Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HEIN, DIRECTOR, WHITE HOUSE OFFICE OF FAITH-BASED AND COMMUNITY INITIATIVES, ET AL. *v.* FREEDOM FROM RELIGION FOUNDATION, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 06–157. Argued February 28, 2007—Decided June 25, 2007

The President, by executive orders, created a White House office and several centers within federal agencies to ensure that faith-based community groups are eligible to compete for federal financial support. No congressional legislation specifically authorized these entities, which were created entirely within the Executive Branch, nor has Congress enacted any law specifically appropriating money to their activities, which are funded through general Executive Branch appropriations. Respondents, an organization opposed to Government endorsement of religion and three of its members, brought this suit alleging that petitioners, the directors of the federal offices, violated the Establishment Clause by organizing conferences that were designed to promote, and had the effect of promoting, religious community groups over secular ones. The only asserted basis for standing was that the individual respondents are federal taxpayers opposed to Executive Branch use of congressional appropriations for these conferences. The District Court dismissed the claims for lack of standing, concluding that under *Flast* v. *Cohen*, 392 U. S. 83, federal taxpayer standing is limited to Establishment Clause challenges to the constitutionality of exercises of congressional power under the taxing and spending clause of Art. I, §8. Because petitioners acted on the President's behalf and were not charged with administering a congressional program, the court held that the challenged activities did not authorize taxpayer standing under *Flast*. The Seventh Circuit reversed, reading *Flast* as granting federal taxpayers standing to

Syllabus

challenge Executive Branch programs on Establishment Clause grounds so long as the activities are financed by a congressional appropriation, even where there is no statutory program and the funds are from appropriations for general administrative expenses. According to the court, a taxpayer has standing to challenge anything done by a federal agency so long as the marginal or incremental cost to the public of the alleged Establishment Clause violation is greater than zero.

Held: The judgment is reversed.

433 F. 3d 989, reversed.

JUSTICE ALITO, joined by THE CHIEF JUSTICE and JUSTICE KENNEDY, concluded that because the Seventh Circuit's broad reading of *Flast* is incorrect, respondents lack standing. Pp. 6–25.

1. Federal-court jurisdiction is limited to actual "Cases" and "Controversies." U. S. Const., Art. III. A controlling factor in the definition of such a case or controversy is standing, *ASARCO Inc.* v. *Kadish*, 490 U. S. 605, 613, the requisite elements of which are well established: "A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U. S. 737, 751. Pp. 6–8.

2. Generally, a federal taxpayer's interest in seeing that Treasury funds are spent in accordance with the Constitution is too attenuated to give rise to the kind of redressable "personal injury" required for Article III standing. See, *e.g., Frothingham* v. *Mellon*, decided with *Massachusetts* v. *Mellon*, 262 U. S. 447, 485–486. Pp. 8–10.

3. In *Flast*, the Court carved out a narrow exception to the general constitutional prohibition against taxpayer standing. The taxpayer-plaintiff there alleged that the distribution of federal funds to religious schools under a federal statute violated the Establishment Clause. The Court set out a two-part test for determining standing: "First, . . . a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, §8. . . . Secondly, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, §8." 392 U. S., at 102–103. The Court then held that the particular taxpayer had satisfied both prongs of the test. *Id.*, at 103–104. Pp. 11–12.

4. Respondents' broad reading of the *Flast* exception to cover any expenditure of Government funds in violation of the Establishment Clause fails to observe "the rigor with which the *Flast* exception to the *Frothingham* principle ought to be applied." *Valley Forge Chris-*

Syllabus

tian College v. *Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 481. Given that the alleged Establishment Clause violation in *Flast* was funded by a specific congressional appropriation and was undertaken pursuant to an express congressional mandate, the Court concluded that the taxpayer-plaintiffs had established the requisite "logical link between [their taxpayer] status and the type of legislative enactment attacked." 392 U. S., at 102. "Their constitutional challenge [was] made to an exercise by Congress of its power under Art. I, §8, to spend for the general welfare." *Id.*, at 103. But *Flast* "limited taxpayer standing to challenges directed 'only [at] exercises of congressional power' " under the Taxing and Spending Clause. *Valley Forge, supra*, at 479. Pp. 12–13.

5. The link between congressional action and constitutional violation that supported taxpayer standing in *Flast* is missing here. Respondents neither challenge any specific congressional action or appropriation nor ask the Court to invalidate any congressional enactment or legislatively created program as unconstitutional. That is because the expenditures at issue were not made pursuant to any Act of Congress, but under general appropriations to the Executive Branch to fund day-to-day activities. These appropriations did not expressly authorize, direct, or even mention the expenditures in question, which resulted from executive discretion, not congressional action. The Court has never found taxpayer standing under such circumstances. *Bowen* v. *Kendrick*, 487 U. S. 589, 619–620, distinguished. Pp. 13–18.

6. Respondents argue to no avail that distinguishing between money spent pursuant to congressional mandate and expenditures made in the course of executive discretion is arbitrary because the injury to taxpayers in both situations is the same as that targeted by the Establishment Clause and *Flast*—the expenditure for the support of religion of funds exacted from taxpayers. But *Flast* focused on congressional action, and the invitation to extend its holding to encompass discretionary Executive Branch expenditures must be declined. The Court has repeatedly emphasized that the *Flast* exception has a "narrow application," *DaimlerChrysler Corp.* v. *Cuno*, 547 U. S. ___, ___, that only "slightly lowered" the bar on taxpayer standing, *United States* v. *Richardson*, 418 U. S. 166, 173, and that must be applied with "rigor," *Valley Forge*, *supra*, at 481. Pp. 18–19.

7. Also rejected is respondents' argument that Executive Branch expenditures in support of religion are no different from legislative extractions. *Flast* itself rejected this equivalence. 392 U. S., at 102. Because almost all Executive Branch activity is ultimately funded by some congressional appropriation, extending the *Flast* exception to purely executive expenditures would effectively subject every federal

Syllabus

action—be it a conference, proclamation, or speech—to Establishment Clause challenge by any taxpayer in federal court. Respondents' proposed rule would also raise serious separation-of-powers concerns, enlisting the federal courts to superintend, at the behest of any federal taxpayer, the speeches, statements, and myriad daily activities of the President, his staff, and other Executive Branch officials. Pp. 19–21.

8. Both the Seventh Circuit and respondents implicitly recognize that unqualified federal taxpayer standing to assert Establishment Clause claims would go too far, but neither has identified a workable limitation. Taking the Circuit's zero-marginal-cost test literally—*i.e.*, that any marginal cost greater than zero suffices—taxpayers might well have standing to challenge some (and perhaps many) speeches by Government officials. At a minimum, that approach would create difficult and uncomfortable line-drawing problems. Respondents' proposal to require an expenditure to be fairly traceable to the conduct alleged to violate the Establishment Clause, so that challenges to the content of any particular speech would be screened out, is too vague and ill-defined to be accepted. Pp. 21–23.

9. None of the parade of horribles respondents claim could occur if *Flast* is not extended to discretionary Executive Branch expenditures has happened. In the unlikely event any do take place, Congress can quickly step in. And respondents make no effort to show that these improbable abuses could not be challenged in federal court by plaintiffs possessed of standing based on grounds other than their taxpayer status. Pp. 23–24.

10. This case does not require the Court to reconsider *Flast*. The Seventh Circuit did not apply *Flast*; it extended it. *Valley Forge Christian Academy* illustrates that a necessary concomitant of *stare decisis* is that a precedent is not always expanded to the limit of its logic. That is the approach taken here. *Flast* is neither extended nor overruled. It is simply left as it was. Pp. 24–25.

JUSTICE SCALIA, joined by JUSTICE THOMAS, concurred in the Court's judgment, concluding that *Flast* v. *Cohen*, 392 U. S. 83, should be overruled as wholly irreconcilable with the Article III restrictions on federal-court jurisdiction that are embodied in the standing doctrine. Pp. 1–21.

1. The Court's taxpayer-standing cases involving Establishment Clause challenges to government expenditures are notoriously inconsistent because they have inconsistently described the relevant "injury in fact" that Article III requires. Some cases have focused on the financial effect on the taxpayer's wallet, whereas *Flast* and the cases that follow its teaching have emphasized the mental displeasure the taxpayer suffers when his funds are extracted and spent in aid of re-

Syllabus

ligion. There are only two logical routes available with respect to taxpayer standing. If the mental displeasure created by Establishment Clause violations is concrete and particularized enough to constitute an Article III "injury in fact," then *Flast* should be applied to (at a minimum) *all* challenges to government expenditures allegedly violating constitutional provisions that specifically limit the taxing and spending power; if not, *Flast* should be overturned. Pp. 2–12.

2. Today's plurality avails itself of neither principled option, instead accepting the Government's submission that *Flast* should be limited to challenges to expenditures that are expressly authorized or mandated by specific congressional enactment. However, the plurality gives no explanation as to why the factual differences between this case and *Flast* are material. (Whether the challenged government expenditure is expressly allocated by a specific congressional enactment is not relevant to the Article III criteria of injury in fact, traceability, and redressability.) Yet the plurality is also unwilling to acknowledge that *Flast* erred by relying on purely mental injury. Pp. 12–14.

3. Respondents' legal position is no more coherent than the plurality's. They refuse to admit that their argument logically implies that *every* expenditure of tax revenues that is alleged to violate the Establishment Clause is subject to suit under *Flast*. Of course, *that* position finds no support in this Court's precedents or this Nation's history. Pp. 14–16.

4. A taxpayer's purely psychological disapproval that his funds are being spent in an allegedly unlawful manner is never sufficiently concrete and particularized to support Article III standing. See *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 573–574. Although overruling precedents is a serious undertaking, *stare decisis* should not prevent the Court from doing so here. *Flast* was inconsistent with the cases that came before it and undervalued the separation-of-powers function of standing. Its lack of a logical theoretical underpinning has rendered the Court's taxpayer-standing doctrine so incomprehensible that appellate judges do not know what to make of it. The case has engendered no reliance interests. Few cases less warrant *stare decisis* effect. It is past time to overturn *Flast*. Pp. 17–21.

ALITO, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and KENNEDY, J., joined. KENNEDY, J., filed a concurring opinion. SCALIA, J., filed an opinion concurring in the judgment, in which THOMAS, J., joined. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined.