

SCALIA, J., concurring

SUPREME COURT OF THE UNITED STATES

Nos. 09–987 and 09–991

ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZA-
TION, PETITIONER

09–987

v.

KATHLEEN M. WINN ET AL.

GALE GARRIOTT, DIRECTOR, ARIZONA DEPART-
MENT OF REVENUE, PETITIONER

09–991

v.

KATHLEEN M. WINN ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April 4, 2011]

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. See *DaimlerChrysler Corp. v. Cuno*, 547 U. S. 332, 343–345 (2006). In *Flast v. Cohen*, 392 U. S. 83 (1968), we created a narrow exception for taxpayers raising Establishment Clause challenges to government expenditures. Today’s majority and dissent struggle with whether respondents’ challenge to the Arizona tuition tax credit falls within that narrow exception. Under a principled reading of Article III, their struggles are unnecessary. *Flast* is an anomaly in our jurisprudence, irreconcilable with the Article III restrictions on federal judicial power that our opinions have established. I would repudiate that misguided decision and enforce the Constitution. See *Hein v. Freedom From Religion Foundation, Inc.*, 551 U. S.

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WINN

SCALIA, J., concurring

587, 618 (2007) (SCALIA, J., concurring in judgment).

I nevertheless join the Court's opinion because it finds respondents lack standing by applying *Flast* rather than distinguishing it away on unprincipled grounds. Cf. *Hein*, *supra*, at 628–631.