ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION v. WINN
131 Sup. Ct. 1436 (2011)

Justice Kennedy delivered the opinion of the Court.

Arizona provides tax credits for contributions to school tuition organizations, or STOs. STOs use these contributions to provide scholarships to students attending private schools, many of which are religious. Respondents are a group of Arizona taxpayers who challenge the STO tax credit as a violation of Establishment Clause principles.

To obtain a determination on the merits in federal court, parties seeking relief must show that they have standing under Article III of the Constitution. Respondents contend that they have standing to challenge Arizona's STO tax credit for one and only one reason: because they are Arizona taxpayers. But the mere fact that a plaintiff is a taxpayer is not generally deemed sufficient to establish standing in federal court. To overcome that rule, respondents must rely on an exception created in Flast v. Cohen, 392 U. S. 83 (1968). For the reasons discussed below, respondents cannot take advantage of Flast's narrow exception to the general rule against taxpayer standing. As a consequence, respondents lacked standing to commence this action, and their suit must be dismissed for want of jurisdiction.

I

Respondents challenged §43-1089, a provision of the Arizona Tax Code. Section 43-1089 allows Arizona taxpayers to obtain dollar-for-dollar tax credits of up to $500 per person and $1,000 per married couple for contributions to STOs. If the credit exceeds an individual's tax liability, the unused portion can be carried forward up to five years. Under a version of §43-1089 in effect during the pendency of this lawsuit, a charitable organization could be deemed an STO only upon certain conditions. The organization was required to be exempt from federal taxation under §501(c)(3) of the Internal Revenue Code. It could not limit its scholarships to students attending only one school. And it had to allocate "at least ninety per cent of its annual revenue for educational scholarships or tuition grants" to children attending a private school in Arizona that did not discriminate on the basis of race, color, handicap, familial status, or national origin.

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III

Absent special circumstances, standing cannot be based on a plaintiff's mere status as a taxpayer. Recent decisions have explained that claims of taxpayer standing rest on unjustifiable economic and political speculation. When a government expends resources or declines to impose a tax, its budget does not necessarily suffer. Difficulties persist even if one assumes that an expenditure or tax benefit depletes the government's coffers. To find injury, a court must speculate "that elected officials will increase a taxpayer-plaintiff's tax bill to make up a deficit." And to find redressability, a court must assume that, were the remedy the taxpayers seek to be allowed, "legislators will pass along the supposed increased revenue in the form of tax reductions." It would be "pure speculation" to conclude that an injunction against a government expenditure or tax benefit "would result in any actual tax relief" for a taxpayer-plaintiff.

These well-established principles apply to the present cases. Respondents may be right that Arizona's STO tax credits have an estimated annual value of over $50 million. That, however, is just the beginning of the analysis. By helping students obtain scholarships to private schools, both religious and secular, the STO program might relieve the burden placed on Arizona's public schools. The result could be an immediate and permanent cost savings for the State. Underscoring the potential financial benefits of the STO program, the average value of an STO scholarship may be far less than the average cost of educating an Arizona public school student. Because it encourages scholarships for attendance at private schools, the STO tax credit may not cause the State to incur any financial loss.

Even assuming the STO tax credit has an adverse effect on Arizona's annual budget, problems would remain. To conclude there is a particular injury in fact would require speculation that Arizona lawmakers react to revenue shortfalls by increasing respondents' tax liability. A finding of causation would depend on the additional determination that any tax increase would be traceable to the STO tax credits, as distinct from other governmental expenditures or other tax benefits. Respondents have not established that an injunction against application of the STO tax credit would prompt Arizona legislators to "pass along the supposed increased revenue in the form of tax reductions." Those matters, too, are conjectural.

Each of the inferential steps to show causation and redressability depends on premises as to which there remains considerable doubt. The taxpayers have not shown that any interest they have in protecting the State Treasury would be advanced. Even were they to show some closer link, that interest is still of a general character, not particular to certain persons. Nor have the taxpayers shown that higher taxes will result from the tuition credit scheme. The rule against taxpayer standing, a rule designed both to avoid speculation and to insist on particular injury, applies to respondents' lawsuit. The taxpayers, then, must rely on an exception to the rule, an exception next to be considered.

The primary contention of respondents, of course, is that, despite the general rule that taxpayers lack standing to object to expenditures alleged to be unconstitutional, their suit falls within the exception established by Flast v. Cohen. It must be noted at the outset that Flast's holding provides a "narrow exception" to "the general rule against taxpayer standing."

Flast held that taxpayers have standing when two conditions are met. The first condition is that there must be a "logical link" between the plaintiff's taxpayer status "and the type of legislative enactment attacked." This condition was not satisfied in Doremus v. Board of Ed. of Hawthorne, 342 U. S. 429 (1952), because the statute challenged in that case--providing for the recitation of Bible passages in public schools--involved at most an "incidental expenditure of tax funds." In Flast, by contrast, the allegation was that the Federal Government violated the Establishment Clause in the exercise of its legislative authority both to collect and spend tax dollars. In the decades since Flast, the Court has been careful to enforce this requirement. See Hein, 551 U. S. 587; Valley Forge, 454 U. S. 464.

The second condition for standing under Flast is that there must be "a nexus" between the plaintiff's taxpayer status and "the precise nature of the constitutional infringement alleged." This condition was deemed satisfied in Flast based on the allegation that Government funds had been spent on an outlay for religion in contravention of the Establishment Clause.

After stating the two conditions for taxpayer standing, Flast considered them together, explaining that individuals suffer a particular injury for standing purposes when, in violation of the Establishment Clause and by means of "the taxing and spending power," their property is transferred through the Government's Treasury to a sectarian entity. Flast thus "understood the 'injury' alleged in Establishment Clause challenges to federal spending to be the very 'extract[ion] and spen[ding]' of 'tax money' in aid of religion alleged by a plaintiff." "Such an injury," Flast continued, is unlike "generalized grievances about the conduct of government" and so is "appropriate for judicial redress."

Respondents contend that the STO tax credit is, for Flast purposes, best understood as a governmental expenditure. That is incorrect. It is easy to see that tax credits and governmental expenditures can have similar economic consequences, at least for beneficiaries whose tax liability is sufficiently large to take full advantage of the credit. Yet tax credits and governmental expenditures do not both implicate individual taxpayers in sectarian activities. A dissenter whose tax dollars are "extracted and spent" knows that he has in some small measure been made to contribute to an establishment in violation of conscience. In that instance the taxpayer's direct and particular connection with the establishment does not depend on economic speculation or political conjecture. The connection would exist even if the conscientious dissenter's tax liability were unaffected or reduced. When the government declines to impose a tax, by contrast, there is no such connection between dissenting taxpayer and alleged establishment. Any financial injury remains speculative. And awarding some citizens a tax credit allows other citizens to retain control over their own funds in accordance with their own consciences.

The distinction between governmental expenditures and tax credits refutes respondents' assertion of standing. When Arizona taxpayers choose to contribute to STOs, they spend their own money, not money the State has collected from respondents or from other taxpayers. Arizona's §43-1089 does not "extrac[t] and spen[d]" a conscientious dissenter's funds in service of an establishment, or " 'force a citizen to contribute three pence only of his property' " to a sectarian organization (quoting Writings of James Madison). On the contrary, respondents and other Arizona taxpayers remain free to pay their own tax bills, without contributing to an STO. Respondents are likewise able to contribute to an STO of their choice, either religious or secular. And respondents also have the option of contributing to other charitable organizations, in which case respondents may become eligible for a tax deduction or a different tax credit. The STO tax credit is not tantamount to a religious tax or to a tithe and does not visit the injury identified in Flast. It follows that respondents have neither alleged an injury for standing purposes under general rules nor met the Flast exception. Finding standing under these circumstances would be a departure from Flast's stated rationale.

Furthermore, respondents cannot satisfy the requirements of causation and redressability. When the government collects and spends taxpayer money, governmental choices are responsible for the transfer of wealth. In that case a resulting subsidy of religious activity is, for purposes of Flast, traceable to the government's expenditures. And an injunction against those expenditures would address the objections of conscience raised by taxpayer-plaintiffs. Here, by contrast, contributions result from the decisions of private taxpayers regarding their own funds. Private citizens create private STOs; STOs choose beneficiary schools; and taxpayers then contribute to STOs. While the State, at the outset, affords the opportunity to create and contribute to an STO, the tax credit system is implemented by private action and with no state intervention. Objecting taxpayers know that their fellow citizens, not the State, decide to contribute and in fact make the contribution. These considerations prevent any injury the objectors may suffer from being fairly traceable to the government. And while an injunction against application of the tax credit most likely would reduce contributions to STOs, that remedy would not affect noncontributing taxpayers or their tax payments. As a result, any injury suffered by respondents would not be remedied by an injunction limiting the tax credit's operation.

Resisting this conclusion, respondents suggest that Arizonans who benefit from §43-1089 tax credits in effect are paying their state income tax to STOs. In respondents' view, tax credits give rise to standing even if tax deductions do not, since only the former yield a dollar-for-dollar reduction in final tax liability. But what matters under Flast is whether sectarian STOs receive government funds drawn from general tax revenues, so that moneys have been extracted from a citizen and handed to a religious institution in violation of the citizen's conscience. Under that inquiry, respondents' argument fails. Like contributions that lead to charitable tax deductions, contributions yielding STO tax credits are not owed to the State and, in fact, pass directly from taxpayers to private organizations. Respondents' contrary position assumes that income should be treated as if it were government property even if it has not come into the tax collector's hands. That premise finds no basis in standing jurisprudence. Private bank accounts cannot be equated with the Arizona State Treasury.

The conclusion that the Flast exception is inapplicable at first may seem in tension with several earlier cases, all addressing Establishment Clause issues and all decided after Flast. See Mueller, 463 U. S. 388; Nyquist v. Mauclet, 432 U. S. 1 (1977); Hunt v. McNair, 413 U. S. 734 (1973); Walz v. Tax Comm'n of City of New York, 397 U. S. 664 (1970). But those cases do not mention standing and so are not contrary to the conclusion reached here.

Furthermore, if a law or practice, including a tax credit, disadvantages a particular religious group or a particular nonreligious group, the disadvantaged party would not have to rely on Flast to obtain redress for a resulting injury. See Texas Monthly, Inc. v. Bullock, 489 U. S. at 8 (plurality opinion) (finding standing where a general interest magazine sought to recover tax payments on the ground that religious periodicals were exempt from the tax). Because standing in Establishment Clause cases can be shown in various ways, it is far from clear that any nonbinding sub silentio holdings in the cases respondents cite would have depended on Flast. That the plaintiffs in those cases could have advanced arguments for jurisdiction independent of

Flast makes it particularly inappropriate to determine whether or why standing should have been found where the issue was left unexplored.

If an establishment of religion is alleged to cause real injury to particular individuals, the federal courts may adjudicate the matter. That requirement has not been satisfied here.

Justice Scalia, with whom Justice Thomas joins, concurring.

Taxpayers ordinarily do not have standing to challenge federal or state expenditures that allegedly violate the Constitution. In Flast v. Cohen, we created a narrow exception. Today's majority and dissent struggle with whether respondents' challenge falls within that narrow exception. Flast is an anomaly in our jurisprudence. I would repudiate that misguided decision. I nevertheless join the Court's opinion because it finds respondents lack standing.

Justice Kagan, with whom Justices Ginsburg, Breyer, and Sotomayor join, dissenting.

Since its inception, the Arizona private-school-tuition tax credit has cost the State nearly $350 million in diverted tax revenue. The Arizona taxpayers who instituted this suit (collectively, Plaintiffs) allege that the use of these funds to subsidize school tuition organizations (STOs) breaches the Establishment Clause's promise of religious neutrality. Many of these STOs, the Plaintiffs claim, discriminate on the basis of a child's religion when awarding scholarships.

For almost half a century, litigants like the Plaintiffs have obtained judicial review of claims that the government has used its taxing and spending power in violation of the Establishment Clause. Beginning in Flast v. Cohen, and continuing in case after case for over four decades, this Court and others have exercised jurisdiction to decide taxpayer-initiated challenges not materially different from this one.

Today, the Court breaks from this precedent by refusing to hear taxpayers' claims that the government has unconstitutionally subsidized religion through its tax system. These litigants lack standing, the majority holds, because the funding of religion they challenge comes from a tax credit, rather than an appropriation. A tax credit, the Court asserts, does not injure objecting taxpayers, because it "does not extract and spend [their] funds in service of an establishment."

This novel distinction in standing law between appropriations and tax expenditures has as little basis in principle as it has in our precedent. Cash grants and targeted tax breaks are means of accomplishing the same government objective--to provide financial support to select individuals or organizations. Taxpayers who oppose state aid of religion have equal reason to protest whether that aid flows from the one form of subsidy or the other. Either way, the government has financed the religious activity. And so either way, taxpayers should be able to challenge the subsidy.

Still worse, the Court's arbitrary distinction threatens to eliminate all occasions for a taxpayer to contest the government's monetary support of religion. Precisely because appropriations and tax breaks can achieve identical objectives, today's opinion enables the government to end-run Flast's guarantee of access to the Judiciary. From now on, the government need follow just one simple rule--subsidize through the tax system--to preclude taxpayer challenges to state funding of religion.

And that result--the effective demise of taxpayer standing--will diminish the Establishment Clause's force and meaning. Sometimes, no one other than taxpayers has suffered the injury necessary to challenge government sponsorship of religion. Today's holding therefore will prevent federal courts from determining whether some subsidies to sectarian organizations comport with our Constitution's guarantee of religious neutrality. Because I believe these challenges warrant consideration on the merits, I respectfully dissent.

I

Taxpayers have standing, Flast held, when they allege that a statute enacted pursuant to the legislature's taxing and spending power violates the Establishment Clause. In this situation, the Court explained, a plaintiff can establish a two-part nexus "between the [taxpayer] status asserted and the claim sought to be adjudicated." First, by challenging legislative action taken under the taxing and spending clause, the taxpayer shows "a logical link between [her] status and the type of ... enactment attacked." Second, by invoking the Establishment Clause--a specific limitation on the legislature's taxing and spending power--the taxpayer demonstrates "a nexus between [her] status and the precise nature of the constitutional infringement alleged." Because of these connections, Flast held, taxpayers alleging that the government is using tax proceeds to aid religion have "the necessary stake ... in the outcome of the litigation to satisfy Article III."

That simple restatement of the Flast standard should be enough to establish that the Plaintiffs have standing. They attack a provision of the Arizona tax code that the legislature enacted pursuant to the State Constitution's taxing and spending clause (Flast nexus, part 1). And they allege that this provision violates the Establishment Clause (Flast nexus, part 2). By satisfying both of Flast's conditions, the Plaintiffs have demonstrated their "stake as taxpayers" in enforcing constitutional restraints on the provision of aid to STOs. Finding standing here is merely a matter of applying Flast.

II

The majority reaches a contrary decision by distinguishing between two methods of financing religion: A taxpayer has standing to challenge state subsidies to religion, the Court announces, when the mechanism used is an appropriation, but not when the mechanism is a

targeted tax break, otherwise called a "tax expenditure."[1] In the former case, but not in the latter, the Court declares, the taxpayer suffers cognizable injury.

But this distinction finds no support in case law, and just as little in reason. In the decades since Flast, no court--not one--has differentiated between appropriations and tax expenditures in deciding whether litigants have standing. Over and over again, courts (including this one) have faced Establishment Clause challenges to tax credits, deductions, and exemptions; over and over again, these courts have reached the merits of these claims. And that is for a simple reason: Taxpayers experience the same injury for standing purposes whether government subsidization of religion takes the form of a cash grant or a tax measure. The only rationale the majority offers for its newfound distinction--that grants, but not tax expenditures, somehow come from a complaining taxpayer's own wallet--cannot bear the weight the Court places on it. If Flast is still good law--and the majority today says nothing to the contrary--then the Plaintiffs should be able to pursue their claim on the merits.

Until today, this Court has never so much as hinted that litigants in the same shoes as the Plaintiffs lack standing under Flast. To the contrary: We have faced the identical situation five times and we have five times resolved the suit without questioning the plaintiffs' standing. Lower federal courts have followed our example and handled the matter in the same way. I have not found any instance of a court dismissing such a claim for lack of standing.

Consider the five cases in which this Court entertained suits filed by taxpayers alleging that tax expenditures unlawfully subsidized religion. We first took up such a challenge in Walz v. Tax Comm'n of City of New York, 397 U. S. 664 (1970), where we upheld the constitutionality of a property tax exemption for religious organizations. Next, in Hunt v. McNair, 413 U. S. 734 (1973), we decided that the Establishment Clause permitted a state agency to issue tax-exempt bonds to sectarian institutions. The same day, in Committee for Public Ed. & Religious Liberty v. Nyquist, 413 U. S. 756 (1973), we struck down a state tax deduction for parents who paid tuition at religious and other private schools. A decade later, in Mueller v. Allen, 463 U. S. 388 (1983), we considered, but this time rejected, a similar Establishment Clause challenge to a state tax deduction for expenses incurred in attending such schools. And most recently, we decided a preliminary issue in this very case, ruling that the Tax Injunction Act posed no barrier to the Plaintiffs' litigation of their Establishment Clause claim. See Hibbs v. Winn, 542 U. S. 88 (2004) (Winn I). The Court in all five of these cases divided sharply on the merits. But in one respect, the Justices were unanimous: Not a single one thought to question the litigants' standing.

The Solicitor General, participating here as amicus curiae, conceded at oral argument that under the Federal Government's--and now the Court's--view of taxpayer standing, each of these five cases should have been dismissed for lack of jurisdiction.

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[1] "Tax expenditures" are monetary subsidies the government bestows on particular individuals or organizations by granting them preferential tax treatment.

"[The Court:] So if you are right, ... the Court was without authority to decide Walz, Nyquist, Hunt, Mueller, [and] Hibbs [v. Winn,] this very case, just a few years ago? ... .

[Solicitor General:] Right... . [M]y answer to you is yes.

[The Court:] I just want to make sure I heard your answer to the--you said the answer is yes. In other words, you agree ... those cases were wrongly decided... . [Y]ou would have said there would have been no standing in those cases.

[Solicitor General:] No taxpayer standing." Tr. of Oral Arg. 10-12.

Nor could the Solicitor General have answered differently. Each of these suits, as described above, alleged that a state tax expenditure violated the Establishment Clause. And each relied only on taxpayer standing as the basis for federal-court review. The Court today speculates that "the plaintiffs in those cases could have advanced arguments for jurisdiction independent of Flast." But whatever could have been, in fact not one of them did so.

And the Court itself understood the basis of standing in these five cases. This and every federal court has an independent obligation to consider standing, even when the parties do not call it into question. To do anything else would risk an unlawful exercise of judicial authority. And in these cases the Court had an additional prompt: In several of them, amici, including the United States, contested--or at least raised as a question--the plaintiffs' standing as taxpayers to pursue their claims. The Court, moreover, was well aware at the time of the issues presented by taxpayer standing. Indeed, the decisions on their face reflect the Court's recognition of what gave the plaintiffs standing; in each, we specifically described the plaintiffs as taxpayers who challenged the use of the tax system to fund religious activities. In short, we considered and decided all these cases because we thought taxpayer standing existed.

The majority shrugs off these decisions because they did not discuss what was taken as obvious. But we have previously stressed that the Court should not "disregard the implications of an exercise of judicial authority assumed to be proper for over 40 years." And that principle has extra force here, because we have relied on some of these decisions to support the Court's jurisdiction in other cases. Pause on that for a moment: The very decisions the majority today so easily dismisses are featured in our prior cases as exemplars of jurisdiction. So in School Dist. of Grand Rapids v. Ball, 473 U. S. 373 (1985), we relied on Nyquist and Hunt to conclude that taxpayers had standing to challenge a program of aid to religious and other private schools. And in Winn I (recall, an earlier iteration of this case), we rejected a different jurisdictional objection in part by relying on Mueller and Nyquist. We called those cases "adjudications of great moment discerning no [jurisdictional] barrier" and warned that they could not "be written off as reflecting nothing more than unexamined custom or unthinking habit." Until today, that is--when the majority does write off these adjudications and reaches a result against all precedent.

Our taxpayer standing cases have declined to distinguish between appropriations and tax expenditures for a simple reason: Here, as in many contexts, the distinction is one in search of a difference. To begin to see why, consider an example far afield from Flast and, indeed, from religion. Imagine that the Federal Government decides it should pay hundreds of billions of dollars to insolvent banks in the midst of a financial crisis. Suppose, too, that many millions of taxpayers oppose this bailout on the ground that it uses their hard-earned money to reward irresponsible business behavior. In the face of this hostility, some Members of Congress make the following proposal: Rather than give the money to banks via appropriations, the Government will allow banks to subtract the exact same amount from the tax bill they would otherwise have to pay to the U. S. Treasury. Would this proposal calm the furor? Or would most taxpayers respond by saying that a subsidy is a subsidy (or a bailout is a bailout), whether accomplished by the one means or by the other? Surely the latter; indeed, we would think the less of our countrymen if they failed to see through this cynical proposal.

And what ordinary people would appreciate, this Court's case law also recognizes--that targeted tax breaks are often "economically and functionally indistinguishable from a direct monetary subsidy." Tax credits, deductions, and exemptions provided to an individual or organization have "much the same effect as a cash grant to the [recipient] of the amount of tax it would have to pay" absent the tax break. "Our opinions," therefore, "have long recognized ... the reality that [tax expenditures] are a form of subsidy that is administered through the tax system." Or again: Tax breaks "can be viewed as a form of government spending," even assuming the diverted tax funds do not pass through the public treasury.

Consider some further examples of the point, but this time concerning state funding of religion. Suppose a State desires to reward Jews--by, say, $500 per year--for their religious devotion. Should the nature of taxpayers' concern vary if the State allows Jews to claim the aid on their tax returns, in lieu of receiving an annual stipend? Or assume a State wishes to subsidize the ownership of crucifixes. It could purchase the religious symbols in bulk and distribute them to all takers. Or it could mail a reimbursement check to any individual who buys her own and submits a receipt for the purchase. Or it could authorize that person to claim a tax credit equal to the price she paid. Now, really--do taxpayers have less reason to complain if the State selects the last of these three options? The Court today says they do, but that is wrong. The effect of each form of subsidy is the same, on the public fisc and on those who contribute to it. Regardless of which mechanism the State uses, taxpayers have an identical stake in ensuring that the State's exercise of its taxing and spending power complies with the Constitution.

Here, the mechanism Arizona has selected is a dollar-for-dollar tax credit to aid school tuition organizations. Each year come April 15, the State tells Arizonans: Either pay the full amount of your tax liability to the State, or subtract up to $500 from your tax bill by contributing that sum to an STO. To claim the credit, an individual makes a notation on her tax return and splits her tax payment into two checks, one made out to the State and the other to the STO. The STO payment is therefore "costless" to the individual; it comes out of what she otherwise would be legally obligated to pay the State--hence, out of public resources. And STOs capitalize on this

aspect of the tax credit for all it is worth. To drum up support, STOs highlight that "donations" are made not with an individual's own, but with other people's--i.e., taxpayers'--money. And so Arizonans do just that. By the State's reckoning, from 1998 to 2008 the credit cost Arizona almost $350 million in redirected tax revenue.

The Plaintiffs contend that this expenditure violates the Establishment Clause. If the legislature had appropriated these monies for STOs, the Plaintiffs would have standing to argue the merits of their claim in federal court. But the Plaintiffs have no such recourse, the Court today holds, because Arizona funds STOs through a tax credit rather than a cash grant. No less than in the hypothetical examples offered above, here too form prevails over substance, and differences that make no difference determine access to the Judiciary. And the casualty is a historic and vital method of enforcing the Constitution's guarantee of religious neutrality.

The majority offers just one reason to distinguish appropriations and tax expenditures: A taxpayer experiences injury, the Court asserts, only when the government "extracts and spends" her very own tax dollars to aid religion. In other words, a taxpayer suffers legally cognizable harm if but only if her particular tax dollars wind up in a religious organization's coffers. And no taxpayer can make this showing, the Court concludes, if the government subsidizes religion through tax credits, deductions, or exemptions (rather than through appropriations).[2]

The majority purports to rely on Flast to support this new "extraction" requirement. It plucks the three words "extrac[t] and spen[d]" from the midst of the Flast opinion, and suggests that they severely constrict the decision's scope. But as indicated earlier, everything of import in Flast cuts against the majority's position. Here is how Flast primarily justified its holding: "[O]ne of the specific evils feared by those who drafted the Establishment Clause and fought for its adoption was that the taxing and spending power would be used to favor one religion over another or to support religion in general." That evil arises even if the specific dollars that the government uses do not come from citizens who object to the preference. Likewise, the two-part nexus test, which is the heart of Flast's doctrinal analysis, contains no hint of an extraction requirement. So the majority is left with nothing, save for three words Flast used to describe the particular facts in that case: In not a single non-trivial respect could the Flast Court recognize its handiwork in the majority's depiction.

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[2] Even taken on its own terms, the majority's reasoning does not justify the conclusion that the Plaintiffs lack standing. Arizona's tuition-tax-credit program in fact necessitates the direct expenditure of funds from the state treasury. After all, the statute establishing the initiative requires the Arizona Department of Revenue to certify STOs, maintain an STO registry, make the registry available to the public on request and post it on a website, collect annual reports filed by STOs, and send written notice to STOs that have failed to comply with statutory requirements. Presumably all these activities cost money, which comes from the state treasury. But applying the majority's theory in this way reveals the hollowness at its core. Can anyone believe that the Plaintiffs have suffered injury through the costs involved in administering the program, but not through the far greater costs of granting the tax expenditure in the first place?

The injury to taxpayers that Flast perceived arose whenever the legislature used its taxing-and-spending power to channel tax dollars to religious activities. In that and subsequent cases (including the five in this Court involving tax expenditures), a taxpayer pleaded the requisite harm by stating that public resources were funding religion; the tracing of particular dollars did not enter into the question. And for all the reasons already given, that standard is met regardless whether the funding is provided via cash grant or tax expenditure. Taxpayers pick up the cost of the subsidy in either form. So taxpayers have an interest in preventing the use of either mechanism to infringe religious neutrality.

Indeed, the majority's new conception of injury is at odds not merely with Flast, but also (if ironically) with our cases precluding taxpayer standing generally. Today's majority insists that legislation challenged under the Establishment Clause must "extrac[t] and spen[d] a conscientious dissenter's funds." But we have rejected taxpayer standing in other contexts because each taxpayer's share of treasury funds is "minute and indeterminable." No taxpayer can point to an expenditure (by cash grant or otherwise) and say that her own tax dollars are in the mix; in fact, they almost surely are not. "[I]t is," as we have noted, "a complete fiction to argue that an unconstitutional ... expenditure causes an individual ... taxpayer any measurable economic harm." That is as true in Establishment Clause cases as in any others. Taxpayers have standing in these cases despite their foreseeable failure to show that the alleged constitutional violation involves their own tax dollars, not because the State has used their particular funds.

James Madison had something important to say about the matter of "extraction." Madison's Memorial and Remonstrance criticized a tax levy proposed in Virginia to aid teachers of the Christian religion. But Madison's passionate opposition to that proposal informs this case in a manner different than the majority suggests. The Virginia tax in fact would not have extracted any monies (not even "three pence") from unwilling citizens, as the Court now requires. The plan allowed conscientious objectors to opt out of subsidizing religion by contributing their assessment to an alternative fund for the construction and maintenance of county schools. Indeed, the Virginia Assessment was specifically "designed to avoid any charges of coercion of dissenters to pay taxes to support religious teachings with which they disagreed."

In this respect, the Virginia Assessment is just like the Arizona tax credit. Although both funnel tax funds to religious organizations (and so saddle all taxpayers with the cost), neither forces any given taxpayer to pay for the subsidy out of her pocket. Madison thought that feature of the Assessment insufficient to save it. By relying on the selfsame aspect of the Arizona scheme to deny the Plaintiffs' claim of injury, the majority betrays Madison's vision.

III

Today's decision devastates taxpayer standing in Establishment Clause cases. The government, after all, often uses tax expenditures to subsidize favored persons and activities. Still more, the government almost always has this option. Appropriations and tax subsidies are readily interchangeable; what is a cash grant today can be a tax break tomorrow. The Court's

opinion thus offers a roadmap--more truly, just a one-step instruction--to any government that wishes to insulate its financing of religious activity from legal challenge. Structure the funding as a tax expenditure, and Flast will not stand in the way. No taxpayer will have standing to object. However blatantly the government may violate the Establishment Clause, taxpayers cannot gain access to the federal courts.

And by ravaging Flast in this way, today's decision damages one of this Nation's defining constitutional commitments. "Congress shall make no law respecting an establishment of religion"--ten simple words that have stood for over 200 years as a foundation stone of American religious liberty. Ten words that this Court has long understood, as James Madison did, to limit (though by no means eliminate) the government's power to finance religious activity. The Court's ruling today will not shield all state subsidies for religion from review; as the Court notes, some persons alleging Establishment Clause violations have suffered individualized injuries, and therefore have standing, independent of their taxpayer status. But Flast arose because "the taxing and spending power [may] be used to favor one religion over another or to support religion in general" without causing particularized harm to discrete persons. It arose because state sponsorship of religion sometimes harms individuals only in their capacity as contributing members of our national community. In those cases, the Flast Court thought, our Constitution's guarantee of religious neutrality still should be enforced.