

Flast v. Cohen (1968)

392 U.S. 83

*Florence Flast and other federal taxpayers filed suit in federal district court to enjoin Wilbur Cohen, secretary of health, education and welfare, from expending funds authorized by Congress under the Elementary and Secondary Education Act of 1965. The act provided funds to finance the instruction of and the purchase of textbooks in reading, arithmetic, and other subjects in religious schools. Flast and the other plaintiffs contended that these expenditures promoted religious programs in violation of the Establishment Clause of the First Amendment. The district court, on the authority of *Frothingham*, held that they lacked standing and dismissed the suit.*

Opinion of the Court: Warren, Black, Brennan, Marshall, White.

Concurring opinions: Douglas; Fortas; Stewart.

Dissenting opinion: Harlan.

CHIEF JUSTICE WARREN delivered the opinion of the Court.

. . . This Court first faced squarely the question whether a litigant asserting only his status as a taxpayer has standing to maintain a suit in a federal court in *Frothingham v. Mellon* . . . and that decision must be the starting point for analysis in this case. . . .

Although the barrier *Frothingham* erected against federal taxpayer suits has never been breached, the decision has been the source of some confusion and the object of considerable criticism. The confusion has developed as commentators have tried to determine whether *Frothingham* establishes a constitutional bar to taxpayer suits or whether the Court was simply imposing a rule of self-restraint which was not constitutionally compelled. The conflicting viewpoints are reflected in the arguments made to this Court by the parties in this case. The Government has pressed upon us the view that *Frothingham* announced a constitutional rule, compelled by the Article III limitations on federal court jurisdiction and grounded in considerations of the doctrine of separation of powers. Appellants, however, insist that *Frothingham* expressed no more than a policy of judicial self-restraint which can be disregarded when compelling reasons for assuming jurisdiction over a taxpayer's suit exist. The opinion delivered in *Frothingham* can be read to support either position. . . .

The jurisdiction of federal courts is defined and limited by Article III of the Constitution. In terms relevant to the question for decision in this case, the judicial power of federal courts is constitutionally restricted to "cases" and "controversies." As is so often the situation in constitutional adjudication, those two words have an iceberg quality, containing beneath their surface simplicity submerged complexities which go to the very heart of our constitutional form of government. Embodied in the words "cases" and "controversies" are two complementary but somewhat different limitations. In part those words limit the business of federal courts to questions presented in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part those words define the role assigned to the judiciary in a tripartite allocation of power to assure that the federal courts will not intrude into

areas committed to the other branches of government. Justiciability is the term of art employed to give expression to this dual limitation placed upon federal courts by the case-and- controversy doctrine.

. . . As we understand it, the Government's position is that the constitutional scheme of separation of powers, and the deference owed by the federal judiciary to the other two branches of government within that scheme, presents an absolute bar to taxpayer suits challenging the validity of federal spending programs. The Government views such suits as involving no more than the mere disagreement by the taxpayer "with the uses to which tax money is put." According to the Government, the resolution of such disagreements is committed to other branches of Federal Government and not to the judiciary. Consequently, the Government contends that, under no circumstances, should standing be conferred on federal taxpayers to challenge a federal taxing or spending program. An analysis of the function served by standing limitations compels a rejection of the Government's position.

Standing is an aspect of justiciability and as such, the problem of standing is surrounded by the same complexities and vagaries that inhere in justiciability. . . . The "gist of the question of standing" is whether the party seeking relief has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverse- ness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr* (1962). . . . In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. . . .

. . . A taxpayer may or may not have the requisite personal stake in the outcome, depending upon the circumstances of the particular case. Therefore, we find no absolute bar in Article III to suits by federal taxpayers challenging allegedly unconstitutional federal taxing and spending programs. There remains, however, the problem of determining the circumstances under which a federal taxpayer will be deemed to have the personal stake and interest that imparts the necessary concrete adverseness to such litigation so that standing can be conferred on the taxpayer *qua* taxpayer consistent with the constitutional limitations of Article III. . . . Whether such individuals have standing to maintain that form of action turns on whether they can demonstrate the necessary stake as taxpayers in the outcome of the litigation to satisfy Article III requirements.

The nexus demanded of federal taxpayers has two aspects to it. First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, 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. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. Secondly the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction. . . .

The taxpayer-appellants in this case have satisfied both nexuses to support their claim of

standing under the test we announce today. Their constitutional challenge is made to an exercise by Congress of its power under Art. I, § 8, to spend for the general welfare, and the challenged program involves a substantial expenditure of federal tax funds. In addition, appellants have alleged that the challenged expenditures violate the Establishment and Free Exercise Clauses of the First Amendment. . . .

Reversed.

JUSTICE HARLAN, dissenting.

The problems presented by this case are narrow and relatively abstract, but the principles by which they must be resolved involve nothing less than the proper functioning of the federal courts, and so run to the roots of our constitutional system. . . .

It is desirable first to restate the basic issues in this case. The lawsuits here and in *Frothingham*. They present the question whether federal taxpayers *qua* taxpayers may, in suits in which they do not contest the validity of their previous or existing tax obligations, challenge the constitutionality of the uses for which Congress has authorized the expenditure of public funds.

This Court has previously held that individual litigants have standing to represent the public interest, despite their lack of economic or other personal interests, if Congress has appropriately authorized such suits. . . . I would adhere to that principle. Any hazards to the proper allocation of authority among the three branches of the Government would be substantially diminished if public actions had been pertinently authorized by Congress and the President. I appreciate that this Court does not ordinarily await the mandate of other branches of the Government, but it seems to me that the extraordinary character of public actions, and of the mischievous, if not dangerous, consequences they involve for the proper functioning of our constitutional system, and in particular of the federal courts, makes such judicial forbearance the part of wisdom. It must be emphasized that the implications of these questions of judicial policy are of fundamental significance for the other branches of the Federal Government.

The question here is not, despite the Court's unarticulated premise, whether the religious clauses of the First Amendment are hereafter to be enforced by the federal courts; the issue is simply whether plaintiffs of an *additional* category, heretofore excluded from those courts, are to be permitted to maintain suits. The recent history of this Court is replete with illustrations, including even one announced today . . . that questions involving the religious clauses will not, if federal taxpayers are prevented from contesting federal expenditures, be left "unacknowledged, unresolved, and undecided."

Accordingly, for the reasons contained in this opinion, I would affirm the judgment of the District Court.