

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

Nos. 09–987 and 09–991

ARIZONA CHRISTIAN SCHOOL TUITION ORGANIZATION, PETITIONER

09–987

v.

KATHLEEN M. WINN ET AL.

GALE GARRIOTT, DIRECTOR, ARIZONA DEPARTMENT 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 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 under the First and Fourteenth Amendments. After the Arizona Supreme Court rejected a similar Establishment Clause claim on the merits, respondents sought intervention from the Federal Judiciary.

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. Standing in Estab-

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lishment Clause cases may be shown in various ways. Some plaintiffs may demonstrate standing based on the direct harm of what is claimed to be an establishment of religion, such as a mandatory prayer in a public school classroom. See *School Dist. of Abington Township v. Schempp*, 374 U. S. 203, 224, n. 9 (1963). Other plaintiffs may demonstrate standing on the ground that they have incurred a cost or been denied a benefit on account of their religion. Those costs and benefits can result from alleged discrimination in the tax code, such as when the availability of a tax exemption is conditioned on religious affiliation. See *Texas Monthly, Inc. v. Bullock*, 489 U. S. 1, 8 (1989) (plurality opinion).

For their part, 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. See 1997 Ariz. Sess. Laws §43–1087, codified, as amended, Ariz. Rev. Stat. Ann. §43–1089 (West Supp. 2010). 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. §43–1089(A). If the credit exceeds an individual's tax liability, the credit's unused portion can be carried forward up to five years. §43–1089(D). Under a

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version of §43–1089 in effect during the pendency of this lawsuit, a charitable organization could be deemed an STO only upon certain conditions. See §43–1089 (West 2006). The organization was required to be exempt from federal taxation under §501(c)(3) of the Internal Revenue Code of 1986. §43–1089(G)(3) (West Supp. 2005). It could not limit its scholarships to students attending only one school. *Ibid.* And it had to allocate “at least ninety per cent of its annual revenue for educational scholarships or tuition grants” to children attending qualified schools. *Ibid.* A “qualified school,” in turn, was defined in part as a private school in Arizona that did not discriminate on the basis of race, color, handicap, familial status, or national origin. §43–1089(G)(2).

In an earlier lawsuit filed in state court, Arizona taxpayers challenged §43–1089, invoking both the United States Constitution and the Arizona Constitution. The Arizona Supreme Court rejected the taxpayers’ claims on the merits. *Kotterman v. Killian*, 193 Ariz. 273, 972 P. 2d 606 (1999). This Court denied certiorari. *Rhodes v. Killian*, 528 U. S. 810 (1999); *Kotterman v. Killian*, 528 U. S. 921 (1999).

The present action was filed in the United States District Court for the District of Arizona. It named the Director of the Arizona Department of Revenue as defendant. The Arizona taxpayers who brought the suit claimed that §43–1089 violates the Establishment Clause of the First Amendment, as incorporated against the States by the Fourteenth Amendment. Respondents alleged that §43–1089 allows STOs “to use State income-tax revenues to pay tuition for students at religious schools,” some of which “discriminate on the basis of religion in selecting students.” Complaint in No. 00–0287 (D Ariz.), ¶¶29–31, App. to Pet. for Cert. in No. 09–987, pp. 125a–126a. Respondents requested, among other forms of relief, an injunction against the issuance of §43–1089 tax credits for

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contributions to religious STOs. The District Court dismissed respondents' suit as jurisdictionally barred by the Tax Injunction Act, 28 U. S. C. §1341. The Court of Appeals reversed. This Court agreed with the Court of Appeals and affirmed. *Hibbs v. Winn*, 542 U. S. 88 (2004).

On remand, the Arizona Christian School Tuition Organization and other interested parties intervened. The District Court once more dismissed respondents' suit, this time for failure to state a claim. Once again, the Court of Appeals reversed. It held that respondents had standing under *Flast v. Cohen*, *supra*. 562 F. 3d 1002 (CA9 2009). Reaching the merits, the Court of Appeals ruled that respondents had stated a claim that §43–1089 violated the Establishment Clause of the First Amendment. The full Court of Appeals denied en banc review, with eight judges dissenting. 586 F. 3d 649 (CA9 2009). This Court granted certiorari. 560 U. S. __ (2010).

II

The concept and operation of the separation of powers in our National Government have their principal foundation in the first three Articles of the Constitution. Under Article III, the Federal Judiciary is vested with the “Power” to resolve not questions and issues but “Cases” or “Controversies.” This language restricts the federal judicial power “to the traditional role of the Anglo-American courts.” *Summers v. Earth Island Institute*, 555 U. S. 488, __ (2009) (slip op., at 4). In the English legal tradition, the need to redress an injury resulting from a specific dispute taught the efficacy of judicial resolution and gave legitimacy to judicial decrees. The importance of resolving specific cases was visible, for example, in the incremental approach of the common law and in equity's consideration of exceptional circumstances. The Framers paid heed to these lessons. See U. S. Const., Art. III, § 2 (“The judicial Power shall extend to all Cases, in Law and Equity . . .”).

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By rules consistent with the longstanding practices of Anglo-American courts a plaintiff who seeks to invoke the federal judicial power must assert more than just the “generalized interest of all citizens in constitutional governance.” *Schlesinger v. Reservists Comm. to Stop the War*, 418 U. S. 208, 217 (1974).

Continued adherence to the case-or-controversy requirement of Article III maintains the public’s confidence in an unelected but restrained Federal Judiciary. If the judicial power were “extended to every *question* under the constitution,” Chief Justice Marshall once explained, federal courts might take possession of “almost every subject proper for legislative discussion and decision.” 4 Papers of John Marshall 95 (C. Cullen ed. 1984) (quoted in *DaimlerChrysler Corp. v. Cuno*, 547 U. S. 332, 341 (2006)). The legislative and executive departments of the Federal Government, no less than the judicial department, have a duty to defend the Constitution. See U. S. Const., Art. VI, cl. 3. That shared obligation is incompatible with the suggestion that federal courts might wield an “unconditioned authority to determine the constitutionality of legislative or executive acts.” *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 471 (1982). For the federal courts to decide questions of law arising outside of cases and controversies would be inimical to the Constitution’s democratic character. And the resulting conflict between the judicial and the political branches would not, “in the long run, be beneficial to either.” *United States v. Richardson*, 418 U. S. 166, 188–189 (1974) (Powell, J., concurring). Instructed by Chief Justice Marshall’s admonition, this Court takes care to observe the “role assigned to the judiciary” within the Constitution’s “tripartite allocation of power.” *Valley Forge, supra*, at 474 (internal quotation marks omitted).

III

To state a case or controversy under Article III, a plaintiff must establish standing. *Allen v. Wright*, 468 U. S. 737, 751 (1984). The minimum constitutional requirements for standing were explained in *Lujan v. Defenders of Wildlife*, 504 U. S. 555 (1992).

“First, the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) ‘actual or imminent, not “conjectural” or “hypothetical.”’ Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court.’ Third, it must be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.*, at 560–561 (citations and footnote omitted).

In requiring a particular injury, the Court meant “that the injury must affect the plaintiff in a personal and individual way.” *Id.*, at 560, n. 1. The question now before the Court is whether respondents, the plaintiffs in the trial court, satisfy the requisite elements of standing.

A

Respondents suggest that their status as Arizona taxpayers provides them with standing to challenge the STO tax credit. Absent special circumstances, however, standing cannot be based on a plaintiff’s mere status as a taxpayer. This Court has rejected the general proposition that an individual who has paid taxes has a “continuing, legally cognizable interest in ensuring that those funds are not *used* by the Government in a way that violates the Constitution.” *Hein v. Freedom From Religion Founda-*

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tion, Inc., 551 U. S. 587, 599 (2007) (plurality opinion). This precept has been referred to as the rule against taxpayer standing.

The doctrinal basis for the rule was discussed in *Frothingham v. Mellon*, 262 U. S. 447 (1923) (decided with *Massachusetts v. Mellon*). There, a taxpayer-plaintiff had alleged that certain federal expenditures were in excess of congressional authority under the Constitution. The plaintiff argued that she had standing to raise her claim because she had an interest in the Government Treasury and because the allegedly unconstitutional expenditure of Government funds would affect her personal tax liability. The Court rejected those arguments. The “effect upon future taxation, of any payment out of funds,” was too “remote, fluctuating and uncertain” to give rise to a case or controversy. *Id.*, at 487. And the taxpayer-plaintiff’s “interest in the moneys of the Treasury,” the Court recognized, was necessarily “shared with millions of others.” *Ibid.* As a consequence, *Frothingham* held that the taxpayer-plaintiff had not presented a “judicial controversy” appropriate for resolution in federal court but rather a “matter of public . . . concern” that could be pursued only through the political process. *Id.*, at 487–489.

In a second pertinent case, *Doremus v. Board of Ed. of Hawthorne*, 342 U. S. 429 (1952), the Court considered *Frothingham*’s prohibition on taxpayer standing in connection with an alleged Establishment Clause violation. A New Jersey statute had provided that public school teachers would read Bible verses to their students at the start of each schoolday. A plaintiff sought to have the law enjoined, asserting standing based on her status as a taxpayer. Writing for the Court, Justice Jackson reiterated the foundational role that Article III standing plays in our separation of powers.

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“The party who invokes the power [of the federal courts] must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.” *Doremus, supra*, at 434 (quoting *Frothingham, supra*, at 488).

The plaintiff in *Doremus* lacked any “direct and particular financial interest” in the suit, and, as a result, a decision on the merits would have been merely “advisory.” 342 U. S., at 434–435. It followed that the plaintiff’s allegations did not give rise to a case or controversy subject to judicial resolution under Article III. *Ibid.* Cf. *School Dist. of Abington Township v. Schempp*, 374 U. S., at 224, n. 9 (finding standing where state laws required Bible readings or prayer in public schools, not because plaintiffs were state taxpayers but because their children were enrolled in public schools and so were “directly affected” by the challenged laws).

In holdings consistent with *Frothingham* and *Doremus*, more 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. On the contrary, the purpose of many governmental expenditures and tax benefits is “to spur economic activity, which in turn *increases* government revenues.” *DaimlerChrysler*, 547 U. S., at 344.

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.” *Ibid.* And to find redressability, a court must assume that, were the remedy the taxpayers seek to be

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allowed, “legislators will pass along the supposed increased revenue in the form of tax reductions.” *Ibid.* 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. *ASARCO Inc. v. Kadish*, 490 U. S. 605, 614 (1989) (opinion of KENNEDY, J.).

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. See Brief for Respondent Winn et al. 42; see also Arizona Dept. of Revenue, Revenue Impact of Arizona’s Tax Expenditures FY 2009/10, p. 48 (preliminary Nov. 15, 2010) (reporting the total estimated “value” of STO tax credits claimed over a 1-year period). The education of its young people is, of course, one of the State’s principal missions and responsibilities; and the consequent costs will make up a significant portion of the state budget. 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. See Brief for Petitioner Arizona Christian School Tuition Organization 31 (discussing studies indicating that the STO program may on net save the State money); see also *Mueller v. Allen*, 463 U. S. 388, 395 (1983) (“By educating a substantial number of students [private] schools relieve public schools of a correspondingly great burden—to the benefit of all taxpayers”). 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. See Brief for Petitioner Garriott 38. Because it encourages scholarships for attendance at private schools, the STO tax credit may not cause the

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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. *DaimlerChrysler*, 547 U. S., at 344. 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." *Ibid.* 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.

B

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*, 392 U. S. 83. It must be noted at the outset that, as this Court has explained, *Flast's* holding provides a

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“narrow exception” to “the general rule against taxpayer standing.” *Bowen v. Kendrick*, 487 U. S. 589, 618 (1988).

At issue in *Flast* was the standing of federal taxpayers to object, on First Amendment grounds, to a congressional statute that allowed expenditures of federal funds from the General Treasury to support, among other programs, “instruction in reading, arithmetic, and other subjects in religious schools, and to purchase textbooks and other instructional materials for use in such schools.” 392 U. S., at 85–86. *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.” *Id.*, at 102. This condition was not satisfied in *Doremus* 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.” *Flast*, 392 U. S., at 102. 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. *Id.*, at 103. In the decades since *Flast*, the Court has been careful to enforce this requirement. See *Hein*, 551 U. S. 587 (no standing under *Flast* to challenge federal executive actions funded by general appropriations); *Valley Forge*, 454 U. S. 464 (no standing under *Flast* to challenge an agency’s decision to transfer a parcel of federal property pursuant to the Property Clause).

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.” 392 U. S., at 102. 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. *Id.*, at 85–86. In *Frothingham*, by contrast, the claim was that

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Congress had exceeded its constitutional authority without regard to any specific prohibition. 392 U. S., at 104–105. Confirming that *Flast* turned on the unique features of Establishment Clause violations, this Court has “declined to lower the taxpayer standing bar in suits alleging violations of any constitutional provision apart from the Establishment Clause.” *Hein, supra*, at 609 (plurality opinion); see also *Richardson*, 418 U. S. 166 (Statement and Account Clause); *Schlesinger*, 418 U. S. 208 (Incompatibility 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. 392 U. S., at 105–106. As *Flast* put it: “The taxpayer’s allegation in such cases would be that his tax money is being extracted and spent in violation of specific constitutional protections against such abuses of legislative power.” *Id.*, at 106. *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.” *DaimlerChrysler*, 547 U. S., at 348 (quoting *Flast*, 392 U. S., at 106). “Such an injury,” *Flast* continued, is unlike “generalized grievances about the conduct of government” and so is “appropriate for judicial redress.” *Id.*, at 106.

Flast found support for its finding of personal injury in “the history of the Establishment Clause,” particularly James Madison’s Memorial and Remonstrance Against Religious Assessments. *DaimlerChrysler, supra*, at 348. In 1785, the General Assembly of the Commonwealth of Virginia considered a “tax levy to support teachers of the Christian religion.” *Flast, supra*, at 104, n. 24; see A Bill Establishing A Provision for Teachers of the Christian

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Religion, reprinted in *Everson v. Board of Ed. of Ewing*, 330 U. S. 1, 74 (1947) (supplemental appendix to dissent of Rutledge, J.). Under the proposed assessment bill, taxpayers would direct their payments to Christian societies of their choosing. *Ibid.* If a taxpayer made no such choice, the General Assembly was to divert his funds to “seminaries of learning,” at least some of which “undoubtedly would have been religious in character.” *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 869, n. 1 (1995) (Souter, J., dissenting) (internal quotation marks omitted); see also *id.*, at 853, n. 1 (THOMAS, J., concurring). However the “seminaries” provision might have functioned in practice, critics took the position that the proposed bill threatened compulsory religious contributions. See, e.g., T. Buckley, *Church and State in Revolutionary Virginia, 1776–1787*, pp. 133–134 (1977); H. Eckenrode, *Separation of Church and State in Virginia* 106–108 (1910).

In the Memorial and Remonstrance, Madison objected to the proposed assessment on the ground that it would coerce a form of religious devotion in violation of conscience. In Madison’s view, government should not “force a citizen to contribute three pence only of his property for the support of any one establishment.” *Flast, supra*, at 103 (quoting 2 Writings of James Madison 183, 186 (G. Hunt ed. 1901)). This Madisonian prohibition does not depend on the amount of property conscripted for sectarian ends. Any such taking, even one amounting to “three pence only,” violates conscience. 392 U. S., at 103; cf. *supra*, at 6–7. The proposed bill ultimately died in committee; and the General Assembly instead enacted legislation forbidding “compelled” support of religion. See A Bill for Establishing Religious Freedom, reprinted in 2 Papers of Thomas Jefferson 545–546 (J. Boyd ed. 1950); see also *Flast*, 392 U. S., at 104, n. 24. Madison himself went on to become, as *Flast* put it, “the leading architect of the religion clauses of the First Amendment.” *Id.*, at 103. *Flast*

was thus informed by “the specific evils” identified in the public arguments of “those who drafted the Establishment Clause and fought for its adoption.” *Id.*, at 103–104; see also Feldman, Intellectual Origins of the Establishment Clause, 77 N. Y. U. L. Rev. 346, 351 (2002) (“[T]he Framers’ generation worried that conscience would be violated if citizens were required to pay taxes to support religious institutions with whose beliefs they disagreed”); McConnell, Coercion: The Lost Element of Establishment, 27 Wm. & Mary L. Rev. 933, 936–939 (1986).

Respondents contend that these principles demonstrate their standing to challenge the STO tax credit. In their view the 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. *Flast, supra*, at 106. 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. See *DaimlerChrysler, supra*, at 348–349. 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. See *supra*, at 6–10. 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

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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, *Flast*, 392 U. S., at 106, or “force a citizen to contribute three pence only of his property” to a sectarian organization, *id.*, at 103 (quoting 2 Writings of James Madison, *supra*, at 186). 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. See, e.g., Ariz. Rev. Stat. Ann. §43–1088 (West Supp. 2010). 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 more than the extension of *Flast* “to the limits of its logic.” *Hein*, 551 U. S., at 615 (plurality opinion). It 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. See *DaimlerChrysler*, 547 U. S., at 344. Here, by contrast, contributions result from the decisions of

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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. See Brief for Respondent Winn et al. 5–6; Tr. of Oral Arg. 35–36. 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

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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); cf. *Hibbs v. Winn*, 542 U. S. 88 (reaching only threshold jurisdictional issues). But those cases do not mention standing and so are not contrary to the conclusion reached here. When a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed. See, e.g., *Hagans v. Lavine*, 415 U. S. 528, 535, n. 5 (1974) (“[W]hen questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us”); *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 38 (1952) (“Even as to our own judicial power of jurisdiction, this Court has followed the lead of Mr. Chief Justice Marshall who held that this Court is not bound by a prior exercise of jurisdiction in a case where it was not questioned and it was passed *sub silentio*”); *Frothingham, surpa*, at 486. The Court would risk error if it relied on assumptions that have gone unstated and unexamined.

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

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nonbinding *sub silentio* holdings in the cases respondents cite would have depended on *Flast*. See, e.g., *Walz, supra*, at 666–667 (explaining that the plaintiff was an “owner of real estate” in New York City who objected to the city’s issuance of “property tax exemptions to religious organizations”). 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. Like other constitutional provisions, the Establishment Clause acquires substance and meaning when explained, elaborated, and enforced in the context of actual disputes. That reality underlies the case-or-controversy requirement, a requirement that has not been satisfied here.

* * *

Few exercises of the judicial power are more likely to undermine public confidence in the neutrality and integrity of the Judiciary than one which casts the Court in the role of a Council of Revision, conferring on itself the power to invalidate laws at the behest of anyone who disagrees with them. In an era of frequent litigation, class actions, sweeping injunctions with prospective effect, and continuing jurisdiction to enforce judicial remedies, courts must be more careful to insist on the formal rules of standing, not less so. Making the Article III standing inquiry all the more necessary are the significant implications of constitutional litigation, which can result in rules of wide applicability that are beyond Congress’ power to change.

The present suit serves as an illustration of these principles. The fact that respondents are state taxpayers does not give them standing to challenge the subsidies that

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§43–1089 allegedly provides to religious STOs. To alter the rules of standing or weaken their requisite elements would be inconsistent with the case-or-controversy limitation on federal jurisdiction imposed by Article III.

The judgment of the Court of Appeals is reversed.

It is so ordered.