

No. 25-888

IN THE
SUPREME COURT OF THE UNITED STATES

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

v.

DON HUIZENGA, ET AL.,
Respondents.

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

**BRIEF OF PROFESSORS ZACHARY D.
CLOPTON AND NADAV SHOKED AS AMICI
CURIAE IN SUPPORT OF PETITIONER**

Zachary D. Clopton
Counsel of Record
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 E. Chicago Ave.
Chicago, IL 60611
(312) 503-8460
zclopton@law.northwestern.edu

Counsel for Amici Curiae

February 27, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	1
BACKGROUND.....	3
ARGUMENT.....	5
I. Municipal Taxpayer Litigation Is Distinct.....	5
II. Municipal Taxpayer Litigation Is Distinct Because of Local Governments’ Distinct Corporate Roots	7
III. Recognizing the Corporate Roots of Muni- cipal Taxpayer Litigation Justifies—but also Limits—Modern Municipal Tax- payer Standing	11
CONCLUSION	18

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>All. Energy Corp. v. Plan. & Zoning Bd. of Milford,</i> 815 A.2d 105 (Conn. 2003)	14
<i>ASARCO Inc. v. Kadish,</i> 490 U.S. 605 (1989)	13
<i>Blanton v. Merry,</i> 116 Ga. 288 (1902).....	12
<i>Bradfield v. Roberts,</i> 175 U.S. 291 (1899)	6
<i>Chambers v. Lautenbaugh,</i> 644 N.W.2d 540 (Neb. 2002)	14
<i>Cohen v. Beneficial Indus. Loan Corp.,</i> 337 U.S. 541 (1949)	9
<i>Crampton v. Zabriskie,</i> 101 U.S. 601 (1879)	11
<i>D.C. Common Cause v. District of Columbia,</i> 858 F.2d 1 (D.C. Cir. 1988)	12
<i>DaimlerChrysler Corp. v. Cuno,</i> 547 U.S. 332 (2006)	6, 7
<i>Frothingham v. Mellon,</i> 262 U.S. 447 (1923)	2, 5-9, 11, 14, 16, 17
<i>Green v. State Civil Service Commission,</i> 90 Ohio St. 252 (1914).....	12
<i>Huizenga v. Indep. Sch. Dist. No. 11,</i> 727 F. Supp. 3d 812 (D. Minn. 2024),	

<i>rev'd and remanded</i> , 149 F.4th 990 (8th Cir. 2025)	3-5
<i>N. Tr. Co. v. Snyder</i> , 89 N.W. 460 (Wis. 1902).....	10
<i>New Jersey State Lodge-Fraternal Ord. of Police v. Aaron</i> , 121 A.2d 402 (N.J. Super. Ct. App. Div. 1956).....	14
<i>Nichols v. City of Rehoboth Beach</i> , 836 F.3d 275 (3d Cir. 2016).....	14
<i>Ohioans for Concealed Carry v. City of Columbus</i> , 140 N.E.3d 1215 (Ohio Ct. App. 2019)	14
<i>Pierce v. Hagens</i> , 86 N.E. 519 (Ohio 1908)	10
<i>Protect Our Parks, Inc. v. Chi. Park Dist.</i> , 971 F.3d 722 (7th Cir. 2020)	7, 14, 15
<i>Schmidt v. Joint School Dist. No. 4</i> , 146 Wis. 635 (1911)	12
<i>Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs</i> , 641 F.3d 197 (6th Cir. 2011)	7
<i>Smith v. Jefferson County Board of School Commissioners</i> , 641 F.3d 197 (6th Cir. 2011)	7, 12, 15, 16
<i>Town of Jacksonport v. Watson</i> , 33 Ark. 704 (1878)	10
<i>United States v. City of New York</i> , 972 F.2d 464 (2d Cir. 1992).....	13

Constitutional Provisions

U.S. Const. amend. V 6

Statutes, Rules and Regulations

Fed. R. Civ. P. 23.1(a)..... 16

Sup. Ct. R. 37.2..... 1

Sup. Ct. R. 37.6..... 1

Other Authorities

1 WILLIAM BLACKSTONE, COMMENTARIES..... 8

Zachary D. Clopton & Nadav Shoked, *Suing
Cities*, 133 YALE L. J. 2520 (2024)..... 1, 5, 9Zachary D. Clopton & Nadav Shoked,
The City Suit, 72 EMORY L.J. 1351 (2023)..... 82 JAMES D. COX & THOMAS LEE HAZEN, COX &
HAZEN ON CORPORATIONS: INCLUDING
UNINCORPORATED FORMS OF DOING BUSINESS
§ 15.03 (2d ed. 2003)..... 94 JOHN F. DILLON, COMMENTARIES ON THE LAW
OF MUNICIPAL CORPORATIONS § 1580 *et seq.*
(5th ed., 1911)..... 11Max Schanzenbach & Nadav Shoked,
Reclaiming Fiduciary Law for the City,
70 STAN. L. REV. 565 (2018) 87C CHARLES ALAN WRIGHT, ARTHUR R. MILLER
& MARY KAY KANE, FEDERAL PRACTICE
& PROCEDURE § 1821 (3d ed. 2007)..... 9, 13, 17

INTEREST OF *AMICI CURIAE*¹

Amici curiae are law professors at Northwestern Pritzker School of Law. Professor Clopton is a scholar of civil procedure. Professor Shoked is a scholar of local government law. Professors Clopton and Shoked have studied civil litigation involving local governments, and they have an interest in the proper application of the law in this area. *Amici* specifically address the issues involved in this petition at length and in detail in Zachary D. Clopton & Nadav Shoked, *Suing Cities*, 133 YALE L. J. 2520 (2024). Accordingly, portions of this brief have been drawn from that article.

SUMMARY OF ARGUMENT

Municipal taxpayer standing is unquestionably a unique doctrine in American law. But it is not without a rationale. Its oft-neglected history indicates that it draws its justification from local governments' doctrinal roots in corporate law. That body of law that created municipal taxpayer standing was also originally used to define the doctrine's limits. Yet those limitations have escaped the attention of federal courts in recent decades. This petition presents this Court with an opportunity to clarify the law of

¹ *Amici* file this brief pursuant to Sup. Ct. R. 37.2. Counsel of record for all parties received notice of *amici*'s intention to file an *amicus curiae* brief more than 10 days prior to the due date for the *amicus curiae* brief. This brief has been authored entirely by *Amici* and their counsel, and no person other than the *amici curiae* or their counsel made a monetary contribution to its preparation or submission. See Sup. Ct. R. 37.6.

Northwestern Pritzker School of Law is listed for affiliation purposes only. *Amici* are participating in their individual capacity, not on behalf of their institution.

taxpayer standing—its grounding, logic, and limited reach.

In this case, the Eighth Circuit found that municipal taxpayers have standing to challenge a local government policy even when they cannot identify any losses to the municipal fisc resulting from the policy. In acknowledging municipal taxpayer standing, the court below relied on rulings respecting municipal litigation that go back more than a century, in which this Court explained that municipal taxpayers have standing to sue their local government even in situations where federal and state taxpayers would not have standing to sue those governments. But the Eighth Circuit misread those earlier decisions. Consequently, it bestowed standing on municipal taxpayers in a manner out of line with—indeed, opposed to—the reasoning of those rulings.

The distinction drawn between federal and municipal taxpayers in the pertinent foundational case, *Frothingham v. Mellon*, 262 U.S. 447 (1923), did not turn on the relative size or power of the three levels of government. Rather, the distinction was grounded in the special, corporate roots of local governments. Going back to Blackstone and earlier, the common law viewed municipal governments—but not other governments—as corporations. Post-Independence, American law continued to treat local governments as corporations in many contexts, including in the law of justiciability. Therefore, when the *Frothingham* court invoked a distinction between federal and municipal taxpayer litigation, it (correctly) reasoned that, unlike the former, the latter was

grounded in a distinct and well established doctrine: the corporate derivative suit.

In light of this historical and doctrinal background, the corporate derivative suit must still be read as the guiding light of municipal taxpayer litigation. And by reclaiming this lost history of municipal taxpayer litigation as corporate derivative litigation, this Court can uphold municipal taxpayer standing while limiting its reach in a rational way. Most specifically, just as derivative suits are designed to protect the financial interests of the corporation, municipal taxpayer suits must be designed to protect the financial interests of the municipal government. The Eighth Circuit's decision explicitly deems questions regarding a challenged policy's impact on municipal financial interests irrelevant to determining taxpayer standing. That holding lacks doctrinal grounding or logic—and ends up rendering taxpayer standing a tool threatening, rather than protecting, the citizenry's interest in effective municipal government.

The Eighth Circuit's decision is wrong. It establishes a clear split of opinions between the circuits. It thus offers this Court an invaluable opportunity to reengage with an often-misunderstood precedent, and to mitigate the harms its expansive reading has generated. Accordingly, we urge the Court to grant certiorari.

BACKGROUND

In *Huizenga et al. v. Independent School District No. 11 et al.*, the Eighth Circuit Court of Appeals allowed three residents (Plaintiffs) to challenge a provision in a collective bargaining agreement

between their school district and a teachers union. The contested contract provision allows teachers to take, collectively, a number of days per year of paid leave to work for the union. The union must reimburse the district's costs for hiring substitute teachers for those leave days. Plaintiffs allege that the provision violates the Free Speech Clause as well as state constitutional and statutory provisions.

Before getting to their substantive arguments—regarding which *amici* express no opinion in this brief—Plaintiffs had to surmount the standing hurdle. The problem they faced is that, obviously, they could point at no injury in fact they had endured. They are not a party to the agreement with the union, nor does the agreement govern any behavior of theirs. It does not, in other words, affect them as individuals, citizens, or residents.

They thus contended that the provision affects them as taxpayers. The school district is funded through property taxes, and thus any action it commits may affect property owners' tax bills. However, while taxpayers may be (indirectly and remotely) affected by any financial burden the local government assumes, the school district here assumed no financial burden. As the union will reimburse the district for the costs of hiring substitute teachers for days when teachers go on union leave, no expense will result from the contested provision. The provision thus cannot generate costs to the school district and, accordingly, can never affect property owners' tax bills. For this reason, the district court denied plaintiffs standing. *Huizenga v. Indep. Sch. Dist. No.*

11, 727 F. Supp. 3d 812, 817 (D. Minn. 2024), rev'd and remanded, 149 F.4th 990 (8th Cir. 2025).

The Court of Appeals reversed, holding that the status of taxpayers, *in and of itself*, grants residents standing to contest *any policy* of their local government. That is, taxpayers need not establish that a policy they challenge will generate costs and thus translate into increased tax bills. A resident need not show any injury, direct or indirect. With or without one, municipal taxpayers may challenge any local government's decision in federal court.

This brief explains that this holding is wrong—and that it presents the Court with an invaluable opportunity to revisit and clarify the old holding allowing for municipal taxpayer standing.

ARGUMENT

I. Municipal Taxpayer Litigation Is Distinct.

The doctrine granting Plaintiffs standing as taxpayers in their lawsuit against the school district, a local government, is an outlier in American standing law. *See* Clopton & Shoked, *Suing Cities, supra*, at 2550-2555. Plaintiffs would never have enjoyed the right to sue, just because they are taxpayers, a state or federal government entity. More than a century of rulings forecloses that possibility.

The classic case on taxpayer standing is *Frothingham v. Mellon*, 262 U.S. 447 (1923). Frothingham challenged the federal Maternity Act of 1921, which provided states with federal grants to reduce maternal and infant mortality. Frothingham sued federal officials, arguing that, through increased federal taxation, the Act took her property in violation

of the Fifth Amendment's Takings Clause. This Court rejected her suit unceremoniously. It explained that the complaint's target, a statute whose administration is "likely to produce additional taxation . . . upon a vast number of [federal] taxpayers" was "essentially a matter of public and not of individual concern." *Id.* at 487. Frothingham suffered no cognizable injury, as her interest as a taxpayer "in the moneys of the Treasury" was too "remote, fluctuating and uncertain" to qualify as such an injury. *Id.*

More than eighty years after *Frothingham*, this Court in *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), confirmed that the bar on taxpayer standing announced in *Frothingham* applied with equal force to state taxpayers. *Id.* at 345-46. State taxpayers, this Court held, could not challenge Ohio's decision to award tax benefits to encourage the expansion of a Jeep factory in Toledo. This Court's cases thus stand for the proposition that federal and state taxpayers "have no standing under Article III to challenge [federal or] state tax or spending decisions simply by virtue of their status as taxpayers." *Id.* at 346.

But this simple rule does not apply to municipal taxpayers. In *Frothingham* itself, plaintiff adverted to a series of earlier cases supporting taxpayer standing to challenge the spending of funds on government projects in the District of Columbia. 262 U.S. at 476 (argument for Frothingham) (citing, inter alia, *Bradfield v. Roberts*, 175 U.S. 291, 295 (1899)). In response, this Court observed that those cases dealt with the standing of D.C. taxpayers to sue their city government, not the federal government. And *municipal* taxpayer standing is, the Court reasoned,

unrelated to federal taxpayer standing. The Court referred to “the rule frequently stated by this Court, that resident taxpayers may sue to enjoin an illegal use of the moneys of a municipal corporation.” 262 U.S. at 486.

The result of this statement in *Frothingham* is that municipal taxpayer standing exists in federal court in many circumstances in which federal or state taxpayer standing would not. Thus, for example, this Court rejected taxpayers’ standing to sue Ohio for subsidies the state provided to the Jeep factory in *DaimlerChrysler*, but it left untouched claims against subsidies to the same factory that the City of Toledo provided, as those claims relied on municipal taxpayer standing. 547 U.S. at 349.

II. Municipal Taxpayer Litigation Is Distinct Because of Local Governments’ Distinct Corporate Roots.

The logic behind the distinction these cases established between municipal taxpayers standing on the one hand and federal and state taxpayer standing on the other hand has recently been questioned. *E.g.*, *Smith v. Jefferson Cnty. Bd. of Sch. Comm’rs*, 641 F.3d 197, 222 (6th Cir. 2011) (en banc) (Sutton, J., concurring); *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d 722, 733 (7th Cir. 2020). But the distinction announced in *Frothingham* was not random. It was grounded in important distinguishing characteristics of municipal governments, as opposed to other governments, in traditional English and American law. Namely, it was based on local governments’ status as corporations.

In *Frothingham*, Justice Sutherland explained that municipal taxpayer standing is justified because of “the peculiar relation of the corporate taxpayer to the [municipal] corporation, which is not without some resemblance to that subsisting between stockholder and private corporation. . . . But the relation of a taxpayer of the United States to the federal government is very different.” 262 U.S. at 487 (citation omitted).

In this quotation, Justice Sutherland was alluding to the well-established, and never doubted, roots of local governments in the corporate form—roots that local governments do not share with other governments. Historically, municipal governments were corporations or corporation-like entities. See Zachary D. Clopton & Nadav Shoked, *The City Suit*, 72 EMORY L.J. 1351, 1365-79 (2023) (describing this connection and collecting sources). Blackstone famously grouped together as “lay corporations” the “trading companies of London,” colleges—and *towns*. 1 WILLIAM BLACKSTONE, COMMENTARIES *470-71. Each of these entities was “called a corporation or body corporate because the persons are made into a body, and are of capacity to take, grant, & c., by a particular name.” *Id.*, at *467. Accordingly, legal characteristics associated with the corporate form, both in *Frothingham*’s time and in our own, inhere to municipal governments—including many rules pertaining to litigation. See Max Schanzenbach & Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 STAN. L. REV. 565, 598-600 (2018); Clopton & Shoked, *The City Suit*, *supra*, at 1365-79.

Fully in line with this doctrinal background, municipal taxpayer litigation was understood not as a form of federal or state taxpayer litigation, but as a form of corporate litigation. *See* Clopton & Shoked, *Suing Cities, supra*, at 2592-2599. When referencing the corporate roots of municipal governments to justify municipal, but not federal, taxpayer standing, Justice Sutherland conceived city residents in such cases as resorting to a specific corporate litigation form: the derivative suit. *Id.* This is the mode of litigation that most clearly manifests the “peculiar relation” between the member or stockholder and the corporation. *Frothingham*, 262 U.S. at 487.

The connection to derivative suits is not just formal but also functional. Derivative suits are tools for shareholders to sue on behalf of the corporation when it fails to bring the suit itself. *See* 2 JAMES D. COX & THOMAS LEE HAZEN, COX & HAZEN ON CORPORATIONS: INCLUDING UNINCORPORATED FORMS OF DOING BUSINESS § 15.03 (2d ed. 2003); 7C CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1821 (3d ed. 2007). Derivative actions are especially important when the individuals in charge of the corporation (officers and directors) are complicit in the corporate injury, such that they are unwilling to order the corporation to sue to vindicate its rights. *See, e.g., Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 547-48 (1949).

Municipal taxpayer suits were originally envisioned to function in the same way. Like derivative suits, they permitted resident taxpayers (stockholders) to ensure the prudent management of municipal (corporate) assets by suing on behalf of the

municipality (corporation) to prevent misuse of its funds. *See generally* Schanzenbach & Shoked, *supra*, at 598-600. Indeed, by the time Justice Sutherland was writing, many state courts had formally recognized the ability of citizens to file derivative actions on behalf of their municipalities, viewing the municipal corporation as no different from any other corporation. *See, e.g., N. Tr. Co. v. Snyder*, 89 N.W. 460, 462-63 (Wis. 1902) (“If it appears, reasonably, by all the allegations of the complaint, in a suit instituted by a member of a corporation in its right, that those persons in whom the duty and the primary right rests to represent it will not perform that duty, from any cause, a case is thereby presented, subject to proof, entitling an interested person, such as a taxpayer in case of a municipal or political corporation, to protect his right and that of all others similarly situated, by suing in his and their behalf, and presenting to a court for adjudication the cause of action of the corporation”); *Pierce v. Hagens*, 86 N.E. 519, 520 (Ohio 1908) (“Speaking in the enlarged sense, the corporation is the trustee and the inhabitants the cestuis que trust. If the corporation were a private one, there could be no doubt of the power to sue. Can any situation involving only property be imagined where a stronger claim for relief can be made upon a court of equity? It is not easy to suggest one”); *Town of Jacksonport v. Watson*, 33 Ark. 704, 705–06 (1878) (“A court of equity may, at the suit of . . . taxable inhabitants of a municipal corporation, restrain the corporation . . . from making an unauthorized appropriation of the corporate funds. This is so because the corporation holds its money for the corporators, the inhabitants of the town or city, to be

expended for legitimate corporate purposes, and a misappropriation of these funds is an injury to the taxpayer, for which no other remedy is so effectual or appropriate as an injunction”). Even this Court, more than forty years before *Frothingham*, recognized this practice. *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879) (“Of the right of resident taxpayers 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 propertyholders of the county may otherwise be compelled to pay there is at this day no serious question.”).

When Justice Sutherland in *Frothingham* spoke of the similarity between the municipal taxpayer and the corporate shareholder, he specifically cited approvingly the leading treatise on municipal government that reported, and wholeheartedly endorsed, the prevalent resort to municipal derivative litigation. *Frothingham*, 262 U.S. at 487 (citing 4 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 1580 *et seq.* (5th ed., 1911)). In short, therefore, municipal taxpayer standing has long been grounded in the well-known and still-viable law of corporate derivative suits.

III. Recognizing the Corporate Roots of Municipal Taxpayer Litigation Justifies— but also Limits—Modern Municipal Taxpayer Standing.

The doctrinal history generating the rules governing municipal taxpayer litigation indicates that they are not random, and that, therefore, calls for their complete abolition might be misguided. To the extent

that some corporate derivative suits remain justiciable in federal courts, some municipal taxpayer cases should be justiciable too.

Just as, and because, modern commentators and courts have forgotten this historical connection between municipal taxpayer litigation and corporate derivative suits, they also have ignored how the rules and logic of derivative suits cabin municipal taxpayers' standing rights. As noted, derivative suits answer the need to enable shareholders to stop a corporation from (illegally) wasting the corporation's—that is, the shareholders'—funds. Translating this logic to taxpayer standing, it is unsurprising that originally courts required that municipal taxpayers claim that their lawsuit was necessary to stop a city from wasting the municipal government's—that is, the taxpayers'—funds. *See, e.g., Green v. State Civil Service Commission*, 90 Ohio St. 252 (1914); *Schmidt v. Joint School Dist. No. 4*, 146 Wis. 635 (1911); *Blanton v. Merry*, 116 Ga. 288 (1902).

But, as the case at hand illustrates, over time many federal courts have watered down this requirement. They now tend to hold that municipal taxpayers may have standing even if the contested city policy cannot be shown to deplete city funds. A plaintiff need not allege that the policy is wasteful—merely that it is illegal. *See, e.g., Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 211 (6th Cir. 2011); *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 5 (D.C. Cir. 1988). For some federal courts this is so clear that the Second Circuit found municipal taxpayer standing even after concluding that the

lawsuit stood “no chance” of affecting plaintiffs’ tax bills. *United States v. City of New York*, 972 F.2d 464, 466 (2d Cir. 1992). And in the case at issue in the petition, the Eighth Circuit found standing even though the challenged contract provision expressly provides that the municipal costs of substitute teachers must be covered by the union.

Courts’ refusal to demand allegations of lost tax revenues divorces the doctrine of municipal taxpayer standing from its underlying rationale. Derivative suits are a tool only to sue on behalf of the financial interests of the corporation. *WRIGHT ET AL.*, *supra*, § 1821. A derivative suit requires an injury to the corporation. *Id.* (“An action that is not for the benefit of the corporation but merely seeks to enforce the rights of one or more shareholders against the corporation is not a derivative action.”). By analogy, municipal taxpayer suits should be limited to cases where there is a financial injury to the municipality. The municipal taxpayer’s standing is *derivative* of the municipality’s standing, so the municipality itself must suffer a real injury to provide that predicate.

Perhaps reflecting this background, Justice Kennedy once implied that a municipal taxpayer must show a financial injury to the local government that could actually affect that taxpayer. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 613–14 (1989) (opinion of Kennedy, J.) (“We have indicated that the same conclusion may not hold for municipal taxpayers, *if* it has been shown that the ‘peculiar relation of the corporate taxpayer to the [municipal] corporation’ makes the taxpayer’s interest in the application of

municipal revenues ‘direct and immediate.’”) (citations omitted and emphasis added). Even more recently, and more directly on point, then-Judge Barrett, writing for the Court of Appeals of the Seventh Circuit, denied municipal taxpayers standing in *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733 (7th Cir. 2020), specifically because taxpayer plaintiffs could not “show that the municipality has actually expended funds on the allegedly illegal elements of the disputed practice.” *Id.*, at 735 (quoting *Nichols v. City of Rehoboth Beach*, 836 F.3d 275, 282 (3d Cir. 2016)).

The Eighth Circuit decision ignores this wise requirement. In so doing, that court and others not only unmoor municipal taxpayer standing from its historical and doctrinal roots, but they also generate grave results on the ground. The shift away from the traditional test for municipal taxpayer standing has allowed municipal taxpayer lawsuits to proliferate and has pushed into federal court policy disputes this Court never imagined permitting in *Frothingham*.² A

² State court cases grounded in municipal taxpayer standing also provide vivid examples. *E.g.*, *New Jersey State Lodge-Fraternal Ord. of Police v. Aaron*, 121 A.2d 402, 404-405 (N.J. Super. Ct. App. Div. 1956) (holding that had plaintiff been a taxpayer they could have challenged decisions as to which police officers should be promoted); *Ohioans for Concealed Carry v. City of Columbus*, 140 N.E.3d 1215, 1229 (Ohio Ct. App. 2019) (holding that taxpayers could challenge gun regulations, while non-taxpayers could not); *Chambers v. Lautenbaugh*, 644 N.W.2d 540, 547-48 (Neb. 2002) (holding that taxpayers could challenge a redistricting plan); *All. Energy Corp. v. Plan. & Zoning Bd. of Milford*, 815 A.2d 105, 113 (Conn. 2003) (holding that taxpayers could challenge the award of a license to sell gasoline and alcohol).

recent example is a challenge to Chicago's decision respecting the siting of the Obama Presidential Center. *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733 (7th Cir. 2020). In that case, broad municipal taxpayer standing was sought to enable residents to bring to federal court a decision that had no effect whatsoever on them (or on the city's fisc). Through municipal taxpayer standing, they hoped that the federal court will enforce their preferences regarding the best Chicago location for a Presidential Center, overriding the preferences of elected City bodies. Then-Judge Barrett, concerned with such a result, described municipal taxpayer standing as a "relic." *Id.*

Cases can be even more extreme. One result of broad municipal taxpayer standing doctrine is that sometimes individuals can use municipal taxpayer standing to redress their own private grievances for which traditional injury-based standing would seem to be a better fit. That is, they employ taxpayer standing to outmaneuver rules that render traditional standing unavailable. An illustrative example is *Smith v. Jefferson County Board of School Commissioners*, 641 F.3d 197 (6th Cir. 2011). As part of wider budget cuts, a county school board in Tennessee decided to close a public alternative school and to contract instead with a private alternative school. In the process, some teachers from the public school were let go. Three fired teachers sued the board claiming that the decision violated their due process rights and the Establishment Clause, seeking a declaratory judgment and \$1 million per plaintiff in compensatory damages. The Sixth Circuit held that the teachers' due

process claims failed, and that as individuals they lacked prudential standing to pursue the Establishment Clause claims. *Id.* at 216-219. The court, however, went on to hold that the teachers had standing to pursue the latter claims *as municipal taxpayers*. *Id.* at 209-216. The teachers were empowered to rely on municipal taxpayer standing to litigate their personal grievances even though individual standing was unavailable. Judge Sutton found this result bewildering. He thus proceeded to identify various legal and logical problems with modern municipal taxpayer litigation. *Id.* at 221-222 (Sutton, J., concurring).

The fact pattern in *Smith* illustrates yet another troubling result that unbounded municipal taxpayer standing generates: it might admit suits by plaintiffs who not only are not arguing on behalf of a municipal interest—as *Frothingham*'s derivative lawsuit rationale envisioned—but are in fact, and explicitly, arguing against it. The teachers' (understandable) interest in *Smith* was that the school district rehire them, rather than contract with a private school, irrespective of what was in the best financial interest of the school district or of other taxpayers. The plaintiffs were highly unlikely to adequately represent the interests of those on whose behalf they were allegedly suing—a classic conflict of interest.

Corporate law acknowledges, and seeks to eliminate, such conflicts of interest in derivative suits. In federal court, a derivative suit “may not be maintained” unless the plaintiff “fairly and adequately represent[s] the interests of [the] shareholders.” Fed. R. Civ. P. 23.1(a). This requirement of fair and

adequate representation has been understood, first and foremost, to mean that no conflicts of interests may exist between the plaintiff in a derivative suit and other shareholders. 7C WRIGHT ET AL., *supra*, at § 1833 (2007). Yet, in municipal taxpayer litigation, federal courts today do not police the adequacy of representation plaintiffs provide. Indeed, by loosening the justiciability requirements, they invite plaintiffs to sue when their interests misalign with the municipality's. A simple example of a conflicted plaintiff would be a taxpayer plaintiff's claim that city officials were wrong to allocate a specific grant to one neighborhood rather than to that taxpayer plaintiff's own neighborhood. Insisting that plaintiffs indicate a financial loss to the municipal taxbase on behalf of which they claim to sue, could, at the very least, mitigate this concern with conflicted plaintiffs. This is a particularly necessary guardrail as currently federal courts do not employ any other test to establish the adequacy of representation in municipal taxpayer litigation, as they do in the corporate derivative litigation—and as they should here.

Municipal taxpayer litigation is, as both Judge Sutton and then-Judge Barrett noted in recent cases discussed in this brief, an anomaly. What both found surprising about it is also true: as read by many federal courts, municipal taxpayer standing means that virtually any action a municipality takes can be challenged in federal court by almost any disgruntled citizen. This, however, is not what *Frothingham* said. It is not what the doctrinal background that Court relied on would support. And it is not what the law should be. Municipal taxpayer litigation should be

geared toward tackling illegal municipal spending, that is, corrupt use of funds or (at most) gross incompetence in their management. It was never intended to push into court debates over policy, such as those touching upon the rights of unions, where little distinguishes the local government from the federal or state governments. Municipal taxpayer standing, as applied by several federal courts, has strayed too far from its origins. This departure makes this case a compelling one for review in this Court.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully urge that the petition for a writ of certiorari be granted.

Respectfully submitted,

Zachary D. Clopton
Counsel of Record
NORTHWESTERN PRITZKER
SCHOOL OF LAW
375 E. Chicago Ave.
Chicago, IL 60611
(312) 503-8460
zclopton@law.northwestern.edu

Counsel for Amici Curiae

February 27, 2026