



10-1981

## Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.

Lewis Powell Jr.

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PRELIMINARY MEMORANDUM

November 26, 1980 Conference  
List 3, Sheet 1

No. 80-327-CFX

cert to CA3 (Adams; Rosenn,  
concurring; Weis, dissenting)

VALLEY FORGE  
CHRISTIAN COLLEGE

V.

AMERICANS UNTD. FOR  
SEPARATN. CH. & ST., ET AL. Federal/Civil

Timely

1. SUMMARY: Whether resps, who cannot demonstrate injury to themselves as taxpayers, have standing to challenge the transfer of federal property to petr, a religious organization.

2. FACTS AND DECISIONS BELOW: In 1976, HEW conveyed to petr, an allegedly sectarian college, 77 acres of surplus

*The issue presented here is difficult, and I suspect that CA3 has limited Schlesinger somewhat. Nonetheless, the issue (back)*



federal property, as well as the buildings and equipment situated thereon. The property was transferred pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 484(k), which authorizes HEW to sell or lease surplus gvt property to tax-exempt institutions for health and educational purposes; in accordance with the Act, the property was deeded to the petr in return for its commitment to use the property in a manner beneficial to the public. Petr thus made no financial payment for the property.

In 1977, an action was instituted in the USDC for ED Pa. against petr and HEW by resps, a non-profit organization dedicated to the separation of church and state, and four of its individual directors, who are citizens and taxpayers of the U.S. Resps claimed that the transfer of this property to petr violated the Establishment Clause, and sought declaratory and injunctive relief to void the transfer. The DC (Ditter, DJ) dismissed the suit on the ground that resps lacked standing to sue as taxpayers under Flast v. Cohen, 392 U.S. 83 (1968), since they challenged an exercise of Congress's property power, U.S. Const., Art. IV, § 3, cl.2, rather than its taxing and spending power, Art. I, § 8. The DC held that resps also lacked standing under Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208 (1975), because they failed to allege that they had suffered any actual or concrete injury beyond a generalized grievance common to all taxpayers.

CA3 reversed. The CA accepted the DC's conclusion that resps lacked taxpayer standing to challenge the transfer. Nonetheless, the ct held that resps had standing to sue because



they alleged a personal "injury in fact" to an interest protected by the Establishment Clause -- their "shared individuated right" to a gvt that "shall make no law respecting the establishment of religion." Resps thus had a sufficient "personal stake in the outcome" to assure a complete perspective on the issues. Flast did not require a different result, for in that case, unlike here, the pliffs had alleged injury only to their economic interests. Likewise, this case is distinguishable from Schlesinger and U.S. v. Richardson, 418 U.S. 166 (1974), for unlike the general constitutional limitations at issue there, the First Amendment creates legal rights in individuals that may be vindicated in the courts.

In a concurring opinion, Judge Rosenn concluded that resps "have standing because they possess the necessary adversity of interest, and, as a practical matter, no one is better suited to bring this lawsuit and vindicate the freedoms embodied in the Establishment Clause." Judge Rosenn reasoned that because the First Amendment is designed to protect against abuses by political majorities, it must not depend upon the political processes for protection.

Judge Weis dissented on the ground that "a generalized grievance brought by concerned citizens seeking to enforce a particular constitutional guarantee has been deemed too abstract to satisfy the injury in fact component of standing." He noted that the Flast majority had not accepted Justice Fortas's suggestion that "[p]erhaps the vital interest of a citizen in the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for this



challenge." 392 U.S. at 115-16. In his view, then, the majority had embraced a concept of standing that had been presented to and rejected by this Court.

3. CONTENTIONS: Petr contends that the ct below repudiates Flast, and formulates instead a standing doctrine that is in conflict both with this Court's recent standing decisions and with CADC's decision in American Jewish Congress v. Vance, 575 F.2d 939 (CADC 1978) (no "citizen standing" to challenge federal program under First and Fifth Amendments). As both the DC and the CA below realized, resps fail the first prong of the Flast test, for they cannot demonstrate a logical nexus between their status as taxpayers and the transfer of this property pursuant to the Property Clause. This Court has consistently held that there is no taxpayer standing to challenge congressional actions not based on the taxing and spending power. See Richardson (challenge under Art. I, § 9, cl. 7 to CIA's secret budget); Schlesinger (challenge under Art. I, § 6, cl. 2 to members of Congress holding reserve commissions). The Court has also refused to recognize citizen standing to assert "abstract injury" arising from nonobservance of the Constitution. See Schlesinger, 418 U.S. at 223. Resps are ideological plttfs. The only injury the individual resps allege in their complaint is to their status as taxpayers; the organizational resp asserts its special interest in maintaining the separation of church and state. But see Warth v. Seldin, 422 U.S. 490, 511 (1975) (organization must seek relief for injury to itself or associational ties of members). Thus, in contrast to the plttfs in Baker v. Carr, 369 U.S. 186



(1962) (voting rights) and Schempp v. Abington School Dist., 374 U.S. 203 (1963) (classroom prayer), resps do not assert any concrete injury in fact. This case cannot be distinguished from Schlesinger and Richardson.

Resps contend that the decision below is consistent with this Court's opinions, as well as the opinions of other CAs. Resps essentially adopt the reasoning of CA3. In addition, they contend that Data Processing Serv. Organizations v. Camp, 397 U.S. 150, 154 (1970), makes clear that a person "may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause ...." Similarly, in Allen v. Hickel, 424 F.2d 944, 946 (CA9 1970), a challenge to the construction of a Christmas creche on federal land, CA9 recognized that this Court has been particularly ready "to find standing conferred by non-economic values in order to consider issues concerning the Establishment Clause ...." Resps also argue the merits of their claims that the transfer constituted an unconstitutional transfer of federal funds and created an impermissible entanglement. Finally, they assert that they should have standing just as the pliffs did in Flast, since the gvt is simply doing here indirectly -- aiding a sectarian institution -- what it could not do directly.

The SG submits that CA3 has decided a "difficult and novel" question of standing that was left open in Flast. Normally, standing to sue in Establishment Clause cases exists either because taxpayer funds have been spent to aid religion, see Flast, or because the challenged actions directly impinge on the interests of the pliff, see Schempp. This Court has made



clear that there is no "citizen standing" to litigate generalized constitutional complaints. Nonetheless, the constitutional claims raised here differ in some respects from those in Richardson and Schlesinger, which involved claims of violations of constitutional provisions concerning the internal processes of gvt, rather than violations of the Bill of Rights. However, the SG argues that there is no need to undertake the difficult task of reexamining Establishment Clause standing in this case. The decision here does not conflict with any decision of this Court or any other CA; Vance, on which petr relies, did not consider the question presented here. Moreover, the decision here is interlocutory, and may have only limited practical consequences, since many Establishment Clause suits already proceed on the basis of the principles established in Flast and Schempp. Accordingly, cert should be denied.

4. DISCUSSION: I recommend a grant. The decision below announces a theory of "citizen standing" that is arguably in conflict with the principles set forth in Richardson and Schlesinger. The SG's assertion that there is no conflict here rests on the questionable premise that this Court's cases indicate that there is citizen standing to assert the violation of some constitutional provisions, but not others. But see Schlesinger, 418 U.S. at 226-27. Similarly, the SG's argument that this case may have little practical effect assumes that its importance is restricted to the Establishment Clause context; however, the reasoning of the court below suggests that there is citizen standing to challenge violations of other



- 7 -

provisions of the Bill of Rights as well. Finally, that the decision below is interlocutory is not dispositive; Richardson came before the Court in the same procedural posture.

There are two responses.

11/18/80

Swartz

op in petn



does not seem pressing and I am inclined to deny.

JCB



November 26, 1980

Court ..... *Tested - talk to* Voted on ..... 19...  
Argued ..... 19... *about this* Assigned ..... 19...  
Submitted ..... 19... Announced ..... 19...

No. 80-327

VALLEY FORGE CHRIS. COLL.

vs.

AM. UNTD. SEPARATN. CH. & ST.

*a standing case  
BRW says  
expansion of standard*

*Relist  
for  
L.F.P.*

*9 in now picked  
to grant.*

HOLD FOR	CERT.		JURISDICTIONAL STATEMENT					MERITS		MOTION		ABSENT	NOT VOTING
	G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Burger, Ch. J.		✓	(?)										
Brennan, J.		✓											
Stewart, J.		✓											
White, J.	✓												
Marshall, J.													
Blackmun, J.	✓												
Powell, J.													
Rehnquist, J.	✓												
Stevens, J.		✓											

*Absent*

*Relisted for me  
to re-exam*



Will stay with Denny.  
12/5/80

Altho wrongly  
Supreme Court of the United States

decided, I think we  
Memorandum  
have more imp cases.  
19

BRW is right that  
CA 3 extended prior  
concepts of "standing".

= Respr had only a  
generalized interest in  
protecting Establishment  
Clause. They objected to  
transfer of Fed. <sup>supplies</sup> property  
to Petr.

Contrary to Schlesinger v.  
Reservist Committee to Stop  
War























To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: FEB 18 1981

Recirculated: \_\_\_\_\_

Re: No 80-327--Valley Forge Christian College et. al. v.  
Americians United for Separation of Church and State

JUSTICE REHNQUIST, dissenting.

In this case, a divided Court of Appeals for the Third  
Circuit held that respondents, though lacking taxpayer standing,  
had standing solely in their capacity as "citizens" to challenge  
governmental conduct as violative of the Establishment Clause of  
the First Amendment. The concurring opinion found standing,  
because in its view respondents were "likely to be the best  
available" plaintiffs and if "they do not have standing, it is  
probable that the" conduct at issue here "would be placed beyond  
judicial review." App. to Pet. for Cert. at 34. Because I think  
the decision below implicitly overrules a long line of our cases  
beginning with Frothingham v. Mellon, 262 U.S. 447 (1923),

decided more than a half century ago, and because I agree with

*This is directed at you. I continue to believe that the case  
is not worth plenary consideration. JPB*



the dissent in this case that "[i]f the basic principles of standing prove to be unworkable or undesirable, then it is the Supreme Court and not a court of appeals that has the right to change them," App. to Pet. for Cert. at 41, I would grant the petition for certiorari and set the case for argument.

Respondents, an organization dedicated to the principle of separation of church and state, challenge the transfer by the Department of Health, Education and Welfare to petitioner Valley Forge Christian College of certain surplus federal land, buildings and equipment. The Government deeded the property to the college pursuant to the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 471 et seq., which authorizes governmental agencies to dispose of surplus property to private citizens who promise to use the property in a manner beneficial to the public. Respondents brought suit in the United States District Court for the Eastern District of Pennsylvania, alleging that the conveyance of federal property to a church-affiliated school violated the Establishment Clause of the First Amendment.



The District Court dismissed for lack of standing to sue, reasoning that respondents could not show the necessary nexus between the challenged action and their economic interest as taxpayers to meet the narrow test of "taxpayer" standing articulated in Flast v. Cohen, 392 U.S. 83 (1968), since the college received surplus property rather than a grant of funds under the Spending Power.

The Court of Appeals reversed. Although the court agreed with the District Court that respondents lacked standing to sue as "taxpayers", it nonetheless asserted that respondents had standing to sue based on "a personal constitutional right" to be free of governmentally established religion. It claimed that "an allegation of injury in fact to an interest protected by the Establishment Clause is all that is required for standing." App. to Pet. for Cert. at 28. Judge Rosenn concurred, finding that that respondents had the necessary adversity of interest and that "as a practical matter, no one is better suited to bring this lawsuit and thus vindicate the freedoms embodied in the



Establishment Clause." Id. at 31. Judge Weis dissented from the court's novel formulation of standing doctrine. He emphasized that that a "generalized grievance brought by concerned citizens seeking to enforce a particular constitutional guarantee has been deemed too abstract to satisfy the injury in fact component of standing. Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208 (1974); United States v. Richardson, 418 U.S. 166 (1974)." Id. at 36.

No one can be unsympathetic to the attempt of any court of appeals judge to make sense out of our opinions dealing with standing. Nevertheless, I think it clear that the court below has plainly embraced a concept of standing totally at odds with the decisions of this Court. In Flast v. Cohen, 392 U.S. 83 (1968), for example, we considered and rejected the very reasoning adopted by the court below. The plaintiffs there asserted that an expenditure of federal funds for sectarian schools violated the Establishment Clause. Although Justice Fortas suggested that "perhaps the vital interest of a citizen in



the establishment issue, without reference to his taxpayer's status, would be acceptable as a basis for this challenge", Id. 115-116 (Fortas, J. concurring), this Court declined to adopt that suggestion. Instead, the Court constructed an elaborate formula for determining when "taxpayers" had standing. Had we agreed with the doctrine of standing suggested by Justice Fortas, and adopted by the court below, we would not have found it necessary to consider the scope and extent of "taxpayer" standing. Indeed, the Court expressly reaffirmed the principle articulated in Frothingham v. Mellon, 262 U.S. 447 (1923) precluding a taxpayer's use of "a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System." Id., at 106.

Since then we have consistently admonished that a citizen who suffers equally with all other citizens will not be heard to raise generalized grievances about the conduct of the Government. In Schlesinger v. Reservists Committee to Stop the War, we held



that plaintiffs as citizens lacked standing to challenge the holding of military commissions by members of Congress. We explained that all citizens share equally an interest in constitutional government and that such a "generalized interest" was insufficient to confer standing. We held that :

standing to sue may not be predicated upon an interest of the kind alleged here which is held in common by all members of the public, because of the necessarily abstract nature of the injury all citizens share. Concrete injury, whether actual or threatened, is that indispensable element of a dispute which serves in part to cast it in a form traditionally capable of judicial resolution. Id., at 220.

Similarly, in United States v. Richardson we found a lack of standing to challenge the constitutionality of the Central Intelligence Agency' "secret budget". We repeated the necessity for plaintiffs to allege "particular concrete injury as a result of the operation of this statute," and stressed that ideological plaintiffs with simply a "mere 'interest in a problem'" or "generalized grievance" will not be permitted to assert a public interest in a constitutional claim. Id., at 177-180 (quoting Sierra Club v. Morton, 405 U.S. 727 (1972). The case of Abington School District v. Schempp, 374 U.S. 205 (1963), so heavily relied on by the majority and concurring opinions, is not to the



contrary. In that case plaintiffs demonstrated that something more than their mere interest as a "citizen" standing was stake: children adhering to the faith of Jehovah's Witnesses were compelled to salute the flag at a public school, thereby being forced either to violate their own faith or disobey School Board resolutions. Id., at 624, 626.

The court below accurately notes that standing barriers have been substantially lowered in the last three decades. But that does not mean that no barriers to "public actions" remain or that those barriers are not sound. It is one thing to rely, as did the majority here, on Chief Justice Marshall's statement in Marbury v. Madison, 5 U.S. 87,192 (1803) that "[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." App.to Pet. for Cert. at 30. It is quite another matter to conjure up an "injury" every time a plaintiff feels that some act of some government agency at some time or place violates some specified provision of the Constitution. The



fact remains that, contrary to the finding of the court below, the relief available to respondents here consists entirely of the vindication of rights held in common by all citizens.

It would be perhaps more frank and more candid to say, as Judge Rosenn did here, that if respondents do not have standing, "it is probable that the transfer of property at issue here, and other similar transfers .... would be placed beyond judicial review." Id., at 34. But the flaw with that argument of course is that our decisions in Frothingham v. Mellon, Schlesinger v. Reservists Committee to Stop the War, and United States v. Richardson, clearly contemplated, and were not alarmed by, the fact that some violations of the Constitution might go unredressed. Those cases recognized that the Article III jurisdiction conferred upon this Court and such other courts that Congress might create was confined to "cases and controversies." The limitation of standing to actual cases and controversies guarantees that those who have nothing more at stake than their interest as a "citizen" are not allowed to roam at large through



statute books, codes of regulations, and the like, in order to litigate whether any particular statute or regulation of which they disapprove affronts the provisions of the United States Constitution. In short, the conclusion of the court below--that certain provisions of the Constitution should be enforceable upon demand by every individual--seriously threatens the "proper functioning both of the federal courts and of the principle of the separation of powers." Flast v. Cohen, 392 U.S. at 129 n.18 (Harlan, J. dissenting). As we recognized in Schlesinger v. Reservists Committee to Stop the War, "the proposition that all constitutional provision are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries." 418 U.S. at 227. Because I believe that the decision below is contrary to a long line of cases and because I think it gives a license to the judiciary to exercise some amorphous general supervision over the operations of government, United States v. Richardson, supra at 188-197 (Powell, J. concurring), I dissent from the denial of certiorari



and would set the case for plenary review.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 19, 1981

*I would prefer  
to reverse summarily,  
but will join this*

Re: No. 80-327 - Valley Forge Christian College  
v. Americans United

Dear Bill:

Please join me in your dissenting opinion.

Sincerely,

*HAB.*

Mr. Justice Rehnquist

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

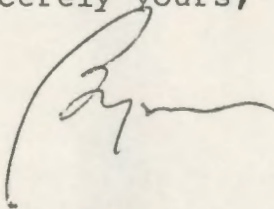
February 19, 1981

Re: 80-327 - Valley Forge Christian  
College v. Americans United for  
Separation of Church and State

Dear Bill,

Please join me in your dissent.

Sincerely yours,

A handwritten signature in dark ink, appearing to be "Byron", written in a cursive style.

Mr. Justice Rehnquist

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

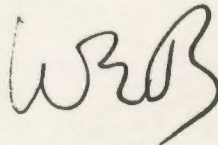
February 19, 1981

REP 80-327 - Valley Forge Christian College v.  
Americans United for Separation of  
Church and State

Dear Bill:

Add me to your "dissent" which appears to make  
this a "grant."

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written in a cursive, stylized script.

Justice Rehnquist

Copies to the Conference



February 19, 1981

No. 80-327 Valley Forge Christian College v. Americans  
United

Dear Bill:

Although I would much prefer to grant and reverse this case summarily, unless this can be done, please add my name to your dissenting opinion.

Sincerely,

Mr. Justice Rehnquist

LFP/lab

Copies to the Conference



No. 80-327

[illegible]



jsw 10/13/81

*Respu, et al. an organization dedicated to separation of Church & State, & 4 of its officers, challenged the transfer of a surplus military hospital to Petr. College - pursuant to a Fed statute permitting such a transfer - even w/out payment when its <sup>use</sup> is restricted to educational purposes. Petr is a religious College.*

*CA 3 (2-1) found no taxpayer standing but nevertheless held that Respu has sufficient interest in protecting the Establishment Clause to have*

BENCH MEMORANDUM *Art III standing*

To: Mr. Justice Powell  
From: John Wiley

October 13, 1981

No. 80-327: Valley Forge Christian College, et al. v. Americans United for Separation of Church and State, Inc., et al.

*In reasons stated by WHR in his dissent from denial of Cert, I'd reverse by a P.C.*  
Question Presented

Whether the Americans United for Separation of Church and State (AUSCS) has standing to assert an Establishment Clause violation arising from the federal government's transfer of surplus real estate to a sectarian college.

I. Background

Article IV, Section 3, Clause 2 of the Constitution provides

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory and other Property belonging to the United States . . . .

*My opinion in Richardson is especially relevant. Only a generalized interest - analogous to taxpayer interest.*



The Federal Property and Administrative Services Act of 1949, 40 U.S.C. §471 et seq., sets forth a procedure for disposing of surplus federal property. If neither Congress nor other agencies indicate a need for the property, the Secretary of Education, by regulation, is to publicize and sell the property so as to produce the greatest public benefit. Nonprofit educational institutions are entitled to a reduction in purchase price known as the "public benefit allowance."

*Reduced price - or no price at all!*

In this case, the U.S. government followed these procedures for the Valley Forge General Hospital, a facility built to provide medical care for members of the armed services. It conveyed 77 acres of land, worth about half a million dollars, to the Valley Forge Christian College (VFCC), an educational institution operated by a religious order known as the Assembly of God that "places considerable emphasis on religious instruction and values in some of its classes and that . . . prepares some of its students for the ministry."

S.G. brief at 9 n.6. The government conveyed the land to VFCC in fee simple. VFCC paid "nothing" for the property as the "public benefit allowance" was set at 100%. Certain conditions subsequent required the college to ~~the~~ <sup>use</sup> the land exclusively for specified educational purposes for 30 years. VFCC then relocated its campus onto the 77 acre tract and converted the hospital to a college. AUSCS learned of the transfer through a new <sup>release</sup> and sued to challenge the conveyance in 1976. It complaint named as plaintiffs itself and four individuals that

*Paid nothing but use was restricted*



it employed in executive positions. The DC dismissed the complaint for want of standing.

A divided panel of the <sup>✓</sup>CA3 reversed. Judge Adams agreed that resp lacked taxpayer standing. He found, however, <sup>CA2 (2-1) found</sup> that resp's interest in the separation of church and state was sufficiently particular and concrete to be injured in fact by the conveyance in question. Judge Rosenn concurred in a separate statement. Judge Weis dissented.

## II. Discussion

This is an easy case for you. Precedents control it, and your concurrence in United States v. Richardson, 418 U.S. 166, 180 (1974) makes clear you are not inclined to expand further the law of standing. You therefore should vote to reverse.

The CA3 unanimously agreed that resps did not possess <sup>no taxpayer standing</sup> taxpayer standing under Flast v. Cohen, 392 U.S. 83 (1968). This is a significant holding, as your Richardson concurrence stated your willingness--for reasons of stare decisis--to allow Flast to stand "on its facts . . . ." Id. at 180. You set forth your belief, however, that the Court "should limit the expansion of federal taxpayer and citizen standing in the absence of specific statutory authorization to an outer boundary drawn by the results in Flast and Baker v. Carr." Id. at 196 (emphasis in original). By attacking an executive action rather than a specific statute enacted under the Taxing



and Spending Clause, this case steps beyond Flast's result. It consequently errs under the rationale of your Richardson concurrence.

The CA3 in fact based its holding on notions of standing that transgress established case law. I will not spend much of your time developing this point, as it has been argued forcefully--and I think correctly--both in Judge Weis's dissent and by Justice Rehnquist in his proposed dissent from denial of cert in this Court. (As you recall, it was this proposed dissent that prompted the grant in this case.) In short, the CA3 decision adopts the rationale proposed by Justice Fortas but rejected by the majority in Flast. It permits a group to air a "generalized grievance" without alleging "some particularized injury that sets him apart from the man on the street." Id. at 194. It is justified by the logic that someone must be available to redress every constitutional infringement. But this proposition has been explicitly and repeatedly rejected by the Court. See Richardson, 418 U.S. at 179; Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 227 (1974). Finally, I think the SG effectively rebuts resps' tardy claim of A.P.A. standing. See SG Reply Brief at 17-18.

The reasoning necessary to settle this case is sufficiently plain from prior cases to permit brief per curiam treatment (assuming, of course, that a majority agrees with this view of the case).



80-327 VALLEY FORGE v. AMERICANS UNITED

Argued 11/4/81



## Hodgson (Petr)

An Art III standing case -  
not an Establishment case.

Complaint alleged standing as  
"taxpayer" & "citizen".

CA 3 ~~had~~ found no "taxpayer"  
standing but held that Respe  
had standing as citizen.

An applicant for this prop who  
lost out to ~~Respe~~<sup>Petr</sup> would have had  
standing - there would have been  
injury in fact.

No injury in fact to Respe in this case

## Lee (SG)

Hast "taxpayer" standing (where  
taxing or spending powers are challenged)  
requirements not met.

"Standing" focuses on the interest  
of the ~~parties~~<sup>plaintiffs</sup> - not on merits.

Hast is a departure from general  
line of taxpayer standing. Would not  
regret an overruling of Hast. (Nor  
would I. See my op. in Richardson)



~~Wisc (cont.)~~

## Boothby (Resp)

The values protected by Est. Clause cannot be protected if there is no citizen standing.

No distinction bet. giving prop. and giving cash.

This case is unlike other ~~tax~~ citizen suits. Here there is a specific act (prop. transfer) - not a general action that affects public at large.

(Relier on depositions for statement of injury in fact)

Relier primarily on Hart

No distinction between action by Congress under Art I (taxing power - Hart) and action under Art IV (property)



11/5  
80-327 Valley Forge Christian  
College v. Americans  
Reverse United for Separation  
Church & State

ITs (Reps) challenged transfer  
of surplus Gov't prop. to Pettr.

ITs were the "organization" &  
four of its officers.

CA 3 (2-1) found "standing"  
by ITs as "interested  
citizens". (not as taxpayers)

ITs had only a generalized  
interest (like taxpayer interest).

CA 3 decision conflicts with  
Hast v. Cohen, Richardson (CIA)  
Schlesinger v. Committee to  
Stop War, Frothingham (taxpayer)



5 Standard

Rev 6-3

80-327 Valley Forge v. Americans United

Conf. 11/6/81

The Chief Justice Rev.

Richardson + Schlesinger stand for principle that a generalized interest is insufficient

Hart granted standing to a taxpayer who objected to tax revenues supporting a religion, Hart doesn't control.

Justice Brennan App.

Can't distinguish between a gift of property & grant of cash. Thus, Hart controls.

Justice White Rev

If we aff. this case, any citizen ~~ex~~ would be able to sue under any provision of Court. This would be a grave step.\*

We can leave Hart where it is but not extend it.

No personalized stake.

\* I certainly agree



Justice Marshall *App.*

*Agree with Hast. It controls.*

Justice Blackmun *App.*

*Standing under Est. Clause  
is proper.*

Justice Powell *Reverse.*

*See my notes*

*I could overrule Hast. See my op.  
in Richardson. A taxpayer's interest is  
too generalized to support standing. No real  
difference between generalized claimer ~~for~~<sup>by</sup>  
"taxpayer" and "citizen".*

*But we can distinguish Hast. <sup>(in struggling,</sup> ~~there~~ and  
need not overrule it.*



Justice Rehnquist

Rev.

Hart should be overruled or limited severely.

No reason for distinguishing bet. 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> or any other provisions of Court in determining standing.

Agree with LFP

Justice Stevens

App.

Taxpayer standing is not enough.

Source of adversary interest in Hart was view that Establishment cases are "different". We should adhere to this view.

If there is no standing here, there should not have been Tilton & similar cases.

Should treat Hart as a taxpayer case; it is an Establishment clause case. Would limit Hart to such cases.

Justice O'Connor

Rev.

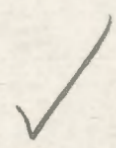
Either overrule or severely limit Hart. Agree with Harlan's opinion (but he viewed issue in terms of prudential standing).

We asked John:  
"What about  
other clauses of  
1<sup>st</sup> Amendment"? John  
says this is different.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL



December 3, 1981

Re: No. 80-327 - Valley Forge Christian College v.  
Americans United For Separation  
of Church and State, Inc.

---

Dear Bill:

I await the dissent.

Sincerely,

*JM.*  
T.M.

Justice Rehnquist

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

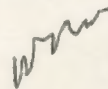
December 3, 1981

Re: No. 80-327 Valley Forge Christian College v.  
Americans United, et al.

Dear Sandra:

In accordance with our conversation, I am circulating to the three others who voted to reverse Valley Forge, which I was assigned and of which a proposed opinion for the Court is presently in circulation, as to whether we should expressly overrule Flast v. Cohen. I wrote the opinion so as to confine Flast in accordance with my sense of the Conference view that there were not five solid votes to overrule it, but if the Chief, Lewis, and Byron are willing to overrule it, I am certainly willing to rewrite the opinion so as to accomplish that result.

Sincerely,



Justice O'Connor

cc: The Chief Justice  
Justice White  
Justice Powell



Supreme Court of the United States  
Washington, D. C. 20543

RECEIVED  
CHAMBERS OF THE  
CHIEF JUSTICE

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

1981 DEC 3 AM 11 05

December 3, 1981

Re: No. 80-327 Valley Forge Christian College v.  
Americans United, et al.

Dear Sandra:

In accordance with our conversation, I am circulating to the three others who voted to reverse Valley Forge, which I was assigned and of which a proposed opinion for the Court is presently in circulation, as to whether we should expressly overrule Flast v. Cohen. I wrote the opinion so as to confine Flast in accordance with my sense of the Conference view that there were not five solid votes to overrule it, but if the Chief, Lewis, and Byron are willing to overrule it, I am certainly willing to rewrite the opinion so as to accomplish that result.

Sincerely,

*WHR*

Justice O'Connor

cc: The Chief Justice  
Justice White  
Justice Powell

*12/3/81*

*Dear Bill  
I would go along  
with an overruling  
of Flast - WSB*

~~cc: The Chief Justice~~  
~~Justice White~~  
~~Justice Powell~~

*copy BRW  
L.F.P.  
S.O.C.*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 3, 1981

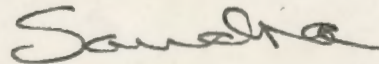
No. 80-327 Valley Forge Christian College  
v. Americans United for Separation  
of Church and State, Inc.

---

Dear Bill,

Please join me in your opinion in the referenced case. If you find sufficient support among the other Justices, I am still willing to go further and overrule Flast v. Cohen. //

Sincerely,



Justice Rehnquist

Copies to the Conference



December 3, 1981

80-327 Valley Forge v. Americans United

Dear Bill:

I have noted with interest Sandra's suggestion that she is "willing to go further and overrule Flast v. Cohen."

I continue to think for the reasons stated in my concurring opinion in Richardson that Flast was an unsound opinion. Overruling it therefore has a good deal of appeal. Yet, I have some hesitation as to the desirability of doing this by a bare majority vote. Flast - a 1968 decision - was decided with only one dissenting vote.

Moreover, your current draft in this case leaves Flast a "bare bones" precedent with little or no force beyond its specific facts. In sum, although I would be happy to join five others, I think there are institutional reasons for not overruling it if four Justices are in dissent.

I am happy to join Bill's opinion as written.

Sincerely,

Justice Rehnquist

lfp/ss

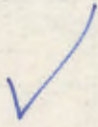
cc: The Chief Justice  
Justice White  
Justice O'Connor



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 3, 1981



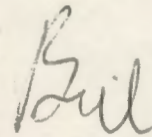
RE: No. 80-327 Valley Forge Christian College v.  
Americans United for Separation  
of Church and State, Inc., et al.

---

Dear Bill:

I shall shortly be circulating a dissent in the  
above.

Sincerely,



Justice Rehnquist  
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

December 3, 1981

Re: No. 80-327 Valley Forge Christian College v.  
Americans United, et al.

Dear Sandra:

You, the Chief and I are all willing to overrule Flast; Lewis has said that he thought he could agree to it but Byron is unwilling to do it. I would prefer a five member court opinion in its present analysis rather than a plurality opinion with one concurrence in the result, and unless otherwise pressured by resistance will leave the opinion in substantially its present shape.

Sincerely,

WWR

Justice O'Connor  
cc: The Chief Justice  
Justice Powell  
Justice White



Free

jsw 12/16/81

Memorandum to Justice Powell

Re: WJB's dissent in Valley Forge Christian College

*I've joined W.H.R.*

Justice Brennan has circulated a lengthy and, at points, heated dissent in this standing case. The key to his position is expressed in Part IIB (pages 13-19). This section argues that the Constitution creates a special taxpayer right to be free from taxation that measurably supports religion. The most powerful portion of this dissent is at pages 16-17, where Justice Brennan recounts the colonial efforts of Madison and Jefferson in securing passage of the Virginia Religious Freedom law--the text of which does support Justice Brennan position. See page 16 ("no man shall be compelled to . . . support any religious . . . ministry whatsoever") (emphasis added).

Justice Brennan's dissent essentially seeks to revise the rationale of Flast to separate Flast's Establishment Clause standing holding--which Justice Brennan enthusiastically supports--from its much-criticized and more general two-part nexus test. See WJB dissent at 21-22 ("The two-pronged 'nexus' test offered by the Court, despite its general language, is best understood as 'determinant of standing of plaintiffs alleging only injury as taxpayers who challenge alleged viola-



tions of the Establishment and Free Exercise Clauses of the First Amendment,' and not as a general statement of standing principles.") (footnote deleted and emphasis added). Yet this narrowing revision is incomplete in two respects. First, as the emphasized portion of this quote illustrates, Justice Brennan believes Flast must also convey federal taxpayer standing in Free Exercise Clause cases--even though these would expand on Flast's holding. This belief is consistent with the historical basis for his position. Second, Justice Brennan also suggests that the general two part nexus test may have some continuing vitality. See dissent at 22 n.17 ("In the years since the announcement of the Flast test we have yet to recognize a similar restriction on Congress' power to tax, and I know of none. Nevertheless, like the Justices who joined in the Court opinion in Flast, I remain reluctant to rule out the possibility.").

You have previously written that you "would not overrule Flast on its facts, because it is now settled that federal taxpayer standing exists in Establishment Clause cases." United States v. Richardson, 418 U.S. 166, 180 (1974). Even though I find Justice Brennan's thinking in the context of the Establishment Clause to be persuasive, the implications of his position clash with your previously expressed views. Unless you are willing to expand your statement in Richardson to include Free Exercise cases, Justice Brennan's dissent is apt not to appeal to you. I therefore recommend that you continue to join Justice Rehnquist.

Yes!

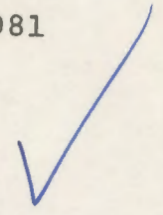
No



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 3, 1981

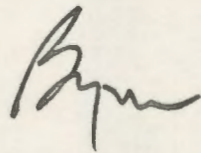


Re: 80-327 - Valley Forge Christian College  
v. Americans United for Separation of Church  
and State, Inc.

Dear Bill,

Please join me. I would not overrule Flast.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm



pp 7, 11, 19

five joined  
See n 13, p 11-

Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

From: Justice Rehnquist

Circulated: \_\_\_\_\_

Recirculated: **DEC 17 1981**

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-327

VALLEY FORGE CHRISTIAN COLLEGE, PETITIONER *v.* AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE, INC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

[December —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

## I

Article IV, Section 3, Clause 2 of the Constitution vests Congress with the "Power to dispose of and make all needful Rules and Regulations respecting the . . . Property belonging to the United States." Shortly after the termination of hostilities in the Second World War, Congress enacted the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, 40 U. S. C. § 471 *et seq.* (1976 ed. and Supp. III). The Act was designed, in part, to provide "an economical and efficient system for . . . the disposal of surplus property." 63 Stat. 378, 40 U. S. C. § 471. In furtherance of this policy, federal agencies are directed to maintain adequate inventories of the property under their control and to identify excess property for transfer to other agencies able to use it. See 63 Stat. 384, 40 U. S. C. § 483(b), (c).<sup>1</sup> Property that has outlived its usefulness to the federal government is declared "surplus"<sup>2</sup> and may be transferred to pri-

<sup>1</sup>The Act defines "excess property" as "property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities." 63 Stat. 378, 40 U. S. C. § 472(e).

<sup>2</sup>The Act defines "surplus property" as "any excess property not re-



vate or other public entities. See generally 63 Stat. 385, as amended, 40 U. S. C. § 484.

The Act authorizes the Secretary of Health, Education, and Welfare (now the Secretary of Education<sup>3</sup>) to assume responsibility for disposing of surplus real property “for school, classroom, or other educational use.” 63 Stat. 387, as amended, 40 U. S. C. § 484(k)(1). Subject to the disapproval of the Administrator of General Services, the Secretary may sell or lease the property to nonprofit, tax exempt educational institutions for consideration that takes into account “any benefit which has accrued or may accrue to the United States” from the transferee’s use of the property. 63 Stat. 387, 40 U. S. C. § 484(k)(1)(A), (C).<sup>4</sup> By regulation, the Secretary has provided for the computation of a “public benefit allowance,” which discounts the transfer price of the property “on the basis of benefits to the United States from the use of such property for educational purposes.” 34 CFR § 12.9(a) (1980).<sup>5</sup>

The property which spawned this litigation was acquired by the Department of the Army in 1942, as part of a larger tract of approximately 181 acres of land northwest of Philadelphia. The Army built on that land the Valley Forge Gen-

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quired for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator [of General Services].” 63 Stat. 379, 40 U. S. C. § 472(g).

<sup>3</sup> See 20 U. S. C. §§ 3411, 3441(a)(2)(P) (1976 ed., Supp. III).

<sup>4</sup> The property is to “be awarded to the applicant having a program of utilization which provides, in the opinion of the Department [of Education], the greatest public benefit.” 34 CFR § 12.5 (1980). Applicants must be willing and able to assume immediate responsibility for the property and must demonstrate the financial capacity to implement the approved program of educational use. *Id.* § 12.8(b).

<sup>5</sup> In calculating the public benefit allowance, the Secretary considers factors such as the applicant’s educational accreditation, sponsorship of public service training, plans to introduce new instructional programs, commitment to student health and welfare, research, and service to the handicapped. 34 CFR pt. 12, Exh. A (1980).



eral Hospital, and for 30 years thereafter, that hospital provided medical care for members of the Armed Forces. In April 1973, as part of a plan to reduce the number of military installations in the United States, the Secretary of Defense proposed to close the hospital, and the General Services Administration declared it to be "surplus property."

The Department of Health, Education, and Welfare (HEW) eventually assumed responsibility for disposing of portions of the property, and in August 1976, it conveyed a 77-acre tract to petitioner, the Valley Forge Christian College.<sup>6</sup> The appraised value of the property at the time of conveyance was \$577,500.<sup>7</sup> This appraised value was discounted, however, by the Secretary's computation of a 100% public benefit allowance, which permitted petitioner to acquire the property without making any financial payment for it. The deed from HEW conveyed the land in fee simple with certain conditions subsequent, which required petitioner to use the property for 30 years solely for the educational purposes described in petitioner's application. In that description, petitioner stated its intention to conduct "a program of education . . . meeting the accrediting standards of the State of Pennsylvania, The American Association of Bible Colleges, the Division of Education of the General Council of the Assemblies of God and the Veterans Administration."

Petitioner is a nonprofit educational institution operating under the supervision of a religious order known as the Assemblies of God. By its own description, petitioner's purpose is "to offer systematic training on the collegiate level to men and women for Christian service as either ministers or

---

<sup>6</sup>The remaining property was conveyed to local school districts for educational purposes or set aside for park and recreational use. At the time of the conveyance, petitioner was known as the Northeast Bible College.

<sup>7</sup>The appraiser placed no value on the buildings and fixtures situated on the tract. The buildings had been constructed for use as an army hospital and, in his view, the expense necessary to render them useful for other purposes would have offset the value of such an endeavor.



laymen.” App. 34. Its degree programs reflect this orientation by providing courses of study “to train leaders for church related ministries.” *Id.*, at 102. Faculty members must “have been baptized in the Holy Spirit and be living consistent Christian lives,” *id.*, at 37, and all members of the college administration must be affiliated with the Assemblies of God, *id.*, at 36. In its application for the 77-acre tract, petitioner represented that, if it obtained the property, it would make “additions to its offerings in the arts and humanities,” and would strengthen its “psychology” and “counselling” courses to provide services in inner city areas.

In September 1976, respondents Americans United for Separation of Church and State, Inc. (Americans United), and four of its employees, learned of the conveyance through a news release. Two months later, they brought suit in the United States District Court for the Eastern District of Pennsylvania to challenge the conveyance on the ground that it violated the Establishment Clause of the First Amendment.<sup>8</sup> See App. 10. In its amended complaint, Americans United described itself as a nonprofit organization composed of 90,000 “taxpayer members.” The complaint asserted that each member “would be deprived of the fair and constitutional use of his (her) tax dollar for constitutional purposes in violation of his (her) rights under the First Amendment of the United States Constitution.” *Ibid.* Respondents sought a declaration that the conveyance was null and void, and an order compelling petitioner to transfer the property back to the United States. *Id.*, at 11.

On petitioner’s motion, the District Court granted summary judgment and dismissed the complaint. App. to Pet. for Cert. A42. The court found that respondents lacked standing to sue as taxpayers under *Flast v. Cohen*, 392 U. S.

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<sup>8</sup> “Congress shall make no law respecting an establishment of religion.  
...”



83 (1968), and had “failed to allege that they have suffered any actual or concrete injury beyond a generalized grievance common to all taxpayers.” App. to Pet. for Cert. A43.

Respondents appealed to the Court of Appeals for the Third Circuit, which reversed the judgment of the District Court by a divided vote. 619 F. 2d 252 (1980). All members of the court agreed that respondents lacked standing as taxpayers to challenge the conveyance under *Flast v. Cohen*, *supra*, since that case extended standing to taxpayers *qua* taxpayers only to challenge congressional exercises of the power to tax and spend conferred by Art. I, § 8, of the Constitution, and this conveyance was authorized by legislation enacted under the authority of the Property Clause, Art. IV, § 3, cl. 2. Notwithstanding this significant factual difference from *Flast*, the majority of the Court of Appeals found that respondents also had standing merely as “citizens,” claiming “‘injury in fact’ to their shared individuated right to a government that ‘shall make no law respecting the establishment of religion.’” 619 F. 2d, at 261. In the majority’s view, this “citizen standing” was sufficient to satisfy the “case or controversy” requirement of Art. III. One judge, perhaps sensing the doctrinal difficulties with the majority’s extension of standing, wrote separately, expressing his view that standing was necessary to satisfy “the need for an available plaintiff,” without whom “the Establishment Clause would be rendered virtually unenforceable” by the Judiciary. *Id.*, at 267, 268. The dissenting judge expressed the view that respondents’ allegations constituted a “generalized grievance . . . too abstract to satisfy the injury in fact component of standing.” *Id.*, at 269. He therefore concluded that their standing to contest the transfer was barred by this Court’s decisions in *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208 (1974), and *United States v. Richardson*, 418 U. S. 166 (1974). 619 F. 2d, at 270-271.

Because of the unusually broad and novel view of standing



to litigate a substantive question in the federal courts adopted by the Court of Appeals, we granted certiorari, 450 U. S. 909 (1981), and we now reverse.

## II

Article III of the Constitution limits the “judicial power” of the United States to the resolution of “cases” and “controversies.” The constitutional power of federal courts cannot be defined, and indeed has no substance, without reference to the necessity “to adjudge the legal rights of litigants in actual controversies.” *Liverpool Steamship Co. v. Commissioners of Emigration*, 113 U. S. 33, 39 (1885). The requirements of Art. III are not satisfied merely because a party requests a court of the United States to declare its legal rights, and has couched that request for forms of relief historically associated with courts of law in terms that have a familiar ring to those trained in the legal process. The judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, this Court said 90 years ago, “is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy.” *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U. S. 339, 345 (1892). Otherwise, the power “is not judicial . . . in the sense in which judicial power is granted by the Constitution to the courts of the United States.” *United States v. Ferreira*, 13 How. 40, 48 (1852).

As an incident to the elaboration of this bedrock requirement, this Court has always required that a litigant have “standing” to challenge the action sought to be adjudicated in the lawsuit. The term “standing” subsumes a blend of constitutional requirements and prudential considerations, see *Warth v. Seldin*, 422 U. S. 490, 498 (1975), and it has not always been clear in the opinions of this Court whether particular features of the “standing” requirement have been re-



quired by Art. III *ex proprio vigore*, or whether they are requirements that the Court itself has erected and which were not compelled by the language of the Constitution. See *Flast v. Cohen*, 392 U. S., at 97.

A recent line of decisions, however, has resolved that ambiguity, at least to the following extent: at an irreducible minimum, Art. III requires the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," *Gladstone, Realtors v. Village of Bellwood*, 441 U. S. 91, 99 (1979), and that the injury "fairly can be traced to the challenged action" and "is likely to be redressed by a favorable decision," *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U. S. 26, 38, 41 (1976).<sup>9</sup> In this manner does Art. III limit the federal judicial power "to those disputes which confine federal courts to a role consistent with a system of separated powers and which are traditionally thought to be capable of resolution through the judicial process." *Flast v. Cohen*, *supra*, at 97.

The requirement of "actual injury redressable by the court," *Simon*, *supra*, at 39, serves several of the "implicit policies embodied in Article III," *Flast*, *supra*, at 96. It tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action. The "standing" requirement serves other purposes. Because it assures an actual factual setting in which the litigant

<sup>9</sup> See *Watt v. Energy Action Educational Foundation*, — U. S. —, — (1981); *Duke Power Co. v. Carolina Environmental Study Group*, 438 U. S. 59, 72 (1978); *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U. S. 252, 261, 262 (1977); *Warth v. Seldin*, 422 U. S. 490, 499 (1975); *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208, 218, 220-221 (1974); *United States v. Richardson*, 418 U. S. 166, 179-180 (1974); *O'Shea v. Littleton*, 414 U. S. 488, 493 (1974); *Linda R.S. v. Richard D.*, 410 U. S. 614, 617-618 (1973).



asserts a claim of injury in fact, a court may decide the case with some confidence that its decision will not pave the way for lawsuits which have some, but not all, of the facts of the case actually decided by the court.

The Art. III aspect of standing also reflects a due regard for the autonomy of those persons likely to be most directly affected by a judicial order. The federal courts have abjured appeals to their authority which would convert the judicial process into "no more than a vehicle for the vindication of the value interests of concerned bystanders." *United States v. SCRAP*, 412 U. S. 669, 687 (1973). Were the federal courts merely publicly funded forums for the ventilation of public grievances or the refinement of jurisprudential understanding, the concept of "standing" would be quite unnecessary. But the "cases and controversies" language of Art. III forecloses the conversion of courts of the United States into judicial versions of college debating forums. As we said in *Sierra Club v. Morton*, 405 U. S. 727, 740 (1972):

"The requirement that a party seeking review must allege facts showing that he is himself adversely affected . . . does serve as at least a rough attempt to put the decision as to whether review will be sought in the hands of those who have a direct stake in the outcome."

The exercise of judicial power, which can so profoundly affect the lives, liberty, and property of those to whom it extends, is therefore restricted to litigants who can show "injury in fact" resulting from the action which they seek to have the Court adjudicate.

The exercise of the judicial power also affects relationships between the coequal arms of the national government. The effect is, of course, most vivid when a federal court declares unconstitutional an act of the Legislative or Executive branch. While the exercise of that "ultimate and supreme function," *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U. S., at 345, is a formidable means of vindicating individual



rights, when employed unwisely or unnecessarily it is also the ultimate threat to the continued effectiveness of the federal courts in performing that role. While the propriety of such action by a federal court has been recognized since *Marbury v. Madison*, 1 Cranch 137 (1803), it has been recognized as a tool of last resort on the part of the federal judiciary throughout its nearly 200 years of existence:

“[R]epeated and essentially head-on confrontations between the life-tenured branch and the representative branches of government will not, in the long run, be beneficial to either. The public confidence essential to the former and the vitality critical to the latter may well erode if we do not exercise self-restraint in the utilization of our power to negative the actions of the other branches.” *United States v. Richardson*, 418 U. S., at 188 (POWELL, J., concurring).

Proper regard for the complex nature of our constitutional structure requires neither that the judicial branch shrink from a confrontation with the other two coequal branches of the federal government, nor that it hospitably accept for adjudication claims of constitutional violation by other branches of government where the claimant has not suffered cognizable injury. Thus this Court has “refrain[ed] from passing upon the constitutionality of an act [of the representative branches] unless obliged to do so in the proper performance of our judicial function, when the question is raised by a party whose interests entitle him to raise it.” *Blair v. United States*, 250 U. S. 273, 279 (1919). The importance of this precondition should not be underestimated as a means of “defin[ing] the role assigned to the judiciary in a tripartite allocation of power.” *Flast v. Cohen*, *supra*, at 95.

Beyond the constitutional requirements, the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing. Thus, this Court has held that “the plaintiff generally must assert his own legal rights



and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *Warth v. Seldin*, 422 U. S., at 499.<sup>10</sup> In addition, even when the plaintiff has alleged redressable injury sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating “abstract questions of wide public significance” which amount to “generalized grievances,” pervasively shared and most appropriately addressed in the representative branches. *Id.*, at 499–500.<sup>11</sup> Finally, the Court has required that the plaintiff’s complaint fall within “the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Data Processing Service v. Camp*, 397 U. S. 150, 153 (1969).<sup>12</sup>

Merely to articulate these principles is to demonstrate their close relationship to the policies reflected in the Art. III requirement of actual or threatened injury amenable to judicial remedy. But neither the counsels of prudence nor the policies implicit in the “case or controversy” requirement should be mistaken for the rigorous Art. III requirements themselves. Satisfaction of the former cannot substitute for a demonstration of “distinct and palpable injury” . . . that is likely to be redressed if the requested relief is granted.” *Gladstone, Realtors v. Village of Bellwood*, *supra*, at 100 (quoting *Warth v. Seldin*, *supra*, at 501). That requirement states a limitation on judicial power, not merely a factor to be balanced in the weighing of so-called “prudential” considerations.

We need not mince words when we say that the concept of “Art. III standing” has not been defined with complete con-

<sup>10</sup> See *Gladstone, Realtors v. Village of Bellwood*, 441 U. S., at 100; *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U. S., at 80; *Singleton v. Wulff*, 428 U. S. 106, 113–114 (1976).

<sup>11</sup> See *Gladstone, Realtors v. Village of Bellwood*, *supra*, at 100; *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, *supra*, at 80.

<sup>12</sup> See *Gladstone, Realtors v. Village of Bellwood*, *supra*, at 100, n. 6; *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U. S., at 39, n. 19.



sistency in all of the various cases decided by this Court which have discussed it, nor when we say that this very fact is probably proof that the concept cannot be reduced to a one-sentence or one-paragraph definition. But of one thing we may be sure: Those who do not possess Art. III standing may not litigate as suitors in the courts of the United States.<sup>13</sup> Art. III, which is every bit as important in its circumscription of the judicial power of the United States as in its granting of that power, is not merely a troublesome hurdle to be overcome if possible so as to reach the “merits” of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the framers of the Constitution at Philadelphia in 1787, a charter which created a general government, provided for the interaction between that government and the governments of the several States, and was later amended so as to either enhance or limit its authority with respect to both States and individuals.

### III

The injury alleged by respondents in their amended complaint is the “depriv[ation] of the fair and constitutional use of

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<sup>13</sup> The dissent takes us to task for “tend[ing] merely to obfuscate, rather than inform, our understanding of the meaning of rights under the law.” *Post*, at ——. Were this Court constituted to operate a national classroom on “the meaning of rights” for the benefit of interested litigants, this criticism would carry weight. The teaching of Art. III, however, is that constitutional adjudication is available only on terms prescribed by the Constitution, among which is the requirement of a plaintiff with standing to sue. The dissent asserts that this requirement “overrides no other provision of the Constitution,” *id.*, at —, but just as surely the Art. III power of the federal courts does not wax and wane in harmony with a litigant’s desire for a “hospitable forum,” *id.*, at —. Art. III obligates a federal court to act only when it is assured of the power to do so, that is, when it is called upon to resolve an actual case or controversy. Then, and only then, may it turn its attention to other constitutional provisions and presume to provide a forum for the adjudication of rights. See *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 345 (1936) (Brandeis, J., concurring).



[their] tax dollar.” J.A. 10.<sup>14</sup> As a result, our discussion must begin with *Frothingham v. Mellon*, 262 U. S. 447 (1923). In that action a taxpayer brought suit challenging the constitutionality of the Maternity Act of 1921, which provided federal funding to the States for the purpose of improving maternal and infant health. The injury she alleged consisted of the burden of taxation in support of an unconstitutional regime, which she characterized as a deprivation of property without due process. “Looking through forms of words to the substance of [the] complaint,” the Court concluded that the only “injury” was the fact “that officials of the executive branch of the government are executing and will execute an act of Congress asserted to be unconstitutional.” *Id.*, at 488. Any tangible effect of the challenged statute on the plaintiff’s tax burden was “remote, fluctuating, and uncertain.” *Id.*, at 487. In rejecting this as a cognizable injury sufficient to establish standing, the Court admonished:

“The party who invokes the power [of judicial review] 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 the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. . . . Here the parties plaintiff have no such case.” *Id.*, at 488.

Following the decision in *Frothingham*, the Court confirmed that the expenditure of public funds in an allegedly

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<sup>14</sup> Respondent Americans United has alleged no injury to itself as an organization, distinct from injury to its taxpayer members. As a result, its claim to standing can be no different from those of the members it seeks to represent. The question is whether “its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit.” *Warth v. Seldin*, 422 U. S., at 511. See *Simon v. Eastern Kentucky Welfare Rights Org.*, *supra*, at 40; *Sierra Club v. Morton*, 405 U. S. 727, 739–741 (1972).



unconstitutional manner is not an injury sufficient to confer standing, even though the plaintiff contributes to the public coffers as a taxpayer. In *Doremus v. Board of Education*, 342 U. S. 429 (1952), plaintiffs brought suit as citizens and taxpayers, claiming that a New Jersey law which authorized public school teachers in the classroom to read passages from the Bible violated the Establishment Clause of the First Amendment. The Court dismissed the appeal for lack of standing:

“This Court has held that the interests of a taxpayer in the moneys of the federal treasury are too indeterminable, remote, uncertain and indirect to furnish a basis for an appeal to the preventive powers of the Court over their manner of expenditure. . . . Without disparaging the availability of the remedy by taxpayer’s action to restrain unconstitutional acts which result in direct pecuniary injury, we reiterate what the Court said of a federal statute as equally true when a state Act is assailed: ‘The party who invokes the power 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 the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.’” *Id.*, at 433–434 (quoting *Frothingham v. Mellon*, *supra*, at 488) (citations omitted).

In short, the Court found that plaintiffs’ grievance was “not a direct dollars-and-cents injury but is a religious difference.” *Id.*, at 434. A case or controversy did not exist, even though the “clash of interests [was] real and . . . strong.” *Id.*, at 436 (Douglas, J., dissenting).

The Court again visited the problem of taxpayer standing in *Flast v. Cohen*, 392 U. S. 83 (1968). The taxpayer plaintiffs in *Flast* sought to enjoin the expenditure of federal funds under the Elementary and Secondary Education Act of 1965, which they alleged were being used to support religious schools in violation of the Establishment Clause. The Court



developed a two-part test to determine whether the plaintiffs had standing to sue. First, because a taxpayer alleges injury only by virtue of his liability for taxes, the Court held that “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, of the Constitution.” *Id.*, at 102. Second, the Court required the taxpayer to “show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8.” *Id.*, at 102–103.

The plaintiffs in *Flast* satisfied this test because “[t]heir 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, and because the Establishment Clause, on which plaintiffs’ complaint rested, “operates as a specific constitutional limitation upon the exercise by Congress of the taxing and spending power conferred by Art. I, § 8,” *id.*, at 104. The Court distinguished *Frothingham v. Mellon*, *supra*, on the ground that Mrs. Frothingham had relied, not on a specific limitation on the power to tax and spend, but on a more general claim based on the Due Process Clause. *Id.*, at 105. Thus, the Court reaffirmed that the “case or controversy” aspect of standing is unsatisfied “where a taxpayer seeks to employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System.” *Id.*, at 106.

Unlike the plaintiffs in *Flast*, respondents fail the first prong of the test for taxpayer standing. Their claim is deficient in two respects. First, the source of their complaint is not a congressional action, but a decision by HEW to transfer a parcel of federal property.<sup>15</sup> *Flast* limited taxpayer stand-

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<sup>15</sup> Respondents do not challenge the constitutionality of the Federal Property and Administrative Services Act itself, but rather a particular



ing to challenges directed “only [at] exercises of congressional power.” *Id.*, at 102. See *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208, 228 (1974) (denying standing because the taxpayer plaintiffs “did not challenge an enactment under Art. I, § 8, but rather the action of the Executive Branch”).

Second, and perhaps redundantly, the property transfer about which respondents complain was not an exercise of authority conferred by the taxing and spending clause of Art. I, § 8. The authorizing legislation, the Federal Property and Administrative Services Act of 1949, was an evident exercise of Congress’ power under the Property Clause, Art. IV, § 3, cl. 2.<sup>16</sup> Respondents do not dispute this conclusion, see Brief for Respondents 10, and it is decisive of any claim of taxpayer standing under the *Flast* precedent.<sup>17</sup>

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Executive branch action arguably authorized by the Act.

<sup>16</sup> The Act was designed “to simplify the procurement, utilization, and disposal of Government property” in order to achieve an “efficient, businesslike system of property management.” S. Rep. No. 475, 81st Cong., 1st Sess., p. 1 (1949). See H. R. Rep. No. 670, 81st Cong., 1st Sess., pp. 1–2 (1949). Among the central purposes of the Act was the “maximum utilization of property already owned by the Government and the minimum purchasing of new property.” S. Rep. No. 475, *supra*, at 4. Congress recognized, however, that from time to time certain property would become surplus to the government, and in particular, property acquired by the military to meet wartime contingencies. Congress provided a means of disposing of this property to meet well-recognized public priorities, including education. See S. Rep. No. 475, *supra*, at 4–5; H.R. Rep. No. 670, *supra*, at 5–6.

<sup>17</sup> Although not necessary to our decision, we note that any connection between the challenged property transfer and respondents’ tax burden is at best speculative and at worst nonexistent. Although public funds were expended to establish the Valley Forge General Hospital, the land was acquired and the facilities constructed thirty years prior to the challenged transfer. Respondents do not challenge this expenditure, and we do not immediately perceive how such a challenge might now be raised. Nor do respondents dispute the government’s conclusion that the property has become useless for federal purposes and ought to be disposed of in some pro-



Any doubt that once might have existed concerning the rigor with which the *Flast* exception to the *Frothingham* principle ought to be applied should have been erased by this Court's recent decisions in *United States v. Richardson*, 418 U. S. 166 (1974), and *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S. 208 (1974). In *Richardson*, the question was whether the plaintiff had standing as a federal taxpayer to argue that legislation which permitted the Central Intelligence Agency to withhold from the public detailed information about its expenditures violated the Accounts Clause of the Constitution.<sup>18</sup> We rejected plaintiff's claim of standing because "his challenge [was] not addressed to the taxing or spending power, but to the statutes regulating the CIA." 418 U. S., at 175. The "mere recital" of those claims "demonstrate[d] how far he [fell] short of the standing criteria of *Flast* and how neatly he [fell] within the *Frothingham* holding left undisturbed." *Id.*, at 174-175.

The claim in *Schlesinger* was marred by the same deficiency. Plaintiffs in that case argued that the Incompatibil-

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ductive manner. In fact, respondents' only objection is that the government did not receive adequate consideration for the transfer, because petitioner's use of the property will not confer a public benefit. See Brief for Respondents 13. Assuming *arguendo* that this proposition is true, an assumption by no means clear, there is no basis for believing that a transfer to a different purchaser would have added to government receipts. As the government argues, "the ultimate purchaser would, in all likelihood, have been another non-profit institution or local school district rather than a purchaser for cash." Brief for United States 30. Moreover, each year of delay in disposing of the property *depleted* the Treasury by the amounts necessary to maintain a facility that had lost its value to the government. Even if respondents had brought their claim within the outer limits of *Flast*, therefore, they still would have encountered serious difficulty in establishing that they "personally would benefit in a tangible way from the court's intervention." *Warth v. Seldin*, 422 U. S., at 508.

<sup>18</sup> U. S. Const., Art. I, § 9, cl. 7 ("[A]nd a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time").



ity Clause of Art. I<sup>19</sup> prevented certain Members of Congress from holding commissions in the Armed Forces Reserve. We summarily rejected their assertion of standing as taxpayers because they “did not challenge an enactment under Art. I, § 8, but rather the action of the Executive Branch in permitting Members of Congress to maintain their Reserve status.” 418 U. S., at 228.

Respondents, therefore, are plainly without standing to sue as taxpayers. The Court of Appeals apparently reached the same conclusion. It remains to be seen whether respondents have alleged any other basis for standing to bring this suit.

#### IV

Although the Court of Appeals properly doubted respondents’ ability to establish standing solely on the basis of their taxpayer status, it considered their allegations of taxpayer injury to be “essentially an assumed role.” 619 F. 2d, at 261.

“Plaintiffs have no reason to expect, nor perhaps do they care about, any personal tax saving that might result should they prevail. The crux of the interest at stake, the plaintiffs argue, is found in the Establishment Clause, not in the supposed loss of money as such. As a matter of primary identity, therefore, the plaintiffs are not so much taxpayers as separationists . . .” *Ibid.*

In the court’s view, respondents had established standing by virtue of an “injury in fact” to their shared individuated right to a government that “shall make no law respecting the establishment of religion.” *Ibid.* The court distinguished this “injury” from “the question of ‘citizen standing’ as such.” *Id.*, at 262. Although citizens generally could not establish standing simply by claiming an interest in governmental ob-

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<sup>19</sup> U. S. Const., Art. I, § 6, cl. 2 (“[N]o Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office”).



servance of the Constitution, respondents had “set forth instead a particular and concrete injury” to a “personal constitutional right.” *Id.*, at 265.

The Court of Appeals was surely correct in recognizing that the Art. III requirements of standing are not satisfied by “the abstract injury in nonobservance of the Constitution asserted by . . . citizens.” *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S., at 223, n. 3. This Court repeatedly has rejected claims of standing predicated on “the right, possessed by every citizen, to require that the Government be administered according to law . . .” *Fairchild v. Hughes*, 258 U. S. 126, 129 [1922].” *Baker v. Carr*, 369 U. S. 186, 208 (1962). See *Schlesinger v. Reservists Committee to Stop the War*, *supra*, at 216–222; *Laird v. Tatum*, 408 U. S. 1 (1972); *Ex parte Levitt*, 302 U. S. 633 (1937). Such claims amount to little more than attempts “to employ a federal court as a forum in which to air . . . generalized grievances about the conduct of government.” *Flast v. Cohen*, 392 U. S., at 106.

In finding that respondents had alleged something more than “the generalized interest of all citizens in constitutional governance,” *Schlesinger*, *supra*, at 217, the Court of Appeals relied on factual differences which we do not think amount to legal distinctions. The court decided that respondents’ claim differed from those in *Schlesinger* and *Richardson*, which were predicated, respectively, on the Incompatibility and Accounts Clauses, because “it is at the very least arguable that the Establishment Clause creates in each citizen a ‘personal constitutional right’ to a government that does not establish religion.” 619 F. 2d, at 265 (footnote omitted). The court found it unnecessary to determine whether this “arguable” proposition was correct, since it judged the mere allegation of a legal right sufficient to confer standing.

This reasoning process merely disguises, we think with a rather thin veil, the inconsistency of the court’s results with



our decisions in *Schlesinger* and *Richardson*. The plaintiffs in those cases plainly asserted a “personal right” to have the government act in accordance with their views of the Constitution; indeed, we see no barrier to the *assertion* of such claims with respect to any constitutional provision. But assertion of a right to a particular kind of government conduct, which the government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning.

Nor can *Schlesinger* and *Richardson* be distinguished on the ground that the Incompatibility and Accounts Clauses are in some way less “fundamental” than the Establishment Clause. Each establishes a norm of conduct which the federal government is bound to honor—to no greater or lesser extent than any other inscribed in the Constitution. To the extent the Court of Appeals relied on a view of standing under which the Art. III burdens diminish as the “importance” of the claim on the merits increases, we reject that notion. The requirement of standing “focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated.” *Flast v. Cohen, supra*, at 99. Moreover, we know of no principled basis on which to create a hierarchy of constitutional values or a complementary “sliding scale” of standing which might permit respondents to invoke the judicial power of the United States.<sup>20</sup>

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<sup>20</sup> The dissent is premised on a revisionist reading of our precedents which leads to the conclusion that the Art. III requirement of standing is satisfied by any taxpayer who contends “that the federal government has exceeded the bounds of the law in allocating its largesse,” *post*, at —. “The concept of taxpayer injury necessarily recognizes the continuing stake of the taxpayer in the disposition of the Treasury to which he has contributed his taxes, and his right to have those funds put to lawful uses.” *Id.*, at —. On this novel understanding, the dissents reads cases such as *Frothingham* and *Flast* as decisions on the merits of the taxpayers’ claims. *Frothingham* is explained as a holding that a taxpayer ordinarily has no legal right to challenge congressional expenditures. *Id.*, at —. The



"The proposition that all constitutional provisions are enforceable by any citizen simply because citizens are the ultimate beneficiaries of those provisions has no boundaries." *Schlesinger v. Reservists Committee to Stop the War*, *supra*, at 227.

The complaint in this case shares a common deficiency with those in *Schlesinger* and *Richardson*. Although they claim

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dissent divines from *Flast* the holding that a taxpayer *does* have an enforceable right "to challenge a federal bestowal of largesse" for religious purposes. *Id.*, at —. This right extends to "the Government as a whole, regardless of which branch is at work in a particular instance," *id.*, at —, and regardless of whether the challenged action was an exercise of the spending power, *id.*, at —.

However appealing this reconstruction of precedent may be, it bears little resemblance to the cases on which it purports to rest. *Frothingham* and *Flast* were decisions that plainly turned on *standing*, and just as plainly they rejected any notion that the Art. III requirement of direct injury is satisfied by a taxpayer who contends "that the federal government has exceeded the bounds of the law in allocating its largesse." *Id.*, at —. Moreover, although the dissent's view may lead to a result satisfying to many in this case, it is not evident how its substitution of "legal interest," *id.*, at —, for "standing" enhances "our understanding of the meaning of rights under law," *id.*, at —. Logically, the dissent must shoulder the burden of explaining why taxpayers with standing have no "legal interest" in congressional expenditures except when it is possible to allege a violation of the Establishment Clause: yet it does not attempt to do so.

Nor does the dissent's interpretation of standing adequately explain cases such as *Schlesinger* and *Richardson*. According to the dissent, the taxpayer plaintiffs in those cases lacked standing, not because they failed to challenge an exercise of the spending power, but because they did not complain of "the distribution of government largesse." *Id.*, at —. And yet if the standing of a taxpayer is established by his "continuing stake . . . in the disposition of the Treasury to which he has contributed his taxes," *id.*, at —, it would seem to follow that he can assert a right to examine the budget of the CIA, as in *Richardson*, see 418 U. S., at 211, and a right to argue that members of Congress cannot claim reserve pay from the government, as in *Schlesinger*, see 418 U. S., at 211. Of course, both claims have been rejected, precisely because Art. III requires a demonstration of redressable injury that is not satisfied by a claim that tax monies have been spent unlawfully.



that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by the plaintiffs *as a consequence* of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms. It is evident that respondents are firmly committed to the constitutional principle of separation of church and State, but standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy. "[T]hat concrete adverseness which sharpens the presentation of issues," *Baker v. Carr*, 369 U. S., at 204, is the anticipated consequence of proceedings commenced by one who has been injured in fact; it is not a permissible substitute for the showing of injury itself.<sup>21</sup>

In reaching this conclusion, we do not retreat from our earlier holdings that standing may be predicated on noneconomic injury. See, *e. g.*, *United States v. SCRAP*, 412 U. S., at 686-688; *Data Processing Service v. Camp*, 397 U. S., at 153-154. We simply cannot see that respondents have alleged an *injury of any kind*, economic or otherwise, sufficient to confer standing.<sup>22</sup> Respondents complain of a transfer of

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<sup>21</sup> In *Schlesinger*, we rejected the argument that standing should be recognized because "the adverse parties sharply conflicted in their interests and views and were supported by able briefs and arguments." 418 U. S., at 225:

"We have no doubt about the sincerity of respondents' stated objectives and the depth of their commitment to them. But the essence of standing 'is not a question of motivation but of possession of the requisite . . . interest that is, or is threatened to be, injured by the unconstitutional conduct.' *Doremus v. Board of Education*, 342 U. S. 429, 435 (1952)." *Id.*, at 225-226.

<sup>22</sup> Respondents rely on our statement in *Data Processing Serv. v. Camp*, 397 U. S. 150, 154 (1970), that "[a] person or family may have a spiritual stake in First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause. *Abington School District v. Schempp*, 374 U. S. 203 [1963]." Respondents



property located in Chester County, Pennsylvania. The named plaintiffs reside in Maryland and Virginia;<sup>23</sup> their organizational headquarters are located in Washington, D.C. They learned of the transfer through a news release. Their claim that the government has violated the Establishment Clause does not provide a special license to roam the country in search of governmental wrongdoing and to reveal their dis-

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apparently construe this language to mean that any person asserting an Establishment Clause violation possesses a "spiritual stake" sufficient to confer standing. The language will not bear that weight. First, the language cannot be read apart from the context of its accompanying reference to *Abington School District v. Schempp*, *supra*. In *Schempp*, the Court invalidated laws that required Bible reading in the public schools. Plaintiffs were children who attended the schools in question, and their parents. The Court noted:

"It goes without saying that the laws and practices involved here can be challenged only by persons having standing to complain. . . . The parties here are school children and their parents, who are directly affected by the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain." *Id.*, at 224, n. 9.

The Court also drew a comparison with *Doremus v. Board of Education*, 342 U. S. 429 (1952), in which the identical substantive issues were raised, but in which the appeal was "dismissed upon the graduation of the school child involved and because of the appellants' failure to establish standing as taxpayers." 374 U. S., at 224, n. 9. The Court's discussion of the standing issue is not extensive, but it is sufficient to show the error in respondents' broad reading of the phrase "spiritual stake." The plaintiffs in *Schempp* had standing, not because their complaint rested on the Establishment Clause—for as *Doremus* demonstrated, that is insufficient—but because impressionable schoolchildren were subjected to unwelcome religious exercises or were forced to assume special burdens to avoid them. Respondents have alleged no comparable injury.

<sup>23</sup> Respondent Americans United claims that it has certain unidentified members who reside in Pennsylvania. It does not explain, however, how this fact establishes a cognizable injury where none existed before. Respondent is still obligated to allege facts sufficient to establish that one or more of its members has suffered, or is threatened with, an injury other than their belief that the transfer violated the Constitution.



coveries in federal court.<sup>24</sup> The federal courts were simply not constituted as ombudsmen of the general welfare.

# V

The Court of Appeals in this case ignored unambiguous limitations on taxpayer and citizen standing. It appears to have done so out of the conviction that enforcement of the Establishment Clause demands special exceptions from the requirement that a plaintiff allege “distinct and palpable injury to himself,” . . . that is likely to be redressed if the requested relief is granted.” *Gladstone, Realtors v. Village of Bellwood*, 441 U. S., at 100 (quoting *Warth v. Seldin*, 422 U. S., at 501). The court derived precedential comfort from *Flast v. Cohen*, *supra*: “The underlying justification for according standing in *Flast* it seems, was the implicit recognition that the Establishment Clause does create in every citizen a personal constitutional right, such that any citizen, including taxpayers, may contest under that clause the constitutionality of federal expenditures.” 619 F. 2d, at 262.<sup>25</sup>

<sup>24</sup> Respondents also claim standing by reference to the Administrative Procedure Act, 5 U. S. C. § 702 (1976), which authorizes judicial review at the instance of any person who has been “adversely affected or aggrieved by agency action within the meaning of a relevant statute.” Neither the Administrative Procedure Act, nor any other congressional enactment, can lower the threshold requirements of standing under Art. III. See, e. g., *Gladstone, Realtors v. Village of Bellwood*, 441 U. S., at 100; *Warth v. Seldin*, 422 U. S., at 501. Respondents do not allege that the Act creates a legal right, “the invasion of which creates standing,” *Linda R.S. v. Richard D.*, 410 U. S., at 617, n. 3., and there is no other basis for arguing that its existence alters the rules of standing otherwise applicable to this case.

<sup>25</sup> The majority believed that the only thing which prevented this Court from openly acknowledging this position was the fact that the complaint in *Flast* had alleged no basis for standing other than the plaintiffs’ taxpayer status. 619 F. 2d, at 262. As the dissent below pointed out, this view is simply not in accord with the facts. See *id.*, at 269–270. The *Flast* plaintiffs and several *amici* strongly urged the Court to adopt the same view of standing for which respondents argue in this case. The Court plainly



The concurring opinion was even more direct. In its view, “statutes alleged to violate the Establishment Clause may not have an individual impact sufficient to confer standing in the traditional sense.” *Id.*, at 268. To satisfy “the need for an available plaintiff,” *id.*, at 267, and thereby to assure a basis for judicial review, respondents should be granted standing because, “as a practical matter, no one is better suited to bring this lawsuit and thus vindicate the freedoms embodied in the Establishment Clause,” *id.*, at 266.

Implicit in the foregoing is the philosophy that the business of the federal courts is correcting constitutional errors, and that “cases and controversies” are at best merely convenient vehicles for doing so and at worst nuisances that may be dispensed with when they become obstacles to that transcendent endeavor. This philosophy has no place in our constitutional scheme. It does not become more palatable when the underlying merits concern the Establishment Clause. Respondents’ claim of standing implicitly rests on the presumption that violations of the Establishment Clause typically will not cause injury sufficient to confer standing under the “traditional” view of Art. III. But “[t]he assumption that if respondents have no standing to sue, no one would have standing, is not a reason to find standing.” *Schlesinger v. Reservists Committee to Stop the War*, 418 U. S., at 227. This view would convert standing into a requirement that must be observed only when satisfied. Moreover, we are unwilling to assume that injured parties are nonexistent simply because they have not joined respondents in their suit. The law of averages is not a substitute for standing.

Were we to accept respondents’ claim of standing in this case, there would be no principled basis for confining our ex-

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chose not to do so. Even if respondents were correct in arguing that the Court in *Flast* was bound by a “perceived limitation in the pleadings,” *id.*, at 262, we are not so bound in this case, and we find no merit in respondents’ vision of standing.



ception to litigants relying on the Establishment Clause. Ultimately, that exception derives from the idea that the judicial power requires nothing more for its invocation than important issues and able litigants.<sup>26</sup> The existence of injured parties who might not wish to bring suit becomes irrelevant. Because we are unwilling to countenance such a departure from the limits on judicial power contained in Art. III, the judgment of the Court of Appeals is reversed.

*It is so ordered.*

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<sup>26</sup> Were we to recognize standing premised on an "injury" consisting solely of an alleged violation of a "personal constitutional right" to a government that does not establish religion," 619 F. 2d, at 265, a principled consistency would dictate recognition of respondents' standing to challenge execution of every capital sentence on the basis of a personal right to a government that does not impose cruel and unusual punishment, or standing to challenge every affirmative action program on the basis of a personal right to a government that does not deny equal protection of the laws, to choose but two among as many possible examples as there are commands in the Constitution.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

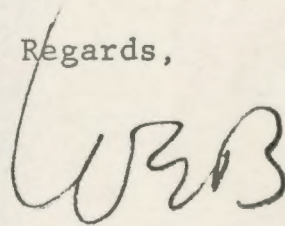
December 28, 1981

Re: No. 80-327 - Valley Forge Christian College v.  
Americans United for Separation of  
Church and State, Inc.

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRB', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

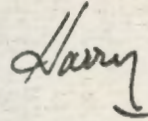
January 4, 1982

Re: No. 80-327 - Valley Forge Christian College  
v. Americans United

Dear Bill:

Please join me in your dissent.

Sincerely,



Justice Brennan

cc: The Conference



January 5, 1981 [1982]

80-327 Valley Forge v. Americans United

Dear Bill:

It came to my attention this morning that although I advised you I would join your opinion, I overlooked writing a join note.

In any event, according to my Conference vote, I now join you.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference



THE C. J.	W. J. B.	<del>ES</del>	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
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join WHR 12/28/81	well dissect 12/3/81	join WHR 12/3/81	join WHR 12/3/81	await dissect 12/3/81	join WGB 1/4/82	join WHR 12/3/81	1st draft 12/2/81 2nd draft 12/7/81	Typed draft 12/18/81 1st printed draft 12/21/81
	Typed draft 12/15/81			join WGB 12/18/81				
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80-327 Valley Forge v. Americans United