No. 25A_____

IN THE

Supreme Court of the United States

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

v.

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

APPLICATION TO THE HON. BRETT M. KAVANAUGH FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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APPLICATION FOR EXTENSION OF TIME

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States and Circuit Justice for the United States Court of Appeals for the Eighth Circuit:

1. Pursuant to Supreme Court Rule 13(5), Applicant Anoka Hennepin Education Minnesota (AHEM) respectfully requests a 21-day extension of time, up to and including Wednesday, January 21, 2026, to file a petition for a writ of certiorari. The United States Court of Appeals for the Eighth Circuit issued its opinion and entered judgment on August 11, 2025. The opinion is available at 149 F.4th 990, and a copy is attached in the Appendix (App. 1). The Eighth Circuit denied AHEM's petition for rehearing en banc and panel rehearing on October 2, 2025, a copy of which is also attached in the Appendix (App. 15). AHEM's petition for certiorari is currently due December 31, 2025. This application has been filed on December 10, 2025, more than ten days before the time for filing the petition is set to expire. This Court has jurisdiction under 28 U.S.C. § 1254(1) to review the decision of the Eighth Circuit.

2. This case presents the important question of whether this Court should repudiate its statement in *Frothingham v. Mellon*, 262 U.S. 447, 486–87 (1923), that there is a municipal-taxpayer exception to the general rule against taxpayer standing and, if it does not, whether a municipal taxpayer seeking to sue in federal court must at least show that the challenged policy is funded by uniquely municipal taxes and imposes a measurable cost on the municipality.

3. Respondents Don Huizenga and Jim Bendtsen are municipal taxpayers of Respondent Independent School District No. 11, a school district in the north

suburbs of Minneapolis, Minnesota. They brought suit in federal court to challenge a provision of the collective bargaining agreement between the District and the labor union representing its teachers, AHEM, which allows teachers to collectively take up to 100 days per year of paid leave for union business. Under the provision, AHEM is required to fully reimburse the District for the costs of hiring a substitute teacher as a result of the policy. Huizenga and Bendtsen sued solely in their capacity as taxpayers, alleging that the leave provision violates the First Amendment of the U.S. Constitution, as well as state law.

4. The district court held that Huizenga and Bendtsen lacked standing. The court started from the premise that, while the general rule is that plaintiffs cannot maintain a lawsuit based solely on taxpayer status, municipal-taxpayer standing is an exception to that rule. But the court concluded that Huizenga and Bendtsen nonetheless lacked standing for two independent reasons: First, they had not shown an injury-in-fact, since the District does not incur any out-of-pocket loss because of the union leave provision; and second, they had not satisfied the traceability requirement because they had not tied any particular District expenditure to uniquely municipal tax revenues.

5. In a 2-1 decision, the Eighth Circuit reversed. Citing this Court's decision in *Frothingham*, the court of appeals first observed that "[m]unicipal taxpayer standing is an exception to [the] general rule" that "the taxpayer's interest 'in seeing that Treasury funds are spent in accordance with the Constitution does not give rise to the kind of redressable "personal injury" required for Article III

standing.'" App. 3 (quoting *Ams. United for Separation of Church & State v. Prison Fellowship Ministries, Inc.*, 509 F.3d 406, 419–20 (8th Cir. 2007)). It then held that Huizenga and Bendtsen could avail themselves of that exception because, in the court of appeals' view, a municipal taxpayer can challenge a municipal policy in federal court simply by showing that the policy results in "some expenditure . . . paid by local taxpayer dollars," App. 7—even where, as here, the challenged policy is designed to (and in fact does) fully reimburse the municipality for that expenditure.

In so holding, the court of appeals acknowledged that there were two separate circuit splits on the scope of municipal-taxpayer standing. The first circuit split is whether a municipal-taxpayer plaintiff must bring a "good-faith pocketbook action" to satisfy Article III's injury-in-fact requirement—*i.e.*, that the plaintiff must show that the municipality incurs an out-of-pocket loss by reason of the challenged policy. The Eighth Circuit—over Judge Shepherd's dissent—answered no. App. 5, 11–12. The second circuit split is whether a municipal-taxpayer plaintiff must show that uniquely municipal taxpayer dollars are financing the challenged policy, as opposed to commingled funds that would be more than sufficient to finance the policy even without any contribution from municipal tax sources. The Eighth Circuit again answered no. App. 8–9.

6. It is past time for this Court to squarely address whether municipal taxpayers should be subject to different requirements than federal and state taxpayers to bring suit in federal court. This Court has established a clear rule that, outside a narrow category of Establishment Clause cases, neither federal nor state

taxpayers have standing to assert a "generalized grievance" that is "undifferentiated and common to all members of the public," *United States v. Richardson*, 418 U.S. 166, 176–77 (1974) (cleaned up); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006) ("The . . . rationale for rejecting federal taxpayer standing applies with undiminished force to state taxpayers."). But the lower courts uniformly have held that rule to be inapplicable to municipal taxpayers, declaring themselves constrained by this Court's statement in *Frothingham*—a case that involved only federal taxpayer plaintiffs—that "[t]he interest of a taxpayer of a municipality in the application of its moneys is direct and immediate and the remedy by injunction to prevent their misuse is . . . the rule of this Court." 262 U.S. at 486 (citing *Crampton v. Zabriskie*, 101 U.S. 601, 609 (1879)). As then-Judge Barrett observed, the municipal-taxpayer exception has become "increasingly anomalous," particularly given that this Court "has never explained why municipal taxpayers are differently situated—and it might find that difficult to do." *Protect Our Parks, Inc. v. Chi. Park Dist.*, 971 F.3d 722, 733–34 (7th Cir. 2020).

7. Because lower courts have been faced with the daunting task of attempting to harmonize the municipal-taxpayer exception with modern Article III standing doctrine, it is unsurprising that they have splintered over the scope of the exception. But the Eighth Circuit has now taken what is by far the most expansive view of the exception, permitting a municipal taxpayer to challenge any municipal policy involving any "expenditure" of government funds in federal court, even if the funds do not derive from uniquely municipal taxes and even if the policy ensures that

the government receives full reimbursement for that expenditure. For these reasons and others, AHEM submits that this case warrants the Court's attention.

8. Good cause exists for the requested 21-day extension, as additional time is necessary to prepare a petition for certiorari in this case because the attorneys working on this petition have other competing deadlines and pre-planned travel between now and December 31, which is the current due date of the petition.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including January 21, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,

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