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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF

Taxpayer-plaintiffs seeking to challenge a government policy cannot satisfy the injury-in-fact, causation, and redressability elements that constitute the "irreducible constitutional minimum of standing." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Their alleged injury is generalized, not particularized. They cannot show that the policy has caused their tax bill to go up. And they cannot show that a favorable ruling would cause their tax bill to go down. The Court held all of this when it rejected state-taxpayer standing in *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006), with reasoning equally applicable to municipal taxpayers.

Yet the lower courts have declared themselves bound to recognize a municipal-taxpayer exception based on a brief passage in *Frothingham v. Mellon*, 262 U.S. 447 (1923). There, on the way to rejecting federal-taxpayer standing, the Court sought to recast an earlier precedent, *Crampton v. Zabriskie*, 101 U.S. 601 (1879), that had allowed a municipal-taxpayer suit to proceed without even alluding to Article III's case-or-controversy requirement. But as Judges Williams, Sutton, Barrett, and Quattlebaum have recognized, allowing municipal taxpayers to sue cannot be squared with modern standing doctrine—a problem only this Court can fix. This Court heeded similar concerns in *Cuno*, 547 U.S. at 346 n.4 (citing *Arakaki v. Lingle*, 423 F.3d 954, 967-69 (9th Cir. 2005)), when it conformed state-taxpayer standing to Article III, and it is past time to do the same for municipal-taxpayer standing.

The brief in opposition from Respondents Huizenga et al. is perhaps most notable for what it does *not* say. It ignores the jurists who have lamented the anomaly of municipal-taxpayer standing, never explaining why their calls for this Court to address the issue are

mistaken. It makes no effort to reconcile the municipal-taxpayer exception with Article III's irreducible elements. And it not only fails to dispute, but affirmatively concedes, that the Eighth Circuit has opened a circuit split on the scope of municipal-taxpayer standing and that the split is outcome determinative in this case.

Respondents are thus left to argue that this Court should not grant certiorari because, in their view, the Court settled the viability of municipal-taxpayer standing in *Frothingham* once and for all. But Respondents do not appear to buy their own premise, as they spend pages trying to shore up *Frothingham*'s equivocal analogy between municipal taxpayers and corporate shareholders with arguments that cannot be gleaned from *Crampton* or *Frothingham*, BIO.9-13—a tacit admission that those opinions carry no persuasive force.

Regardless, Respondents' late-breaking attempts to find solid ground for municipal-taxpayer standing fail. Respondents' 19th- and early-20th-century state-court cases prove too much, as they would support not just taxpayer but *citizen* standing, which this Court has steadfastly rejected. And their attempt to analogize municipal taxpayers to corporate shareholders proves too little, as taxpayers would lack standing even if they could be deemed similarly situated to derivative-suit plaintiffs. *See* Pet.27 (citing *Gollust v. Mendell*, 501 U.S. 115, 125 (1991)).

In all events, the question at this stage is not *how* to resolve the case but *whether* this Court should do so. Given the importance of the issues and that this case is an ideal vehicle for addressing them, the Court should grant the Petition.

ARGUMENT

I. Municipal-Taxpayer Standing Is Irreconcilable with Article III.

A. The Doctrine Is a Relic Warranting Review.

As the Petition explains (at 11-13), municipal-taxpayer standing operates as an aberrational exception to the bedrock requirements of Article III standing. Respondents tacitly concede as much, as they do not even try to reconcile municipal-taxpayer standing with the three "irreducible constitutional minimum" elements of Article III standing. *Lujan*, 504 U.S. at 560. On top of that, as the diverse group of amici States explains, municipal-taxpayer standing raises the same federalism concerns that this Court emphasized while rejecting state-taxpayer standing in *Cuno*. States' Br.12-13.

Unable to harmonize municipal-taxpayer suits with the three irreducible elements of standing, Respondents resort to borrowed valor. They emphasize that "*Frothingham* remains the keystone precedent on taxpayer standing today." BIO.7. But *Frothingham* is foundational only for its general rule *against* taxpayer standing—not its passing suggestion that municipal taxpayers merit different treatment, which this Court has not applied in the intervening century. As a growing chorus of lower-court judges has recognized, *Frothingham*'s municipal-taxpayer analysis has little to commend it. *E.g.*, *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733-34 (7th Cir. 2020) (Barrett, J.). A four-Justice plurality even suggested that the municipal-taxpayer exception might not exist at all. *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 613 (1989) (Kennedy, J.) (citing *Frothingham* for the proposition that the bar against federal-taxpayer

standing "*may* not hold for municipal taxpayers" (emphasis added)).

Simply put, municipal-taxpayer standing is a "relic," *Protect Our Parks,* 971 F.3d at 733, and the Court should take this opportunity to revisit it.

B. Respondents' Defense of Municipal-Taxpayer Standing Fails.

Acknowledging that municipal-taxpayer standing perhaps resulted from "incorrect decisions," Respondents argue that *stare decisis* should save it. BIO.8 (quoting *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015)).

It is at the very least debatable whether the Court would need to march through the *stare decisis* factors to disavow the result in *Crampton* or the *Frothingham* dicta that sought to justify it. That is because both decisions are silent on whether municipal-taxpayer standing squares with the irreducible minimum requirements of Article III. While that silence is understandable as a historical matter—both cases long pre-date the period when this Court gave its full attention to Article III's case-or-controversy limitation—it is unclear whether *stare decisis* receives any weight where the underlying decision does not even address the relevant legal principles. *See Agostini v. Felton*, 521 U.S. 203, 235 (1997) ("The doctrine of *stare decisis* does not preclude us from recognizing the change in our law and overruling [prior cases] inconsistent with our more recent decisions.").

But that question is academic here. While the Petition did not use the epithet "gravely mistaken" (BIO.9) to label *Crampton* or the *Frothingham* dicta, it chronicled their mistakes and the gravity of those mistakes at great length (Pet.11-19). And while Respondents wrap themselves in *stare decisis*, even they cannot bring themselves to claim any reliance

interests counseling in favor of retaining municipal-taxpayer standing—because there are none. *See Alleyne v. United States*, 570 U.S. 99, 119 (2013) (Sotomayor, J., concurring) (where "procedural rules are at issue that do not govern primary conduct and do not implicate the reliance interests of private parties," *stare decisis* has "reduced" force).

In any case, Respondents' labored defense of the relevant decisions only underscores the need for review.

1. Respondents first briefly aim to defend *Crampton* and *Frothingham*'s methodology and results. They concede that Article III's scope is defined by history and tradition but argue that those cases correctly applied "just such an analysis" when they relied exclusively on state-court decisions from the mid-19th century onward. BIO.9. Those state-court decisions, as the Petition noted (at 16), generally allowed such lawsuits because courts thought they were the most efficacious way to challenge misuses of government funds.

But Respondents' argument has an obvious fatal flaw: Neither *Crampton* nor *Frothingham* considered that only *the crown* could challenge municipal expenditures at common law. Pet.14-15. Instead, this Court assumed jurisdiction based solely on 19th-century innovations by state courts. And applying the reasoning of those state-court cases to an Article III standing analysis would prove far too much, as it would extend standing beyond municipal taxpayers to *all* "inhabitants of the town or city," BIO.11 (quoting *Town of Jacksonport v. Watson*, 33 Ark. 704, 705-06 (1878)); *see also Pierce v. Hagans*, 86 N.E. 519, 520 (Ohio 1908) (allowing municipal-taxpayer lawsuit because "the corporation is the trustee and the inhabitants the *cestuis que trust*"). That is not *taxpayer* standing; it is *citizen* standing, which this Court has

forcefully rejected. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 222-23 (1974).

Tellingly, Respondents marshal no authority for the proposition that state-court decisions long after ratification shed light on Article III's injury requirement. In *Cuno*, for instance, the Court rejected state-taxpayer standing, 547 U.S. at 343-49, without addressing the fact that, "[a]s [taxpayer] litigation gained a firm basis in judicial precedent, taxpayers were allowed to challenge state as well as municipal action," Comment, *Taxpayers' Suits: A Survey and Summary*, 69 Yale L.J. 895, 900 & n.29 (1960) (citing 19th-century cases). That forbearance makes sense, as "state courts are not bound by the limitations of a case or controversy," so their decisions are little help in interpreting those constitutional terms. *ASARCO*, 490 U.S. at 617 (plurality).

2. With little to tout in the four corners of *Crampton* and *Frothingham*, Respondents attempt to shore up *Frothingham*'s tentative shareholder-derivative analogy. BIO.10-11. Analogizing municipal taxpayers to corporate shareholders does not withstand scrutiny. Pet.17. Yet even if the analogy were accepted, it is insufficient to grant municipal taxpayers Article III standing. As this Court has explained, 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*, 501 U.S. at 125. Corporate-derivative litigation is not, in other words, itself an exception to Article III, so it cannot support a municipal-taxpayer standing exception.

Respondents' effort to cloak their position in the work of amici scholars (BIO.10-11) also backfires. Although they selectively quote snippets from amici's scholarship to make it appear as though the historical record supports Respondents' arguments, they ignore

the scholars' bottom line: On even the most robust application of the shareholder-derivative analogy, plaintiffs such as Respondents lack standing because they have not shown "a financial injury to the municipality." Clopton & Shoked Br.13. Indeed, the scholars urge this Court to grant certiorari because, in their view, the Eighth Circuit's decision is an example of how municipal-taxpayer standing "has strayed too far from its origins." *Id.* at 18.

3. Respondents next contend that municipal-taxpayer standing remains consistent with subsequent legal and factual developments. They first argue that other aspects of the law that treat municipalities differently than States or the federal government—namely, sovereign immunity and liability under 42 U.S.C. § 1983—support a unique exception to Article III standing for municipal taxpayers. BIO.14-15. But Respondents never explain why those wholly distinct doctrines provide any support for relaxing Article III's irreducible requirements—which apply to "all manner" of cases and controversies, *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 378 (2024)—in municipal cases.

Respondents (BIO.15-16) also insist that the pecuniary interest of a typical municipal taxpayer in a typical municipal expenditure is as "direct and immediate" today as it was in *Frothingham*'s time. 262 U.S. at 486. That denies history. Pet.17-18. Worse, Respondents simply ignore the important ways that the *sources* of municipal funds have changed since *Frothingham*, with many municipalities today receiving most of their funding from state and federal sources. Pet.18-19; AFL-CIO Br.12-13.

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Whether one calls it a "repudiat[ion]," *Herrera v. Wyoming*, 587 U.S. 329, 341-42 (2019), or an overruling, municipal-taxpayer standing should "be

revisited—sooner rather than later," *Bauer v. Elrich*, 8 F.4th 291, 304-05 (4th Cir. 2021) (Quattlebaum, J., dissenting). This Petition provides an ideal vehicle for the Court to do so.

II. The Decision Below Implicates Two Acknowledged Circuit Splits That Warrant Review.

The impossibility of reconciling municipal-taxpayer standing with modern standing principles has produced two distinct outcome-determinative circuit splits over the doctrine's scope. Each independently warrants review.

A. As Respondents acknowledge, the circuits are divided over whether a municipal-taxpayer plaintiff challenging a municipal policy must show that the relevant funds come from municipal taxes. Pet.25-26; BIO.27-28. The Eighth Circuit recognized this split as well. App.9a-10a. And Respondents do not dispute that the split is outcome determinative here, as they cannot show that the District necessarily spends municipal-tax dollars on the challenged policy.

Because Respondents cannot deny an outcome-determinative split, they are left to argue that the split is too shallow to warrant this Court's review. In their view, only the Seventh and Eighth Circuits have addressed whether the funding source matters.

But other circuits agree with the Seventh Circuit that municipal-taxpayer standing cannot exist unless municipal-tax dollars are necessarily at stake, in decisions explicitly distinguishing funds that come from municipal-tax dollars from funds that include other revenue sources. Pet.26. And even if the Eighth Circuit had split only from the Seventh, certiorari would be warranted. This Court routinely intervenes to resolve square splits between two circuits. *See, e.g.*, *Cunningham v. Cornell Univ.*, 604 U.S. 693, 700

(2025). And further percolation cannot get at the root of the problem here, which is that the lower courts are faced with contradictory signals sent from two different eras of this Court's jurisprudence—a problem only this Court can solve. Indeed, a century of post-*Frothingham* percolation has made the municipal-taxpayer doctrine murkier, not clearer.

Respondents also criticize *Protect Our Parks* on the merits, arguing that the Seventh Circuit "did not explain any rationale for a taxpayer-funds-only rule" and that "it is difficult to think of . . . one." BIO.28. But it is hardly surprising that *municipal-taxpayer* standing contains a *municipal-taxes* requirement. The municipal-taxpayer exception necessarily rests on the fiction that municipal taxpayers "have an immediate interest in how the municipality spends the resources *they contributed* to the entity." *Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs*, 641 F.3d 197, 223 (6th Cir. 2011) (en banc) (Sutton, J., concurring) (emphasis added). That fiction evaporates when municipal taxes are not necessarily involved. *See Protect Our Parks*, 971 F.3d at 735.

B. Respondents do dispute the existence of a circuit split over whether a municipal-taxpayer plaintiff must show a direct dollars-and-cents (or "pocketbook") injury to the municipality. BIO.19-21. Their argument would surprise all three judges on the Eighth Circuit panel, as both the majority and dissent acknowledged that the circuits are divided on this issue. App.6a,13a. The en banc Sixth Circuit noted the same. *Smith*, 641 F.3d at 212-13.

The Eighth and Sixth Circuits did not mistakenly announce a circuit split on whether the pocketbook-injury requirement applies to municipal taxpayers. In the Seventh Circuit, for example, the court (contrary to Respondents' suggestion at BIO.23) squarely

rejected the plaintiffs' municipal-taxpayer standing, doing so on the ground that municipal taxpayers cannot challenge municipal expenses "defrayed by . . . contributions" from nonmunicipal sources. *ACLU of Ill. v. City of St. Charles*, 794 F.2d 265, 267-68 (7th Cir. 1986). Likewise, in other circuits, a municipal-taxpayer plaintiff has no standing to challenge a municipal policy that imposes only a de minimis fiscal burden on the municipality—and thus no standing to challenge a municipal policy that imposes no fiscal burden at all. *See, e.g.*, *ACLU-NJ v. Township of Wall*, 246 F.3d 258, 262 (3d Cir. 2001) (requiring "more than a potential de minimis drain on tax revenues"); *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 794 (9th Cir. 1999) (en banc) ("more than an incomputable scintilla"). These decisions are impossible to square with the Eighth Circuit's any-municipal-expenditure rule.

Nothing cited in Respondents' brief supports their claim of lower-court unanimity. The circuits may agree that "at least some expenditure of municipal funds" is *necessary* to support municipal-taxpayer standing. BIO.20-21. But only the Eighth Circuit has concluded that such an expenditure is *sufficient*.

Respondents are equally wrong to assert that this case "involves just the same kind of municipal expenditure that all the Circuits accept." BIO.21. As the courts below observed, the union-leave policy at issue is completely self-financing by its express terms—an important fact that Respondents try to suppress by repeatedly saying that reimbursement "ultimately" happened here, BIO.1,18,22,24, as if it were some coincidence. That self-financing mechanism means that the District has never "incurred a financial deficit" because of the policy. App.29a. In at least the Third, Seventh, and Ninth Circuits, that would defeat standing.

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That the lower courts are divided twice over on the scope of municipal-taxpayer standing confirms that this Court should consider this issue—and wait no longer to do so.

III. The Court Should Grant Certiorari.

Respondents do not dispute that municipal-taxpayer standing is a vitally important and recurring issue. Pet.28-30. For good reason. Even before the Eighth Circuit's decision, school districts throughout the country were forced to defend a wide array of policies in federal court against taxpayer challenges. NSAA Br.5 nn.2-5 (citing cases). The decision below "further widen[s] the floodgates" for taxpayers to challenge school-district and other municipal policies with which they disagree. *Id.* at 6.

And as the States' amicus brief points out, the impact of the Eighth Circuit's novel rule goes beyond municipalities. That rule—that a taxpayer-plaintiff can challenge municipal "expenditures" as a "misuse of municipal funds" without having to show that those expenditures are necessarily financed by municipal taxes (App.10a)—inevitably penalizes *States* that choose to deliver public services through their municipalities, as they often do. States' Br.8-13. In other words, the Eighth Circuit has effectively reopened a door to *state*-taxpayer standing under the guise of *municipal*-taxpayer standing.

This case is an ideal vehicle for the Court to answer lower courts' calls to address municipal-taxpayer standing. Pet.30-31. Respondents raise no vehicle problem as to the first question presented. They do assert that there are "complex factual disputes" bearing on *part* of the second question presented. BIO.23. But the lower courts found no factual dispute—let alone a "complex" dispute—over whether Respon-

dents have standing to challenge the union-leave provision in the applicable contract.

Indeed, Respondents acknowledge that the Eighth Circuit's precise holding is that "the substitute-teacher payments *alone* were sufficient to support standing." BIO.25 (emphasis added). That holding is squarely at issue in this case, free from any factual clutter. That is because the substitute-teacher payments are undisputed, as is the fact that "the union reimburses" them as required by the contract's terms. App.5a. To the extent Respondents believe that there are other facts that may somehow give them standing under a *different* legal rule, they can make those arguments on remand if the municipal-taxpayer exception survives in some form.

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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