

No. 25-888

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IN THE

**Supreme Court of the United States**

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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.*

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

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**BRIEF IN OPPOSITION**

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## **CORPORATE DISCLOSURE STATEMENT**

Respondents Don Huizenga, Nancy Powell, and Jim Bendtsen are not a corporation, so no corporate disclosure statement is required under Supreme Court Rule 29.6.

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**BRIEF IN OPPOSITION**

Petitioner asks the Court to overturn its own well-established precedents about municipal taxpayer standing. Remarkably, Petitioner does this without any discussion of the factors that this Court has identified as bearing on the stare decisis analysis. On examination, it is easy to see why Petitioner has avoided the topic. The stare decisis factors weigh heavily in favor of leaving this settled law settled. As even Petitioner's own amici recognize, the Court's municipal-taxpayer decisions are well grounded in the long-recognized tradition of derivative suits against corporations. Later doctrinal developments have reinforced, not superseded, the distinction between suing a sovereign and suing a municipal corporation. And there is nothing unworkable about the rule.

Perhaps recognizing this, Petitioner alternatively asks the Court to consider tinkering with the taxpayer-standing rules. But the first circuit split that Petitioner purports to identify is illusory. All Courts of Appeals recognize that municipal taxpayers can sue only to stop illegal expenditures of money. In any event, limiting standing to municipal expenditures that ultimately create a net loss for the municipality, as Petitioner asks, would require factual investigations that would be unduly complex, especially on this record. And the second circuit split identified by Petitioner—about limiting standing to illegal expenditures of municipal funds *generated by taxation*—is in its infancy, and presents obvious difficulties that so far have been little discussed in the lower courts.

Thus, neither question presented by the Petition merits the Court's review at this juncture. The Petition should be denied.

## STATEMENT OF THE CASE

### I. The School District Is Paying Its Teachers To Lobby For Respondent, Their Union.

This case vividly illustrates why “[t]he idea of public-sector unionization ... would astound those who framed and ratified the Bill of Rights.” *Janus v. AF-SCME, Council 31*, 585 U.S. 878, 904 (2018). It involves a school district that pays its teachers to engage in political advocacy—not for the district or its interests, but for their union and its often-adverse interests.

Respondent Independent School District No. 11 is located in the northern suburbs of Minneapolis. “The collective-bargaining representative of its teachers is” the Petitioner, Anoka-Hennepin Education Minnesota. App.2a. In its collective bargaining agreement with the union, the District has agreed to “allow[] teachers to take, collectively, 100 days per year of paid leave [annually] to work for the union.” *Ibid.* This paid leave does not expire if the union does not use all of it in a given year: under the contract, “[a]ny unused [leave] days at the end of the school year may be accumulated for use the next year.” App.64a.

Teachers and Petitioner frequently use these paid-leave days to engage in explicitly political activity. The record in this case spans the seven-and-a-half school years starting in fall 2014. During that time period, District teachers used nearly one-third of their paid-union-leave days engaging in political lobbying or testifying before the Minnesota legislature. (CA8 App. 555-564.) Teachers used many other paid-leave days negotiating on behalf of the union *against* the District. (*Ibid.*)

All of this cost the District a significant amount of money. The contract requires the union to “reimburs[e] the School District for required substitute cost” for each day of paid teacher leave, App.64a, and the District has authority to set this substitute compensation at whatever level it chooses. *See* Pet. at 7 (“The District unilaterally sets the substitute cost”); App.29a. But since at least 2014, the District has set this “substitute rate” at the actual cost it pays substitute teachers, not at the much higher per diem salaries it pays its regular teachers while they are on leave. (CA8 App. 576-80.) As a result, from fall 2014 through the end of 2022, the District paid about \$126,000 more in salary to teachers for union leave days than it received in substitute compensation from the union for those same days. (*Compare* CA8 App. 136, 542-549 (AHEM Leave substitute-teacher rates for each year); 555-564 (summary descriptions of AHEM Leave days taken); 565-575 (District costs for teacher salaries per day for AHEM Leave days 2014-2022)).

And these costs are only likely to increase in the future. The union has “banked” more than 400 unused paid-leave days, which mostly accumulated during the COVID-19 pandemic, and which the contract allows it to use at any time. (*Id.* at 616.) And there is no sign that the District will voluntarily increase the substitute rate to cover its actual costs of paying teachers on leave.

## II. The Eighth Circuit Affirms Standing In This Case.

Respondents Don Huizenga and Jim Bendtsen are currently “municipal taxpayers of the district.” App.11a. Respondent Nancy Powell was a district taxpayer when “the complaint was filed” in this case, but has since “moved away and no longer resides in the district.” App.4a. All the individual Respondents object to teachers engaging in “political and campaign advocacy during union leave.” App.2a. They filed this suit alleging that the District’s paid union leave practices are “a violation of the Free Speech Clause” as well as “the Minnesota Constitution and the state Public Employee Labor Relations Act.” *Ibid.*

As relevant here, the Eighth Circuit held that Mr. Huizenga and Mr. Bendtsen have standing to bring these claims pursuant to this Court’s decision in *Frothingham v. Mellon*, 262 U.S. 447 (1923), and reversed the district court’s grant of summary judgment against them. App.5a-11a. Applying *Frothingham*, the Court of Appeals explained that, “[l]ike a shareholder of a private corporation, a municipal taxpayer has an immediate interest in how the municipality spends resources that reflect his contributions.” App.7a (quoting *Am Atheists, Inc. v. City of Detroit Downtown Dev. Auth.*, 567 F.3d 278, 285 (6th Cir. 2009)).

The Eighth Circuit agreed with Petitioner that, under this Court’s decision in *Doremus v. Board of Education of Borough of Hawthorne*, 342 U.S. 429 (1952), a municipal taxpayer does not have standing unless he can “show ... ‘a measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of.’” App.7a (quoting

*Doremus*, 342 U.S. at 434). But the Court of Appeals rejected Petitioner’s contention that it had eliminated Respondents’ standing by “reimburs[ing] the district for the cost of substitutes for teachers taking union leave.” App.5a. The Eighth Circuit held that municipal taxpayers can demonstrate standing by showing that “[t]he [challenged] policy causes a direct expenditure of district funds,” and this standing is not vitiated by allegations that the expenditure later wound up being reimbursed or even turning a profit. App.5a-6a. Noting that “[g]enerally, shareholders may bring derivative suits for knowing violations of the law even when the unlawful actions [ultimately] profit the corporation,” the Court of Appeals held that municipal taxpayers can establish standing by showing an unlawful expenditure itself, and need not make a further showing of “an overall depletion of the public fisc.” App.7a-8a (quoting *Smith v. Jefferson Cnty. Bd. of Sch. Comm’rs*, 641 F.3d 197, 215 (6th Cir. 2011) (en banc)).

The en banc Eighth Circuit denied review, App.21a, and this petition followed.

## REASONS FOR DENYING THE PETITION

### I. Petitioner Offers No Reason For The Court To Consider Overruling Its Landmark Taxpayer-Standing Precedent.

For more than a century, this Court’s settled rule has been that taxpayers have standing to assert derivative-type claims against illegal expenditures by the municipal corporations to which they belong. Petitioner’s Question 1 asks the Court to consider overruling its long-established precedents in this area. But Petitioner makes no showing that any of the *stare decisis* factors identified by this Court weighs in favor of doing that.

#### A. This Court’s Taxpayer-Standing Rules Have Been Well Settled For Decades.

In a series of decisions stretching back to the 1800s, this Court has clearly articulated the rules for taxpayer standing: federal and state taxpayers cannot sue their governments to stop unlawful expenditures of money, but local taxpayers can.

The Court first upheld local-taxpayer standing in *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879). Even at that early date, the Court was able to say that “there is at this day no serious question” that “resident tax-payers” may sue “to prevent an illegal disposition of the moneys of the county or the illegal creation of a debt.” *Ibid.*

The Court reaffirmed this rule when it adopted its modern bar on federal-taxpayer standing in 1923. In *Frothingham v. Mellon*,<sup>1</sup> the Court explained that a

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<sup>1</sup> This Court decided *Frothingham* along with the parallel case of *Massachusetts v. Mellon*. See *DaimlerChrysler Corp. v. Cuno*, 547

federal taxpayer complaining of illegal expenditures cannot make the requisite showing “that he has sustained or is immediately in danger of sustaining some direct injury . . . , and not merely that he suffers in some indefinite way in common with people generally.” 262 U.S. at 488. But the *Frothingham* Court expressly distinguished this situation from “[t]he interest of a taxpayer of a municipality in the application of its moneys.” *Id.* at 486. It “is the rule of this Court” that this interest “is direct and immediate” enough to support standing. *Ibid.*

*Frothingham* remains the keystone precedent on taxpayer standing today. This Court frequently quotes it in explaining general standing principles, e.g., *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 78 (2026); *Moody v. NetChoice, LLC*, 603 U.S. 707, 756-57 (2024), and in articulating the specific bar on federal-taxpayer standing, e.g., *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 343 (2006); *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613 (1989) (plurality). The Court also has repeatedly recognized *Frothingham*’s allowance of municipal-taxpayer standing. *DaimlerChrysler Corp.*, 547 U.S. at 349 (“The *Frothingham* Court noted with approval the standing of municipal residents to enjoin the ‘illegal use of the moneys of a municipal corporation’”); *ASARCO, Inc.*, 490 U.S. at 613 (plurality) (“municipal taxpayers” can have standing under *Frothingham* and *Crampton*).

Since *Frothingham*, the Court has permitted taxpayer standing in one additional context, and rejected it in one other. In *Flast v. Cohen*, the Court held that

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U.S. 332, 343 (2006). The Court’s holding on taxpayer standing is often referred to as *Frothingham* because it was relevant only to *Frothingham*’s case, not to Massachusetts’.

“the *Frothingham* barrier should be lowered when a taxpayer attacks a federal statute on the ground that it violates the Establishment and Free Exercise Clauses of the First Amendment.” 392 U.S. 83, 102 (1968). In *DaimlerChrysler Corp.*, the Court held that *Frothingham*’s “rationale for rejecting federal taxpayer standing applies with undiminished force to state taxpayers.” 547 U.S. at 345. In reaching that holding, however, the Court reiterated *Frothingham*’s approval of *municipal*-taxpayer standing. *Id.* at 349.

**B. None of this Court’s Recognized *Stare Decisis* Factors Suggests Overruling *Frothingham*.**

Petitioner primarily asks the Court to consider overruling *Frothingham* with respect to municipal-taxpayer standing. “*Stare decisis*—in English, the idea that today’s Court should stand by yesterday’s decisions—is a foundation stone of the rule of law.” *Kimble v. Marvel Entm’t, LLC*, 576 U.S. 446, 455 (2015) (cleaned up). Moreover, “*stare decisis* has consequence only to the extent it sustains incorrect decisions; correct judgments have no need for that principle to prop them up.” *Ibid.* Thus, before it will “scrap[] settled precedent,” this Court “require[s] ... a special justification—over and above the belief that the precedent was wrongly decided.” *Id.* at 455-56 (cleaned up).

Remarkably, the Petition here offers little reason for overruling *Frothingham* beyond Petitioner’s belief that it was wrongly decided. In recent years, this Court has explained at length what sorts of factors might “provide the ‘special justifications’ for overruling” a precedent. *Janus*, 585 U.S. at 929 (brackets omitted). Yet the Petition signally fails to discuss

almost any of them—and what abbreviated discussion it offers is manifestly mistaken and inadequate.

**1. *Crampton* and *Frothingham* correctly, or at least reasonably, recognize derivative suits against municipal corporations.**

First, *Frothingham*'s and *Crampton*'s municipal-taxpayer-standing rule is not “egregiously wrong,” “deeply damaging,” or “far outside the bounds of any reasonable interpretation of” the Constitution, *see Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 268 (2022), nor is it “gravely mistaken” in a way that “sits uneasily with 120 years of preceding case law,” *see Ramos v. Louisiana*, 590 U.S. 83, 106 (2020). The common law allowed suits to stop the misuse of corporate funds—including suits by taxpayers as to municipal corporations. *Crampton* and *Frothingham* affirmed that traditionally recognized harm satisfies the requirements of Humanist III standing.

“Article III’s restriction of the judicial power to ‘Cases’ and ‘Controversies’ is properly understood to mean ‘cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.’” *Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021) (citation omitted). Therefore, in assessing Article III standing, “it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016); *accord TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021). *Frothingham*'s and *Crampton*'s recognition of municipal-taxpayer standing resulted from just such an analysis.

As the *Crampton* Court explained, municipal-taxpayer standing flows “from the nature of the powers exercised by municipal corporations.” 101 U.S. at 609. “[O]riginally the common law did not distinguish local governments from those entities that today would have been deemed private corporations.” Clopton & Shoked, *The City Suit*, 72 Emory L.J. 1351, 1366 (2023). Thus, in the colonial and Founding eras “the City of London was not different” in legal status “from the East India Company.” Schanzenbach & Shoked, *Reclaiming Fiduciary Law for the City*, 70 Stan. L. Rev. 565, 579 (2018). “Cities were founded in the New World against this legal background.” *Id.* at 580. It was not until after the Revolution that “American jurists developed a new distinction, unknown in earlier English law, between ... ‘private’ and ‘public’” corporations. Clopton & Shoked, *supra*, at 1370.

Of course, the common law had long allowed shareholders to sue in order to prevent or redress unlawful expenditures by their corporations. As early as 1856, this Court recognized it was “no new principle[]” that such claims are within “the jurisdiction of the courts of the United States” when diversity of citizenship exists. *Dodge v. Woolsey*, 59 U.S. (18 How.) 331, 336, 347 (1856). Thus, as American law increasingly distinguished municipal corporations from private ones, the questions arose: would similar actions lie with respect to municipal corporations, and if so, could such action come within federal jurisdiction?

In the 19<sup>th</sup> and early 20<sup>th</sup> centuries, the States’ supreme courts answered the first question in the affirmative: they “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.” Clopton & Shoked, *Suing Cities*, 133 Yale L.J. 2540, 2593-2594 (2024). As the leading treatise put it in 1872, “the prevailing doctrine” across “numerous cases” and “many ... states” was that “property holders or taxable inhabitants” could “resort to equity to restrain municipal corporations and their officers from ... making an unauthorized appropriation of the corporate funds [] or an illegal disposition of the corporate property.” John F. Dillon, *Treatise on the Law of Municipal Corporations* at 682, § 731 (1<sup>st</sup> ed. 1872). The courts recognized that “the [municipal] 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 tax-payer.” *Town of Jacksonport v. Watson*, 33 Ark. 704, 705–06 (1878). In 1908 the Ohio Supreme Court found it “startling” when a party argued against municipal-taxpayer suits. *Pierce v. Hagans*, 86 N.E. 519, 520 (Ohio 1908). As the court there explained, “the [municipal] corporation is the trustee and the inhabitants the *cestuis que trust*,” so as “members of the [municipal] corporation itself” they have the same “power to sue” as “[i]f the corporation were a private one.” *Ibid.*; see also 4 John F. Dillon, *Commentaries on the Law of Municipal Corporations*, 2766-67, §1580 (5<sup>th</sup> ed. 1911) (explaining this principle). And by 1911, this rule had become “almost universal” among American courts. 4 Dillon, *Municipal Corporations* at 2763 & 2770, §§1579 & 1584 (5<sup>th</sup> ed. 1911).

In *Crampton*, this Court determined that these widely recognized common-law claims also qualify as Article III cases or controversies. 101 U.S. at 609. And in *Frothingham* the Court reaffirmed that rule: municipal taxpayers can sue over illegal expenditures

because their “relation ... to the [municipal] corporation” is like “that subsisting between stockholder and private corporation.” 262 U.S. at 486-87. Indeed, *Frothingham* adopted the modern rule against federal-taxpayer standing by holding that “the relation of a taxpayer of the United States to the Federal Government is very different” from the situation of a municipal taxpayer, and that federal taxpayers therefore lack an analogous legal “interest in the moneys of the Treasury.” 262 U.S. at 487. That distinction has remained the governing legal principle ever since.

Petitioner does not question the essentials of this history. It recognizes (Pet. 15-17) that 19<sup>th</sup>-century common-law courts broadly recognized taxpayer actions against municipal corporations. But Petitioner gets it backwards in contending (*id.* at 16) that these decisions were “not ... derived from the values that Article III expresses.” As this Court has recognized, Article III injury is defined with reference to which harms the common law customarily recognized as remediable—not the other way around. *Spokeo, Inc.*, 578 U.S. at 341. And that is what this Court recognized in *Crampton* and *Frothingham*: because suits to stop illegal municipal expenditures were recognized by the common law, they also can come within federal jurisdiction.

On what basis, then, does Petitioner argue that the Court got this wrong in *Crampton* and *Frothingham* and should overrule itself? Apparently, Petitioner thinks that the common law’s recognition of municipal-taxpayer suits arose too late in history to count for Article III purposes. Petitioner suggests (Pet. at 15-16) that this was some sort of radical innovation of

American courts in the 1800s that should not inform the federal jurisdictional analysis.

But this Court held otherwise in *Crampton* and *Frothingham*, and there is no reason to second-guess its conclusion in that regard. For *stare decisis* purposes, the question “is not alone” whether the Court “would decide” this question “differently now than [it] did then.” *See Kimble*, 576 U.S. at 455. Rather, it is whether *Crampton* and *Frothingham* were so “egregiously wrong,” *Dobbs*, 597 U.S. at 268, or so “gravely mistaken,” *see Ramos*, 590 U.S. at 106, on this matter that there is a “special justification” for revisiting them, *see Kimble*, 576 U.S. at 456. Petitioner has made no argument that could plausibly rise to that level. Petitioner concedes that *Crampton* and *Frothingham* were correct to recognize the common-law pedigree of cases like this one. Petitioner argues only that this pedigree actually was slightly shorter than *Crampton* and *Frothingham* gave it credit for, and that this should have led to the opposite outcome. That simply is not an assignment of the egregious kind of error that could warrant overturning settled precedent.

**2. *Frothingham* remains consistent with present-day legal principles and conditions.**

Second, *Frothingham*’s “doctrinal underpinnings have not eroded over time,” *see Kimble*, 576 U.S. at 458, nor have “[d]evelopments since” *Frothingham*, either “factual [or] legal,” “left it an outlier among” this Court’s decisions, *see Janus*, 585 U.S. at 881.

*Crampton* and *Frothingham* identified their doctrinal underpinnings clearly, albeit briefly: (1) suits to stop improper expenditures by private corporations

are cognizable, (2) municipalities are also corporations, and (3) the common law recognizes claims to stop improper expenditures by them as well. Petitioner does not and cannot contend that any of that has changed since *Frothingham*. Shareholder derivative actions against private corporations are alive and well in federal court. See Fed. R. Civ. P. 23.1. Municipalities remain corporations under the law. See generally, e.g., *Cook Cty. v. United States ex rel. Chandler*, 538 U.S. 119 (2003). And the common-law availability of taxpayer derivative actions remains “well settled,” *Richardson v. Relf*, 265 So. 3d 236, 243 (Ala. 2018) (cleaned up), “in almost every state,” *Goldman v. Landsidle*, 552 S.E.2d 67, 71 (Va. 2001); see *Brandon v. Ashworth*, 955 P.2d 233, 235 (Okla. 1998) (upholding such claim); *Fitzke v. City of Hastings*, 582 N.W.2d 301, 308 (Neb. 1998) (same).

Petitioner nevertheless suggests that it is anomalous for taxpayer standing to lie to stop spending by municipalities, but not by higher levels of government. But that cannot possibly be a development that undermines *Frothingham*—it is the very holding of *Frothingham* itself, in which this Court expressly permitted taxpayer suits over spending from municipal treasuries but not the federal Treasury. 262 U.S. at 486-87.

To be sure, the Court has more recently extended *Frothingham*'s bar on taxpayer standing to suits against state governments. *DaimlerChrysler Corp.*, 547 U.S. at 343-45. But there is nothing anomalous about allowing plaintiffs to sue municipalities in circumstances where they could not sue States or the United States. For instance, the United States enjoys sovereign immunity from suit, e.g., *Dep't of Agric. v.*

*Kirtz*, 601 U.S. 42, 48 (2024), and the Eleventh Amendment similarly deprives federal courts of jurisdiction over many claims against States—but “the Eleventh Amendment does not extend its immunity to units of local government.” *Bd. of Trs. v. Garrett*, 531 U.S. 356, 369 (2001). Similarly, this Court has established (after *Frothingham*) that States are not subject to suit under Section 1983, but municipalities are. *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 62, 64 (1989). In all these contexts, the federal courts are closed to suits against the sovereign States or the United States, but open to claims against municipal corporations. And although some may have predicted the contrary, the availability of such suits has not overwhelmed local governments with impossible litigation burdens. The same is true of the taxpayer suits recognized by *Crampton* and *Frothingham*.

In short, the rule of *Frothingham* is not out of step with developments in the law since that time. By no means is it “the kind of doctrinal dinosaur or legal last-man-standing for which [this Court] sometimes depart[s] from *stare decisis*.” *Kimble*, 576 U.S. at 458.

Nor have factual developments rendered *Frothingham* obsolete. The *Frothingham* Court found a “direct and immediate” relationship between taxpayers and the municipal treasury as a matter of law. 262 U.S. at 486. But even as a matter of fact, the relationship has not become more attenuated over time. 1920s America included cities nearly as large as today’s: New York City’s population at that time was nearly 6 million.<sup>2</sup>

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<sup>2</sup> New York City Planning Department, *Total Population, New York City & Boroughs, 1900 to 2010*, <https://www.nyc.gov/assets/planning/download/pdf/data-maps/nyc->

Per-capita municipal spending is dramatically greater today than in the 1920s, giving each modern taxpayer *more* of an interest in municipal treasuries. See *Janus*, 585 U.S. at 924-25. And *Frothingham*'s analogy to private corporations was not dependent on those corporations being small: by the time of the stock market boom in the 1920s, U.S. Steel had a market capitalization of over \$1 billion (without adjustment for inflation),<sup>3</sup> and the Dow Jones Industrial Average was already almost three decades old.<sup>4</sup>

### **3. *Frothingham* poses no risk of distorting the law—but overruling it would.**

Third, Petitioner does not contend that municipal-taxpayer standing has “led to the distortion of many important but unrelated legal doctrines.” See *Dobbs*, 597 U.S. at 286. And because *Frothingham* fits well with established law, as explained above, it is hard to see how it could.

“To the contrary, the decision’s close relation to a whole web of precedents means that reversing it could threaten others.” *Kimble*, 576 U.S. at 458. *Crampton* and *Frothingham* expressly placed illegal expenditure suits against municipal and private corporations on the same footing. Thus, overruling municipal taxpayer standing as too “remote” would inevitably invite

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population/historical-population/nyc\_total\_pop\_1900-2010.pdf (last accessed May 19, 2026).

<sup>3</sup> Devan Burris & Jared Blikre, *Roaring ‘20s vs. Now: GE, GM, Coca-Cola, U.S. Steel and Sears*, Yahoo! Finance, January 1, 2022, <https://finance.yahoo.com/news/roaring-20s-vs-now-ge-gm-coca-cola-us-steel-and-sears-135843168.html?guccounter=1>.

<sup>4</sup> Randy Befumo, *History of the Dow, 1884-1886*, The Motley Fool, <https://web.archive.org/web/20131004224951/http://www.fool.com/DDow/HistoryOfTheDow.htm> (last accessed May 19, 2026).

defendants to raise the same argument in shareholder derivative suits about business corporations, threatening to upend settled law in that context. Moreover, Petitioner’s contention that common-law taxpayer suits developed too late to count for Article III purposes would call into question federal jurisdiction over many other common-law causes of action as well. Even on Petitioner’s account of legal history, the common law started recognizing suits to stop illegal municipal spending decades *before* it began remedying other well-known forms of harm, such as invasions of privacy, *see* Warren & Brandeis, *The Right of Privacy*, 4 Harv. L. Rev. 193, 193 (1890) (arguing for an emerging class of invasion-of-privacy torts), or emotional distress in the absence of physical contact, *see Payton v. Abbott Labs*, 437 N.E.2d 171, 176-77 (Mass. 1982) (tracing infliction-of-emotional-distress claims to late-19<sup>th</sup>-century English jurisprudence)). Thus, holding that common-law municipal-taxpayer suits arrived too late in history to satisfy Article III would inevitably invite challenges to federal jurisdiction over these other well-recognized types of claims.

In this context, the Court’s “prefer[ence] not to unsettle stable law,” *Kimble*, 576 U.S. at 458, weighs significantly against review.

#### **4. The rule of *Frothingham* works just fine.**

Fourth and finally, “nothing about [*Frothingham*] has proved unworkable.” *See Kimble*, 576 U.S. at 459. There is little difficulty in determining whether someone is a taxpayer of a municipal corporation. And while Petitioner contends that the Courts of Appeals have disagreed legally about *what kind* of municipal transactions can support standing (*see* Pet. 21-22; *contra* Pt. II, *infra*), it points to no court that

has expressed difficulty in identifying *whether* the required kind of transaction occurred. So *Frothingham* certainly does not require the kind of unworkable or “inherently standardless” inquiry that might call for overruling. See *Dobbs*, 597 U.S. at 281.

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“What [this Court] can decide, [it] can undecide. But *stare decisis* teaches that [the Court] should exercise that authority sparingly.” *Kimble*, 576 U.S. at 465. There is no warrant here to consider the drastic step of overruling *Crampton*, *Frothingham*, and the nearly 150-year-old principle they stand for. The Petition should be denied as to Question 1.

## **II. Petitioner’s Proposed Curtailments of *Frothingham* Do Not Warrant Certiorari.**

In the alternative, Petitioner alleges (Pet. 21) that there is confusion as to “the contours of” municipal-taxpayer standing, and asks this Court to at least limit taxpayer standing to a narrower scope than *Crampton* and *Frothingham* identified. This is mistaken. Petitioner first contends that standing should be limited to expenditures that ultimately cause a net loss to the municipal treasury. But no Court of Appeals has ever held that. Rather, this Court has expressly said that municipal-taxpayer standing requires an unlawful municipal expenditure or debt, and every Court of Appeals agrees on that standard. Alternatively, Petitioner asks that standing be limited to municipal spending of funds that can be specifically traced to tax revenues. But only two Courts of Appeals have considered that proposition, no doctrinal underpinnings for it have yet been identified, and its obvious practical problems have not been addressed by the lower courts. More time and

consideration is necessary before it can be determined whether that issue warrants this Court’s review.

**A. There Is No Circuit Split as to Taxpayer Standing to Challenge Municipal Expenditures.**

**1. The Courts of Appeals unanimously determine municipal-taxpayer standing by looking for a municipal expenditure.**

In *Crampton* and *Frothingham*, this Court identified exactly what kind of injuries a municipal taxpayer has standing to sue about: “an illegal disposition of the moneys of the county or the illegal creation of a debt,” *Crampton*, 101 U.S. at 609, or “an illegal use of the moneys of a municipal corporation.” *Frothingham*, 262 U.S. at 486. In the same vein, before this Court’s later decisions foreclosed state-taxpayer standing, it required state taxpayer plaintiffs to “show[] a measurable appropriation or disbursement of ... funds occasioned solely by the activities complained of.” *Doremus*, 342 U.S. at 434.

There is nothing mysterious or difficult about the municipal-taxpayer standing test under these decisions. The test is: are the plaintiffs challenging actions that cost an identifiable amount of the municipality’s money? And indeed, the lower courts apply exactly that test. “[A]ll” the Courts of Appeals “agree that the unconstitutional expenditure of government funds ... confer[s] municipal-taxpayer standing,” *Smith v. Jefferson Cty. Bd. of Sch. Comm’rs*, 641 F.3d 197, 213 (6th Cir. 2011) (en banc), and “have uniformly concluded that municipal taxpayers have standing to challenge allegedly unlawful municipal

expenditures,” *United States v. New York*, 972 F.2d 464, 471 (2d Cir. 1992). See also *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995) (taxpayer plaintiff “must ... show that tax revenues are expended on the disputed practice”); *Freedom from Religion Found. v. Zielke*, 845 F.2d 1463, 1470 (7th Cir. 1988) (question is whether “tax money is spent on the allegedly unconstitutional activity”); *Minn. Fed’n of Teachers v. Randall*, 891 F.2d 1354, 1357 (8th Cir. 1989) (“measurable expenditure of tax money”); *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 794 (9th Cir. 1999) (“specific amounts of money that the government ... spent solely on the unlawful activity”); *D.C. Common Cause v. District of Columbia*, 858 F.2d 1, 5 (D.C. Cir. 1988) (“measurable appropriation”).

What Petitioner points to, then, is not an actual Circuit split but only the appearance of one. As the court below recognized in this case, the Sixth Circuit has nominally declined to apply the *Doremus* “good-faith pocketbook” standard to municipal-taxpayer standing, App.6a (citing *Smith*, 641 F.3d at 212–13), while all other Courts of Appeals—including the Eighth Circuit here—have applied it. But a moment’s examination shows this purported disagreement to be entirely cosmetic. In that very same decision, the Sixth Circuit held that there is no difference in the actual substance of what courts require for municipal taxpayer standing: “all” the Courts of Appeals “agree that the unconstitutional expenditure of government funds ... confer[s] municipal-taxpayer standing,” *Smith* 641 F.3d at 213. Indeed, following *Smith*, the Tenth Circuit has specifically pointed out that this purported disagreement about *Doremus* is much ado about nothing: “Irrespective of the specific language used, every circuit requires a showing of at least some

expenditure of municipal funds.” *Am. Humanist Ass’n v. Douglas Cty. Sch. Dist. Re-1*, 859 F.3d 1243, 1259 (10th Cir. 2017).

Even Petitioner recognizes that *Smith* does not really create a Circuit split on this issue. As Petitioner acknowledges, *Smith* did involve an expenditure of municipal funds: in that case a school district “pa[id] [a] religiously affiliated school” to provide “alternative-school services.” (*See* Pet. at 24.) Every other Court of Appeals would have recognized standing on those facts as well.

**2. Petitioner seeks an exception to municipal-taxpayer standing that no court of appeals has adopted.**

This case involves just the same kind of municipal expenditure that all the Circuits accept. Indeed, the Eighth Circuit here applied the unanimous rule of the Courts of Appeals: quoting *Doremus*, it required Plaintiffs to “establish that the district spends tax revenues on the activities complained of” by showing “a ‘measurable appropriation or disbursement of school-district funds occasioned solely by the activities complained of.’” App.5a (quoting *Doremus*, 342 U.S. at 434). And it held that Mr. Huizenga and Mr. Bendtsen satisfy this standard because they challenge a District practice that undisputedly includes paying substitute teachers to allow regular teachers to engage in political advocacy. App.8a. On top of that, although the Eighth Circuit had no need to reach the point, the District pays an even greater amount to the regular

teachers who take leave under the challenged policy. *See supra*.<sup>5</sup>

What Petitioner actually wants, then, is a novel exception to municipal-taxpayer standing that no Court of Appeals has adopted. Petitioner concedes that, for union-leave days, the District's policy involves paying substitute teachers as well as regular teachers. Petitioner argues that, because Petitioner itself eventually reimburses the District for the cost of substitutes, the policy ultimately imposes no *net* cost on the District, and this eliminates municipal-taxpayer standing. The record belies that argument factually. *See infra* Pt.II.C. But even more importantly, no Court of Appeals has ever accepted this legal theory.

The Eighth Circuit here rejected Petitioner's proposed "net loss" rule for municipal-taxpayer standing. It held that standing arises from the challenged municipal expenditure itself and cannot be vitiated by arguments that the expense was later offset or ultimately somehow turned a profit for the municipality. App.5a-6a. The Sixth Circuit held similarly in *Smith*—where the school district similarly spent money on the challenged program but argued that it had defeated taxpayer standing by offsetting the expenditure with other savings. 641 F.3d at 210-11. The

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<sup>5</sup> The dissent below argued that, because Plaintiffs do not claim that the substitute teachers themselves are doing anything problematic on paid-leave days, they "have failed to show that the district has actually expended funds *on the allegedly illegal elements* of the disputed practice" and lack standing for that reason. App.11a (cleaned up). But the dissent did not address the fact that the District *did* pay its regular teachers directly for their political advocacy—which is exactly the element that Plaintiffs allege is illegal. In any event, Petitioner notably does not ask this Court to consider any "illegal elements" theory or argument.

Sixth Circuit rejected that contention. It held that denying standing unless an expenditure resulted in an ultimate net loss “would run directly counter to case law from the Supreme Court, from this court, and from our sister circuits.” 641 F.3d at 211.

Petitioner identifies not a single other Court of Appeals that had adopted its net-loss rule. The best it can do (Pet. at 24) is point to one oblique phrase of 20-year-old *dictum*. In 1986, the Seventh Circuit held that plaintiffs before it *did* have standing to challenge a municipal Christmas display—but along the way, the court said that “the ... cost” of electricity for the Christmas lights in the display could not be the basis for standing, because the cost was “minuscule” and was “defrayed by voluntary contributions from city residents.” *American Civil Liberties Union v. St. Charles*, 794 F.2d 265, 267-68 (7th Cir. 1986). Even if this conclusion had been necessary to the court’s holding (which it was not), it would seem to be an application of the canonical requirement of a “*measurable* appropriation or disbursement.” *See Doremus*, 342 U.S. at 434 (emphasis added). Petitioner cites no court that has ever actually relied on an offset or net-loss rule to deny standing. So there is no warrant for this Court to consider doing so, either.

**B. In Any Event, the Record Here Precludes any Consideration of a “Net Loss” Rule.**

Even if there were some reason for this Court to consider a “net loss” requirement for municipal-taxpayer standing, this would not be the case to do so, because the record here includes complex factual disputes on the issue that the courts below did not assess.

As the Sixth Circuit observed in rejecting a net-loss standing rule like Petitioner's, "[d]etermining whether a municipality 'lost' or 'saved' money raises a host of implementation problems." *Smith*, 641 F.3d at 215. And so it would. How long of a causal chain between expenditure and income would be acceptable? What value should be assigned to the municipality's loss of the use of the funds between the time of expenditure and the alleged reimbursement? Will clever defendants be able to defeat standing with the same kind of accounting tricks that taxpayer suits are meant to guard against in the first place? These and similar difficulties are additional reasons not to consider Petitioner's net-loss rule at all. But they are especially reasons not to do so in this particular case, which presents an especially complex and problematic record on those questions.

Petitioner's argument against any net loss turns on its reimbursement of the District for the cost of hiring substitute teachers to replace regular teachers who take paid union leave. According to Petitioner, this means that the District breaks even on the paid-leave policy, and so the municipal fisc ultimately suffers no harm from it. But Petitioner overlooks the obvious: the District's paid-leave policy requires paying the regular teachers who are on leave as well. And as described above, the record evidence indicates that the District teachers on union leave receive a per diem salary that is much larger than the substitute-cost reimbursement—to the aggregate tune of more than \$100,000. *See* Statement of the Case, Section I. The upshot is that Petitioner's preferred legal theory is not even apposite unless this fact can somehow be set aside.

The Eighth Circuit had no need to assess this fact, since it found the substitute-teacher payments alone were sufficient to support standing. And although the district court set aside this evidence, it did so on obscure grounds that Respondents would vigorously contest should there be further proceedings on standing in this case. The district court stated with little explanation that Respondents' evidence on the cost of paid union leave "relies on unclear data and unfounded assumptions." App.29a. The only elaboration that it gave was its conclusion that granting paid leave to teachers does not actually cost the District anything, because a teacher's "annual salary ... is not affected by individual days taken off for whatever the reason." App.30a.

It is hard to see how either of those conclusions could withstand scrutiny—and they plainly would *need* to be scrutinized if Petitioner's "net-loss" standing theory were to be given any further consideration. First, there is nothing "unclear" about the cost of paid teacher leave in this case. This was the subject of extensive discovery in the district court, and the District itself produced documents showing that it knew how to calculate the per diem cost, and had actually done so on some occasions. *E.g.*, CA8 App. 565. As the record amply showed, Respondents simply obtained discovery about which teachers took how many days of leave, what each of those teachers' per diem salary was, and what the substitute-teacher rate was—and the rest was arithmetic. *Compare* CA8 App. 136, 542-549 (AHM Leave substitute-teacher rates for each year); 555-564 (summary descriptions of AHM Leave days taken); 565-575 (District costs for teacher salaries per day for AHM Leave days 2014-2022).

Second, it is not clear what evidence the district court was referring to when it stated that “days taken off for whatever the reason” cannot affect a teacher’s salary. App.30a. If taken literally, this would mean that District teachers get unlimited paid leave—which presumably would come as quite a surprise to everyone who works for the District. But whatever the district court may have meant by this factually, it is hard to see how it could be relevant legally. Regardless of what principle the District is using to determine who gets to take paid leave when, it unquestionable is spending money to pay teachers for taking the leave to which Respondents object. If the District is making that choice pursuant to some neutral principle, perhaps that would affect the merits of Respondents’ claims. But it is hard to see how it could affect their standing to sue based on this expenditure.

In short: if there were any reason for the Court to consider restricting municipal-taxpayer standing by adopting a “net-loss” requirement, it should do so in a case where the record clearly indicates that no net loss occurred. Here, at best for Petitioner, the record on that question is a muddle that has not been adequately assessed by the courts below.

**C. Whether *Frothingham* Should be Limited to Expenditures of Tax Funds Should be Allowed to Percolate.**

In the alternative, Petitioner asks the Court to consider receding from the holdings of *Crampton* and *Frothingham* in a different way—by limiting taxpayer standing to expenditures of municipal funds that specifically derived from taxes. This innovation is no more warranted than the last.

This Court has been clear that municipal-taxpayer standing exists to stop illegal expenditures “of the moneys of the county,” *Crampton*, 101 U.S. at 609, or “of the moneys of a municipal corporation,” *Frothingham* 262 U.S. at 486. Not content with that standard, Petitioner asks (Pet. Pt.II.B) that it be narrowed to ‘the moneys of a municipal corporation *collected from taxpayers.*’ Moreover, when a municipality commingles funds from taxpayers with funds from other sources, Petitioner argues that taxpayers should be denied standing unless they can prove that the specific dollars used on the challenged spending came from taxes. *Ibid.*

This rule does not merit the Court’s consideration, for several reasons.

First, the taxpayer-funds-only standing rule has not been extensively considered in the lower courts. It has been articulated by only one Court of Appeals, *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 735-36 (7th Cir. 2020), and rejected by only one—the Eighth Circuit in this case. App.10a. The other decisions pointed to by Petitioner simply do not recognize any “tax-money-only” restriction on municipal-taxpayer standing. In all of them, courts found that the plaintiffs “failed to establish that the [municipality] has spent *any* money” at all on the challenged practice. See *ACLU-NJ ex rel. Miller v. Twp. of Wall*, 246 F.3d 258, 263 (3d Cir. 2001) (emphasis added). In *American Humanist Association*, the plaintiffs complained about “Christian fundraising efforts” in a public school—but failed to show that the payments at issue came from the school at all, rather than being “student-raised money.” 859 F.3d at 1247, 1259-60. Similarly, in *Cantrell v. City of Long Beach*, “[m]ost of

the [plaintiff's] allegations” were about a port entity that “d[id] not receive tax dollars” *at all*. 241 F.3d 674, 683 (9th Cir. 2001). So any Circuit split on this issue is at best a nascent one.

Second, perhaps reflecting this paucity of previous consideration, no doctrinal rationale has yet been offered for a taxpayer-funds-only standing rule. As explained above, *Crampton* and *Frothingham* grew out of the common-law principle that municipalities have trust-like obligations to their taxpayers. That rationale justifies suits to stop any illegal municipal expenditure or debt, since the entire municipal fisc ordinarily is subject to those trust obligations. By contrast, the Seventh Circuit did not explain any rationale for a taxpayer-funds-only rule in *Protect Our Parks*, and it is difficult to think of a satisfactory one. Taxpayers obviously lack any special legal interest in their specific tax dollars once they are paid over to a city or county, so that cannot explain it. Perhaps it could be argued that expenditures of tax dollars have a more direct effect on future taxation than expenditures of non-tax dollars? But the various sources of municipal funding are subject to a thousand vicissitudes, and money is fungible, so this seems at best a contingent and uncertain principle, not well suited to support a bright-line legal requirement. As a result, the potential rationales for this principle have not yet been even articulated, let alone tested, in the lower courts.

Third, it appears that a taxpayer-funds-only standing limitation would functionally overrule *Crampton* and *Frothingham*. Petitioner seems to argue that, if taxpayer dollars are commingled in a municipal account with any funds at all from any other

source, that immunizes all expenditures from the account against any municipal-taxpayer challenge. It seems likely that most municipalities already commingle most of their funds in this way<sup>6</sup>—and if Petitioner’s proposal were to become the law, it seems virtually certain that all of them would, to protect themselves from taxpayer suits. *Crampton* and *Frothingham* would become dead letters. So if *stare decisis* principles do not counsel overturning these precedents—and they do not, as explained above—then it would not be proper to neuter them in this way either.

In short, Petitioner’s proposed taxpayer-funds-only standing rule simply is not ready for this Court’s review. It may never be. But at minimum, more consideration in the lower courts is necessary—to flesh out a rationale for the rule, to explain how it coheres with this Court’s precedents, and to determine whether any Circuit split will mature—before it would even potentially make sense for this Court to review the matter.

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<sup>6</sup> Indeed, it seems quite likely that the municipalities in *Crampton* and *Frothingham* would also have commingled their funds in this way. Did the municipalities there commingle their tax proceeds with revenues from, for instance, the operation of local utilities, or fines collected in municipal courts, or rents collected on real property owned by the municipality? Unless the answer was no, a taxpayer-funds-only rule would make *Crampton* and *Frothingham* wrong from the day they were decided.

**CONCLUSION**

The Petition should be denied. At the least, any grant of the Petition should be limited to the second Question Presented.

Respectfully submitted,

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