, 547 U.S. at 349. To allege such standing: (1) "the plaintiff must actually be a taxpayer of the municipality that she wishes to sue"; and (2) "the plaintiff must establish that the municipality has spent tax revenues on the allegedly illegal action." *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 734 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 2583 (2021).

In the complaint the plaintiffs say each is a "Minnesota taxpayer and a resident of Anoka County, Minnesota within ISD 11," "pays taxes to both the State and to Anoka County which are allocated to ISD 11," and all are "taxpayers of . . . the School District."

Before the district court, the residents alleged they have municipal taxpayer standing as *Anoka County* taxpayers. The county allocates money to fund some of the school district's budget. This argument, as presented to the district court, does not establish the relationship between taxpayer and municipality required for municipal taxpayer standing. Status as a county taxpayer alone does not confer standing to sue a school district within the county any more than status as a state taxpayer confers standing to sue a department within the state. *See Booth v. Hvass*, 302 F.3d 849, 853 (8th Cir. 2002). As this court explained in *Booth*, "[t]he taxpayer base for state departments is

the same as that of the state," and a taxpayer's "interest in the funds allocated to a state agency is similar, perhaps identical, to the taxpayer's interest in the general state treasury." *Id.* Thus, the more broadly shared interest in the larger entity could not support municipal taxpayer standing to sue the smaller entity. *See id.* By that logic, taxpayers of Anoka County may not sue a school district within a county where their interest in the school district's use of funds is identical to their interest in the county's use of funds.

On appeal, however, the residents contend that they do pay taxes to ISD 11, and thus have standing to sue as *ISD 11* taxpayers rather than Anoka County taxpayers. "[A]t the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element" of standing. *Spokeo*, 578 U.S. at 338 (quoting *Warth v. Seldin*, 422 U.S. 490, 518 (1975)). "In a facial attack, the court restricts itself to the face of the pleadings . . . ." *Carlsen v. GameStop, Inc.*, 833 F.3d 903, 908 (8th Cir. 2016).

"The standing inquiry is merely a threshold inquiry"; it does not present the "higher hurdles" of pleading a claim to relief on the merits under Federal Rule of Civil Procedure 12(b)(6). *Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010). Pleading jurisdiction requires only "a short and plain statement of the grounds for the court's jurisdiction," while pleading the merits requires not just "a short and plain statement of the claim," but one that "show[s] that the pleader is entitled to relief." *Compare* Fed. R. Civ. P. 8(a)(2), *with* Fed. R. Civ. P. 8(a)(1). Thus, pleading Article III standing requires only "general allegations of injury, causation, and redressability." *In re SuperValu, Inc.*, 870 F.3d 763, 769, 773 (8th Cir. 2017) (internal quotation marks omitted). This court "presume[s]

that general allegations embrace those specific facts that are necessary to support the claim." *Id.* As alleged in the complaint, the residents are "taxpayers of . . . the School District." Unlike Anoka County taxpayers residing outside the school district, the residents thus belong to a particular "taxpayer base" consisting of school-district residents with a special "interest in the funds allocated to" the school district. *See Booth*, 302 F.3d at 853.

Like the plaintiff in *Everson v. Board of Education of Ewing Township*, each resident here sued "in his capacity as a district taxpayer." *See* 330 U.S. 1, 3 (1947). The union dismisses the significance of *Everson*, noting that it did not discuss standing and suggesting it overlooked a potential jurisdictional defect. But the Supreme Court stated in *Doremus v. Board of Education* that "this Court found a justiciable controversy in *Everson*." 342 U.S. 429, 433-34 (1952). And although *Doremus* involved state taxpayer standing, that statement immediately followed the Court's reaffirmation of the doctrine of municipal taxpayer standing. *See id.* (citing *Frothingham*, 262 U.S. at 486, 488).

The residents adequately alleged they are school district taxpayers and identified a "municipal action" contributing to their injury. *See DaimlerChrysler*, 547 U.S. at 349. Specifically, that the school district "spend[s] tax revenues on the allegedly illegal action" because the collective-bargaining agreement requires it to provide up to 100 days of paid leave, and the union does not fully reimburse that expense. *See Protect Our Parks*, 971 F.3d at 734. Since the district court did not address the preliminary injunction factors, the "common approach is to remand for the district court to conduct the full analysis in the first instance." *Home Instead, Inc. v. Florance*, 721 F.3d 494,

500 (8th Cir. 2013). This court declines to grant the requested injunction.

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The judgment is reversed and the case remanded for further proceedings consistent with this opinion.

APPENDIX G

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DON HUIZENGA, NANCY POWELL,
and JIM BENDTSEN,

Plaintiffs,

v.

INDEPENDENT SCHOOL DISTRICT NO. 11, and
ANOKA-HENNEPIN EDUCATION MINNESOTA
(AMERICAN FEDERATION OF TEACHERS
LOCAL 7007),

Defendants.

Case No. 20-CV-2445 (NEB/ECW)

ORDER ON MOTION TO DISMISS AND MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs, who are state and county taxpayers, sued a school district and a union to challenge a provision of the collective bargaining agreement between the two. The CBA at issue allows teachers in the school district to take paid leave to conduct business for the teachers' union. Plaintiffs allege that this provision of the CBA violates the First Amendment. Plaintiffs move for a preliminary injunction, the union moves to dismiss the complaint, and the school district takes no position. Because Plaintiffs lack standing to sue, the Court grants the motion to dismiss and denies the motion for preliminary injunction.

BACKGROUND

Plaintiffs are taxpayers and residents of Anoka County, Minnesota. (ECF No. 1 ("Compl.") ¶¶ 13–15.) They pay taxes both to the State and to Anoka County. A portion of those taxes are allocated to Defendant Independent School District No. 11 ("School District."). (*Id.* ¶¶ 14–15, 27.) The School District—an "arm of the state"—"receives about 70% of its budget money from state revenue, 21% of its budget money from property taxes paid by district residents," and the remaining funds from other sources. (*Id.* ¶¶ 27, 65; *see id.* ¶¶ 26, 65 (alleging that the Union and the School District are "state actors").)

Plaintiffs challenge portions of the collective bargaining agreement between the School District and the Defendant teachers' union, Anoka-Hennepin Education Minnesota (American Federal of Teachers Local 7007) ("Union"). Under the CBA, teachers can work for the Union for 100 days per year (collectively), and the Union must reimburse the School District "for required substitute cost." (*Id.* ¶¶ 36; *see* ECF No. 18 ("CBA") art. IV, § 13.) Thus, when teachers take leave to do union business, the School District pays the teachers' full salaries and benefits, and the Union reimburses the School District for a lower amount—at most, a rate for substitute teachers. (Compl. ¶¶ 42, 44.) Not surprisingly, this lawsuit came about because the Union uses the teachers to engage in advocacy that Plaintiffs do not support. (*Id.* ¶¶ 43, 44, 46; *see* ECF Nos. 22–24 ¶ 4 (Plaintiffs' declarations that they "largely disagree with [the Union's] political advocacy").)

Plaintiffs have no connection to the school other than their status as taxpayers, so they use taxpayer standing as a basis for suit under the United States Constitution, the Minnesota Constitution, and the

Minnesota Public Employees Labor Relations Act ("PELRA"), Minn. Stat. § 179A.01 *et seq*. (Compl. ¶¶ 48–63.) The claim under the United States Constitution is a First Amendment claim, alleging that "[n]either an agency fee nor any other payment to [a public sector] union may be deducted from a nonmember's wages . . . unless the employee affirmatively consents to pay."[1] (*Id.* ¶¶ 64–68 (citing *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018)).) Plaintiffs ask the Court to "enjoin the Union from removing teachers from their work for the School District to work for the Union absent full payment for their wages and benefits for each day teachers work for the Union." (*Id.* ¶ 56 (cleaned up); *see id.* ¶ 63 (similar).) They also seek to compel the Union to compensate the School District for the unpaid or underpaid business leave taken by teachers over the past six years. (*Id.* at 12.)

ANALYSIS

I. Standing

This case presents the oft-litigated conundrum of taxpayer standing: Plaintiffs claim that they have standing to sue because they pay taxes to the State of Minnesota and Anoka County, and the School District receives taxpayer funds from those entities.[2] (Compl.

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[1] Plaintiffs have withdrawn their argument that subsidizing the Union's political advocacy is unconstitutional because it has no public purpose under *Citizens' Savings and Loan Association v. City of Topeka*, 87 U.S. 655 (1874). (ECF No. 35 at 11.)

[2] The Union moves to dismiss the Complaint because Plaintiffs lack standing and fail to plead a federal claim on which relief can be granted. Fed. R. Civ. P. 12(b)(1), 12(b)(6). The Court considers standing first because it is jurisdictional. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 340 (2006) (beginning with standing because courts are obliged to assure themselves of a litigant's Article III standing). The Union challenges the Com-

¶¶ 13–15, 27; ECF No. 29 at 2.) Plaintiffs understand that they face the general rule that "[a]bsent special circumstances . . . standing cannot be based on a plaintiff's mere status as a taxpayer." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 134 (2011). But there are exceptions granting taxpayer standing in limited circumstances. Because Plaintiffs contend that the School District receives funds from state and county taxpayers, the Court considers these exceptions in two contexts—state and municipal.

A. State Taxpayer Standing

The Complaint alleges that Plaintiffs are state taxpayers, and that the School District, as an "arm of the state," receives state funds. (Compl. ¶¶ 13–15, 26–27); *see GME Consultants, Inc. v. Oak Grove Dev., Inc.*, 515 N.W.2d 74, 76 (Minn. Ct. App. 1994) (holding that school districts are "arms of the state"); *Vill. of Blaine v. Indep. Sch. Dist. No. 12, Anoka Cnty.*, 138 N.W.2d 32, 38 (Minn. 1965) (same). "[S]tate taxpayers have no standing under Article III to challenge state tax or spending decisions simply by virtue of their status as taxpayers." *DaimlerChrysler*, 547 U.S. at 346. Plaintiffs insist that their claims are not based solely on a misallocation of state funds, but even if they were,

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plaint on its face, so the factual allegations concerning jurisdiction "are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993). The Court "restricts itself to the face of the pleadings," and Plaintiffs receive "the same protections as [they] would defending against a motion brought under Rule 12(b)(6)." *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). The parties do not dispute that the Court may consider the CBA, which is embraced by the Complaint. *Trone Health Servs., Inc. v. Express Scripts Holding Co.*, 974 F.3d 845, 850 (8th Cir. 2020).

they fall within the exception created in *Flast v. Cohen,* 392 U.S. 83 (1968). (ECF No. 29 at 9–11.) The Court disagrees.

Under *Flast*, a plaintiff asserting a First Amendment claim has standing to challenge a law authorizing the use of federal funds in a way that allegedly violates the Establishment Clause. 392 U.S. at 105–06. This exception also applies to state taxpayer challenges of state expenditures contrary to the Establishment Clause. *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 420 (8th Cir. 2007); *see generally Doremus v. Bd. of Educ.,* 342 U.S. 429, 434 (1952) ("[W]hat the Court said of a federal statute [i]s equally true when a state Act is assailed: 'The [taxpayer] must be able to show . . . that he has sustained . . . some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally.'").

Plaintiffs argue that *Flast* is not limited to the Establishment Clause context; they seek to apply *Flast* to their First Amendment freedom-of-speech challenge. (ECF No. 29 at 11). But the Supreme Court has characterized *Flast* as "a narrow exception to the general constitutional prohibition against taxpayer standing." *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 602 (2007); *see DaimlerChrysler*, 547 U.S. at 347, 349 (noting that only the Establishment Clause has supported federal taxpayer suits since *Flast,* and rejecting state taxpayer standing based on a Commerce Clause challenge); *Booth v. Hvass*, 302 F.3d 849, 852 (8th Cir. 2002) (noting the Supreme Court "has never found any other constitutional provision that satisfies *Flast*"). The Eighth Circuit and other federal appellate courts "have followed the Supreme Court's lead in refusing to expand the exception ad-

opted in *Flast*." *Tarsney v. O'Keefe*, 225 F.3d 929, 937–38 (8th Cir. 2000) (finding no Free Exercise Clause injury arises from a government expenditure until the expenditure directly prevents the taxpayer's free exercise of religion) (citations omitted). As the Supreme Court explained in *DaimlerChrysler*, "a broad application of *Flast's* exception to the general prohibition on taxpayer standing would be quite at odds with its narrow application in [Supreme Court] precedent and *Flast's* own promise that it would not transform federal courts into forums for taxpayers' 'generalized grievances.'" 547 U.S. at 348 (quoting *Flast*, 392 U.S. at 106). Thus, this Court declines to expand the *Flast* exception to this case, and concludes Plaintiffs lack state taxpayer standing.[3]

B. Municipal Taxpayer Standing

Plaintiffs' challenge as municipal taxpayers fares no better.[4] The Supreme Court has recognized munic-

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[3] Plaintiffs also rely on *McKee v. Likins*, 261 N.W.2d 566 (Minn. 1977), insisting that Minnesota state courts allow taxpayer suits based on illegal expenditures of state tax dollars. (ECF No. 29 at 6 n.2.) But as the Minnesota Supreme Court aptly noted, courts use "different tests for taxpayers' suits on the Federal and state level." *McKee*, 261 N.W.2d at 570 n.4. Thus, a case about Minnesota's standing requirement holds no sway here.

[4] "[O]ne of the central premises of municipal taxpayer standing is that the taxpayer's suit be brought against a *municipality*." *Bd. of Educ. v. N.Y. State Tchrs. Ret. Sys.,* 60 F.3d 106, 111 (2d Cir. 1995) (emphasis in original). According to Plaintiffs, the School District constitutes a municipality for taxpayer standing because a Minnesota statute defines school districts as "municipalities" for tort liability. (ECF No. 35 at 3); Minn. Stat. § 466.01, subdiv. 1; *United States v. Minn. Transitions Charter Sch.*, 50 F. Supp. 3d 1106, 1117 (D. Minn. 2014). At the hearing, the Union disputed this characterization of Minnesota law and its application to taxpayer standing. The Court need not resolve this issue

ipal taxpayer standing "to enjoin the 'illegal use of the moneys of a municipal corporation.'"[5] *DaimlerChrysler*, 547 U.S. at 349 (quoting *Frothingham v. Mellon*, 262 U.S. 447, 486, 487 (1923).) The Eighth Circuit has also recognized the doctrine in concept, but has never applied it to find standing. *See Booth*, 302 F.3d at 853 (acknowledging *Frothingham* and *Crampton v. Zabriskie*, 101 U.S. 601 (1879)); *see, e.g.*, *Pulido v. Bennett*, 848 F.2d 880, 886 (8th Cir.), *modified*, 860 F.2d 296 (8th Cir. 1988) (declining to find local taxpayer standing where plaintiffs could not show their complaint was a "'good-faith pocketbook action' to redress 'a direct dollars-and-cents injury'" they suffered as local taxpayers) (quoting *Doremus*, 342 U.S. at 434).

Courts describing the doctrine countenance two requirements: (1) "the plaintiff must actually be a taxpayer of the municipality that she wishes to sue"; and (2) "the plaintiff must establish that the municipality has spent tax revenues on the allegedly illegal action." *Protect Our Parks, Inc.*, 971 F.3d at 734 (citation omitted). As to the first requirement, Plaintiffs assert that

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because even if the School District is a municipality for taxpayer standing purposes, Plaintiffs do not satisfy the requirements for municipality taxpayer standing.

[5] Even after *DaimlerChrysler*, some Circuits have questioned the viability of municipal taxpayer standing. *See, e.g.*, *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733 (7th Cir. 2020) (Barrett, J.) ("Municipal taxpayer standing is a bit of a relic in the modern landscape of standing. The rule remains undisturbed, but it has grown increasingly anomalous."); *Davis v. Detroit Pub. Sch. Cmty. Dist.*, 835 F. App'x 18, 23 n.4 (6th Cir. 2020) ("We question the viability of municipal taxpayer standing but recognize we must apply it today."); *see also Feldman v. Bowser*, 315 F. Supp. 3d 299, 312 n.5 (D.D.C. 2018) ("[T]he tide appears to be turning against the recognition of municipal taxpayer standing.").

they have municipal taxpayer standing because they pay taxes to Anoka County, which partially funds the School District. (ECF No. 29 at 5–11; Compl. ¶¶ 13–15, 27.) The question is whether Plaintiffs' tax payments to Anoka County give them standing to sue the School District.

In *Frothingham*, the Supreme Court explained that municipal taxpayer standing stems from "the peculiar relation of the corporate taxpayer to the corporation, which is not without some resemblance to that subsisting between stockholder and private corporation." 262 U.S. at 487. Given this analogy, plaintiffs can only use their municipal taxpayer status to sue the municipal entities to which they paid taxes.

Plaintiffs—who bear the burden of proving standing—cite no instances of municipal taxpayer standing where the taxpayers did not pay taxes directly to the municipal defendant. Indeed, courts have declined to find municipal taxpayer standing in this scenario. *See, e.g.*, *Four Seasons Marina Rentals, Inc. v. City of Osage Beach*, No. 08-4221-CV-C-NKL, 2009 WL 1543766, at *4 (W.D. Mo. June 3, 2009) (finding no standing where plaintiff sued a municipality in which it did not reside and to whom it did not pay taxes, but whose legislative action would reduce the amount of taxpayer money available to its own municipality); *Lee v. Kan. City Mo. Sch. Dist.*, No. 07-0487-CV-W-FJG, 2008 WL 539276, at *2 (W.D. Mo. Feb. 26, 2008) (finding no standing to sue municipality other than the one to which plaintiff paid taxes); *Futia v. Westchester Cnty. Bd. of Legislators*, No. 20 CV 1237 (VB), 2020 WL 4570494, at *5 (S.D.N.Y. Aug. 6, 2020) (finding no municipal taxpayer standing where "plaintiffs are not Town residents, and do not plausibly allege a 'direct and immediate' relationship with the munici-

pality"), *aff'd*, No. 20-2946-CV, 2021 WL 1558299 (2d Cir. Apr. 21, 2021).

Plaintiffs rely on *O'Brien v. Village of Lincolnshire* as an example of municipal taxpayer standing. 354 F. Supp. 3d 911 (N.D. Ill. 2018), *aff'd,* 955 F.3d 616 (7th Cir. 2020) ("*O'Brien II*"); (ECF No. 29 at 7.) In *O'Brien*, the plaintiffs alleged that they paid taxes to the Village of Lincolnshire, which Lincolnshire then used to pay membership dues to co-defendant IML. *See id.* at 913–14. The plaintiffs objected to Lincolnshire paying dues to IML because IML used the dues to fund allegedly impermissible political activities. *Id.* at 914. The plaintiffs claimed that "Lincolnshire compelled them to subsidize private speech on matters of substantial public concern," and sought an injunction preventing Lincolnshire from using tax revenue to fund IML's private speech. *O'Brien II*, 955 F.3d at 621. Although not specifically addressed in *O'Brien*, the plaintiffs there sued the proper municipality—the one to whom they paid taxes.

Plaintiffs did not sue a municipality with which they have the "peculiar relation of corporate taxpayer to corporation," *i.e.,* Anoka County. *Frothingham*, 262 U.S. at 487. They sued the School District, an entity independent of Anoka County.[6] Plaintiffs do not claim that they pay taxes directly to the School District; they allege that they paid taxes to the State and to

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[6] The School District is "an independent district" governed by Minnesota Statute Chapter 123B. (Compl. ¶ 16 (citing Minn. Stat. § 123A.55)); Minn. Stat. ch. 123B (School District Powers and Duties); *see* Minn. Stat. § 120A.05, subdiv. 10 (defining "independent district" as "any school district validly created and existing as an independent, consolidated, joint independent, county or a ten or more township district"). Anoka County is governed by Minnesota Statute Chapter 383E.

Anoka County, and that Anoka County funds some of the School District's budget.[7] (Compl. ¶¶ 13–15, 27 (21% of funding from Anoka County).)

Allowing Plaintiffs to sue the School District just because it received some funds from the municipality to which they paid taxes would expand municipal taxpayer standing beyond the narrow limits set by *Froth-*

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[7] *Everson v. Board of Education* seems, at first blush, to support Plaintiffs' position. 330 U.S. 1 (1947). In *Everson*, a "district taxpayer" sued a township's board of education, challenging a board resolution to reimburse parents of students for bussing to and from parochial schools on constitutional grounds. *Id.* at 3. The Supreme Court considered the merits of the taxpayer's challenge, implicitly concluding he had standing to sue. The Supreme Court later explained that the *Everson* taxpayer had standing because he showed "a measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of"—an issue relevant to the second requirement for municipal taxpayer standing. *Doremus*, 342 U.S. at 434–35 (finding no taxpayer standing to assert an Establishment Clause challenge because the taxpayer failed to show a "good-faith pocketbook" injury). Although neither *Everson* nor *Doremus* addressed whether the "district taxpayer" sued a municipal entity that had levied the taxes at issue, a related state court opinion suggests that he did. The state court in *Everson* explained that the New Jersey legislature had "delegate[d] taxing powers to local school districts to raise funds for local school purposes." *Everson v. Bd. of Educ.*, 44 A.2d 333, 336 (N.J. 1945), *aff'd*, 330 U.S. 1 (1947); *see id.* ("School districts, such as the appellant, are authorized by R.S. 18:7–78, N.J.S.A., to raise by special district taxes funds to defray certain current charges and expenses of the public schools in their districts."); *see also Doremus v. Bd. of Educ.*, 75 A.2d 880, 881 (N.J. 1950) (noting that New Jersey public schools were supported "in part by funds raised exclusively in the school district by levy upon taxable property within the school district."). Because the *Everson* taxpayer sued the school district that levied the taxes at issue, *Everson* does not contravene the proposition that municipal taxpayers only have standing to sue the municipal entities to which he paid taxes.

ingham. *Cf. N.Y. State Tchrs. Ret. Sys.,* 60 F.3d at 111 (declining to extend municipal taxpayer standing to actions where a taxpayer challenges an expenditure of municipal funds mandated by state law because "such a rule is not supported by the cases establishing taxpayer standing"). Because Plaintiffs did not pay municipal taxes to the School District, they do not have municipal taxpayer standing to sue in federal court.[8]

II. Remaining Motions

Having concluded that Plaintiffs lack Article III standing, the Court is without subject matter jurisdiction to determine whether their First Amendment claim states a plausible claim for relief under Rule 12(b)(6) of the Federal Rules of Civil Procedure. For the same reason, the Court must deny Plaintiffs' motion for preliminary injunction as moot and dismiss this case.

CONCLUSION

Based on the foregoing and on all the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Defendant Anoka-Hennepin Education Minnesota's Motion to Dismiss Plaintiffs' Complaint (ECF No. 12) is GRANTED;

2. Plaintiffs' Motion for Preliminary Injunction (ECF No. 19) is DENIED AS MOOT; and

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[8] The Union also argues that Plaintiffs do not have municipal taxpayer standing because they identify no unlawful appropriation of taxpayer funds. Because the Court finds that Plaintiffs do not have municipal taxpayer standing for other reasons, it does not reach this argument.

3. Plaintiffs' Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 18, 2021

BY THE COURT:
s/Nancy E. Brasel
Nancy E. Brasel
United States District Judge

APPENDIX H

CONSTITUTION OF THE UNITED STATES

Article. III.

SECTION. 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION. 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both

as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment; shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

APPENDIX I

WORKING AGREEMENT

BY AND BETWEEN

ANOKA-HENNEPIN INDEPENDENT SCHOOL DISTRICT NO. 11 SCHOOL BOARD

AND

ANOKA-HENNEPIN EDUCATION MINNESOTA

July 1, 2019 thru June 30, 2021

* * *

ARTICLE IV
TEACHERS' RIGHTS

Section 1. The AHEM shall have the right to use school buildings before or after school hours for meetings, scheduling such use with the Principal of the school, providing that this shall not interfere with or interrupt school operations. Expenses incident to the meeting shall be borne by the AHEM in accordance with Board policy.

Section 2. Duly authorized representatives of AHEM shall be permitted to discuss matters pertaining to AHEM business with District personnel on campus at all reasonable times at the discretion of the Principal, provided that this shall not interfere with or interrupt normal operations.

Section 3. The AHEM shall have the right to place appropriately identified notices and other material on designated school bulletin boards and in teachers' mailboxes.

Section 4. The Board agrees to make available such information, statistics and records as are necessary for the proper enforcement of this Agreement.

Section 5. Payroll Deductions: Teachers shall have the right to have their membership dues deducted for the Exclusive Representative on a payroll deduction plan. This shall be the exclusive right of AHEM and shall not be granted to any other organization competing to represent teachers in collective bargaining. The Board shall continue such deductions in succeeding years until notified by AHEM to cease.

Section 6. The Board will meet with AHEM to discuss policies and matters of concern on a monthly basis if requested and at least every four months. This right shall not be granted to any other organization competing to represent teachers in collective bargaining.

Section 7. AHEM shall have a designated mailbox at the District Office located adjacent to other school mailboxes.

Section 8. Teacher participation in extracurricular and other duties scheduled after normal duty hours shall be voluntary. Accommodation for open house attendance shall be made on an individual building basis. Teachers wishing to cease participating in duties for which compensation is received shall notify the Principal by April 1, so that the teacher shall be relieved of such duties for the following year.

Section 9. Teachers shall be entitled to full rights of citizenship and no religious or political activities of any teacher or the lack thereof shall be grounds for any discipline or discrimination with respect to the professional employment of such teacher. The private and personal life of any teacher is not within the appropriate concern or attention of the Board, provided

it does not interfere with the instructional program of the school.

Section 10. Teachers shall not be disciplined, reprimanded, reduced in rank or compensation without just cause. Whenever possible, the supervisor will discuss with the teacher those activities of the teacher which would normally lead to a written disciplinary action and shall offer suggestions for correction. A copy of the written disciplinary action shall be given to a teacher before it is placed in the personnel file.

Teachers shall be entitled to have an AHEM representative present at an investigatory interview which the teacher reasonably believes might result in a record of disciplinary action against the teacher. Such a meeting must be held within 48 hours after the teacher is notified.

If the District takes action to suspend or discharge a teacher, the District shall notify the teacher in writing with specific reasons. When it is necessary to remove a teacher from the classroom, the teacher shall receive immediate oral notification of the reason(s) for the action followed promptly by written notification.

Section 11. No visitor other than School District officials and parents of the students enrolled in the teacher's class shall be allowed in the classroom without prior notification to the teacher.

Section 12.

Subd. 1. All evaluations and files in the School District relating to each individual teacher shall be available during regular school business hours to each individual teacher upon the teacher's written request to the appropriate supervisor or the Director of Employee Services. The teacher shall have

the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained therein; provided, however, the School District may destroy such files as provided by law. A teacher shall be notified if any negative information is put in the teacher's file. Likewise, the teacher shall have the right to challenge (according to MS 122A.40, Subd. 19, standards) any material in the teacher's file.

Subd. 2. Teachers shall be evaluated according to state law, school board policy, and administrative procedure by the appropriate assigned supervisor.

Section 13. AHEM Leave: AHEM shall be allowed 100 days per year for AHEM business with AHEM reimbursing the School District for required substitute cost. Any unused AHEM days at the end of the school year may be accumulated for use the next year. The following rules shall apply:

Subd. 1. Notification to the principal or supervisor shall be made as soon as the employee is aware of the use of an AHEM day.

Subd. 2. Notification days used shall be made to the Labor Relations/Benefits Department by AHEM on a trimester basis.

Subd. 3. Payment for days used shall be made to the District on January 1, April 1, and July 1.

Subd. 4. AHEM leave will be deducted in full or half days only.

Subd. 5. AHEM will not be required to reimburse the substitute cost for AHEM days used by AHEM negotiation team members during non-student contact days.

Section 14. The Board shall give each teacher a letter defining the teacher's salary, performance increment and lane placement for the school year.

Section 15. Entitlement: A teacher shall be deemed to have continuing contract entitlement rights as established by the most recent employment contract between the teacher and the District. If the teacher's entitlement is adjusted (full-time to part-time or visa versa), a new contract shall be signed by both the teacher and the District. Contracts shall include references to any entitlement retention rights from approved voluntary contract reductions as set forth in Article XV, Section 10, or due to a teacher obtaining a non-licensed District assignment outside of the bargaining unit as set forth in Article XV, Section 11.

Subd. 1. Part-time teachers in the Student Support Programs, Supplemental Programs, or Alternative Programs not on continuing contract who work less than 536 hours per school year do not have continuing contract entitlement rights.

Section 16. Copyrights: Any teacher who develops courseware and teaching materials of any nature in any media form shall retain full ownership and rights to such courseware and teaching materials.

The employer agrees to permit author(s) to copyright or patent any material produced or created by an employee.

This section refers only to those materials in courseware that are developed on the teacher's own time, with the teachers own resources, and for which no District compensation has been paid. A teacher may pilot a program in the classroom with District approval and the District would have the option to purchase the program at cost.

Section 17. Committees: Teachers shall be offered representation on each District-wide advisory committee. A majority of those teachers will be appointed by the exclusive representative and shall be a part of the recommendation-making process of the committee. Should the exclusive representative fail to appoint teachers as per this provision, appointments may be made by the administration.

Section 18. Site-based Decision Making: The District and its employee organizations will work together to implement site-based decision making in Anoka-Hennepin schools. A District advisory board to assist site councils will consist of administrators, community members, and representative licensed and non-licensed staff. Each employee organization shall be responsible for selecting its representatives for this board.

Employees who serve on the site council will be selected by a method chosen by the building staff. Participation of employees will be voluntary.

No Contractual provision will be waived without the express written consent of the appropriate AHEM officers.

* * *

ARTICLE XIV
SICK-PERSONAL/EMERGENCY LEAVE

The District shall comply with the provision of the federal Family and Medical Leave Act. Teachers shall receive insurance benefits and leaves under the federal Family and Medical Leave Act or under the contract.

Section 1. Full-time teachers will be granted 12 days leave of absence accrued and recorded on a per pay day basis over 22 (twenty-two) pay days for personal illness, serious illness of a member of the immediate

family or on account of death of a member of the immediate family. The immediate family shall include husband, wife, children, mother, father, sister, brother, grandparents and in-laws of similar degree of relationship. Full-time Early Intervention Program teachers will be granted 12 days leave of absence accrued and recorded on a per pay day basis over 26 (twenty-six) pay days.

For personal illness/injury or illness/injury of the teacher's dependent minor child, the teacher may use up to the amount of sick leave the teacher has accrued and available.

For the serious illness/injury of the teacher's spouse, the teacher may use up to the amount of sick leave the teacher has accrued and available.

For the serious illness/injury of the teacher's dependent adult child, the teacher may use up to the amount of sick leave the teacher has accrued and available.

For serious illness of the teacher's parent (or in-law) or non-dependent adult child and for which the teacher must serve as the primary caregiver, the teacher may use up to twelve (12) weeks of sick leave the teacher has accrued and available.

For serious illness of the teacher's sibling (or in-law) or grandparent (or in-law) and for which the teacher must serve as the primary caregiver, the teacher may use up to four (4) weeks of sick leave the teacher has accrued and is available.

On account of death of the teacher's spouse, child, or parent (or in-law), the teacher may use up to two (2) weeks of sick leave the teacher has accrued and available for bereavement purposes.

On account of death of the teacher's sibling (or in-law) or grandparent (or in-law), the teacher may use up to one (1) week of sick leave the teacher has accrued and available for bereavement purposes.

A dependent minor child and a dependent adult child are defined as follows:

Dependent minor child: an individual under 19 years of age or an individual under age 21 who is still attending secondary school.

Dependent adult child: an unmarried child under 26 years of age enrolled as a part-time or full-time student and/or requires 50% or more of support; or an unmarried child of any age that is incapable of self-care because of a mental or physical disability.

Subd. 1. The 12 days allowed include personal leave, under Section 2 of this Article.

Subd. 2. The 12-day allowance will be granted at the beginning of the school year; however, a teacher may only use sick leave earned to date when going on an approved leave.

Subd. 3. A full-time teacher employed during the school year shall be granted twelve (12) full days of sick leave. Teachers with job share and teachers with part-time contracts will be granted prorata days of sick leave; however, part-time teachers in the Student Support Programs, Supplemental Programs or Alternative Programs not on continuing contract who work less than 536 hours per school year are not entitled to sick leave.

Subd. 4. Teachers terminating employment during the school year shall be required to reimburse the District for sick leave days taken but not earned.

Subd. 5. Sick leave shall accumulate to an unlimited amount.

Subd. 6. Sick and personal leave may be taken for a full or one-half day.

Subd. 7. Teachers who have accumulated thirty (30) days of sick leave and who use less than half of the year's allotted sick leave may cash in up to five days (six (6) days for teachers with less than 10 years seniority) of unused sick leave in June of each year, such days to be exchanged at a rate of $138.00 per day for 2019-20 and 2020-21 by notification to the Labor Relations/Benefits Department.

Teachers who have sold days to the District, and due to serious illness(es) have used their reserve, may purchase days from the District at a rate of $138.00 for 2019-20 and 2020-21 to the limit that they have sold.

Subd. 8. Upon the District's initiative removing a teacher from the teacher's assignment, the teacher's sick leave days may be deducted for the time period necessary to obtain an appropriate health professional review/assessment regarding the teacher's physical or mental health to perform the teacher's job. Days deducted shall be credited back in the event the assessment determines the teacher was able to perform the teacher's job during the time period to obtain the assessment.

For a teacher who is out on sick leave or returning from a leave of absence, the credit back of sick days is not applicable for the time period necessary by the District to address the teachers' ability to perform the teacher's job which includes the assessment of medical information or the necessity of accommodation. Both the District and teacher

recognize that reasonable effort to expedite the process is in the mutual interest of both parties.

Section 2. Personal Leave and Seniority Days: Three non-cumulative personal leave days deducted from sick leave shall be granted each year at the teacher's discretion. Teachers who have completed 10 years or more seniority with the district may request one additional personal leave day on a first-requested, first-granted basis to be deducted from their accumulated sick leave. The following guidelines shall be followed:

Subd. 1. No more than 7% of teachers within a building or program may take personal leave or their seniority day on a given day.

Subd. 2. Personal leave may not be taken the first five (5) days of the school calendar year, or the last five (5) days of the school calendar year, and, commencing on May 1 and continuing until the end of the school year, no more than five percent of the building staff may take personal leave or seniority day on Mondays (Tuesday of Memorial weekend) or Fridays except in emergency situations.

The 10 year seniority day may be used in the first five (5) days or the last five (5) days of the school calendar year but is limited to the percent limitations within the building.

Subd. 3. Only one personal leave day and the seniority day may be taken adjacent to a scheduled break without a substitute deduction. If additional personal leave days are requested adjacent to a scheduled break, the teacher will be required to pay the rate of $138.00 per day for 2019-20 and 2020-21 for the days taken regardless of whether a substitute is actually hired. Teachers and/or principals do not have discretion to arrange days during an

extended break for the purpose of avoiding a substitute deduction. Teachers may request that the Department of Labor Relations and Benefits waive the substitute deduction due to unusual circumstances.

Subd. 4. Teachers may request personal leave days on a first requested, first-granted basis. In cases where two or more teachers submit their requests at the same time and the building's 7% or 5% would be exceeded, district-wide seniority shall be used to break the tie (the most senior teacher shall be granted leave).

Subd. 5. A five (5) day notice shall be given, except in emergencies when a phone call to the principal shall be made. Notice is a filed, signed Teacher Personal Leave Form.

Subd. 6. Principal/Supervisors have discretion to approve or deny requests for exceptions to the personal leave day limits established in Subdivisions 1, 2, 4, and 5 of this section.

Subd. 7. If a teacher takes three (3) personal leave days (excluding seniority day) pursuant to this section, the teacher shall not be eligible for the sick leave buy back that year. Teachers may take two (2) personal leave days and the seniority day and still be eligible for sick leave buy back.

Section 3. Absence without pay may be granted by the Principal or the teacher's immediate supervisor at the discretion of the Principal or immediate supervisor. Written notification of the response must be provided within three (3) days following receipt of the request by the Principal.

Section 4. Teacher absence due to injury by a student or a non-student while performing school business

that is not provoked by the teacher shall not be charged against the teacher's sick leave days.

Section 5. Family Medical Leave: Subject to District policies, teachers may request leaves to care for the teacher's dependent child, regardless of age, subject to approval at the District's discretion, for unpaid leaves of absence beyond twelve weeks of FMLA.