AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 9: Liberalism Divided – Judicial Power and Constitutional Authority

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United States v. Richardson, 418 U.S. 166 (1974)

William Richardson worked in military intelligence in the 1940s and 1950s, but by the 1960s he worked in the insurance industry. As reports of American intelligence spending within the United States began to surface in the turbulent 1960s, Richardson tried to expose the activities of the Central Intelligence Agency (CIA). He began by writing to the U.S. Department of Treasury to obtain a copy of the CIA's budget but was rebuffed. Covert military and intelligence spending had operated in a "black budget," off the public books of federal appropriations, since World War II when efforts like the Manhattan Project (which built the first atomic bomb) were hidden from view. The total budget of the CIA, as well as the details of the agency's expenditures, was classified.

Richardson filed suit as a taxpayer and a voting citizen in federal district court in Pennsylvania seeking an injunction against the government. Richardson argued that the constitutional requirement that the government publish a "regular statement and account of the receipts and expenditures of all public money" was being violated by the refusal to provide him with a detailed budget of the intelligence agencies. The district court dismissed the suit, concluding that Richardson did not have standing. He appealed to the U.S. Court of Appeals for the Third Circuit, which reversed the trial court. The government appealed to the U.S. Supreme Court, which in a 5–4 decision reversed the circuit court, concluding that Richardson did not have standing to bring this claim in a federal court. In 1976, a Senate investigating committee concluded that the budget should be made public, but the government continued to guard the CIA's budget as classified until 1997, when the government revealed the aggregate budget of the CIA in response to a judicial ruling on a Freedom of Information Act request.

The initial question for the Supreme Court was whether Richardson had standing to bring such a suit. The Warren Court decision in Flast v. Cohen *(1968) had seemed to open the door to more taxpayer suits seeking judicial review of the federal budget. The Court had long been skeptical of lawsuits initiated by individuals who had no more claim to an injury than that they were taxpayers with an interest in how the government spent public funds. In this case, the Burger Court emphasized that* Flast *should be read narrowly and that relatively few issues regarding the budget could be brought to court by ordinary taxpayers.*

What is the constitutional difficulty with taxpayer suits? Why might the Court be resistant to taxpayer suits? What distinguishes Richardson *from* Flast*? Is the majority persuasive that the result in this case is consistent with the* Flast *decision? Should the Court be generally available to anyone who wants to raise a constitutional question about government actions? Does it matter if the elected branches of government are not responsive to the constitutional concerns? How distinct is the standing question from the question on the merits? Does the constitutional provision directing the government to publish a regular budget statement create an individual right to receive such a statement?*

CHIEF JUSTICE BURGER, delivered the opinion of the Court.

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As far back as *Marbury v. Madison* (1803), this Court held that judicial power may be exercised only in a case properly before it -- a "case or controversy" not suffering any of the limitations of the political-question doctrine, not then moot or calling for an advisory opinion. In *Baker v. Carr* (1962), this

limitation was described in terms that a federal court cannot "'pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.'" . . .

Although the recent holding of the Court in *Flast v. Cohen* (1968), is a starting point in an examination of respondent's claim to prosecute this suit as a taxpayer, that case must be read with reference to its principal predecessor, *Frothingham v. Mellon* (1923). . . . Denying standing, the *Frothingham* Court rested on the "comparatively minute[,] remote, fluctuating and uncertain," impact on the taxpayer, and the failure to allege the kind of direct injury required for standing.

. . . . The Court [in *Flast*] then announced a two-pronged standing test which requires allegations: (a) challenging an enactment under the Taxing and Spending Clause of Art. I, § 8, of the Constitution; and (b) claiming that the challenged enactment exceeds specific constitutional limitations imposed on the taxing and spending power. While the "impenetrable barrier to suits against Acts of Congress brought by individuals who can assert only the interest of federal taxpayers," had been slightly lowered, the Court made clear it was reaffirming the principle of *Frothingham* 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." . . .

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Although the Court made it very explicit in *Flast* that a "fundamental aspect of standing" is that it focuses primarily on the party seeking to get his complaint before the federal court rather than "on the issues he wishes to have adjudicated," it made equally clear that "in ruling on [taxpayer] standing, it is both appropriate and necessary to look to the substantive issues for another purpose, namely, to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated."

We therefore turn to an examination of the issues sought to be raised by respondent's complaint to determine whether he is "a proper and appropriate party to invoke federal judicial power," with respect to those issues.

We need not and do not reach the merits of the constitutional attack on the statute; our inquiry into the "substantive issues" is for the limited purpose indicated above. The mere recital of the respondent's claims and an examination of the statute under attack demonstrate how far he falls short of the standing criteria of *Flast* and how neatly he falls within the *Frothingham* holding left undisturbed. Although the status he rests on is that he is a taxpayer, his challenge is not addressed to the taxing or spending power, but to the statutes regulating the CIA . . . .

. . . . [T]here is no "logical nexus" between the asserted status of taxpayer and the claimed failure of the Congress to require the Executive to supply a more detailed report of the expenditures of that agency.

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The respondent's claim is that without detailed information on CIA expenditures -- and hence its activities -- he cannot intelligently follow the actions of Congress or the Executive, nor can he properly fulfill his obligations as a member of the electorate in voting for candidates seeking national office.

This is surely the kind of a generalized grievance described in both *Frothingham* and *Flast* since the impact on him is plainly undifferentiated and "common to all members of the public." . . . While we can hardly dispute that this respondent has a genuine interest in the use of funds and that his interest may be prompted by his status as a taxpayer, he has not alleged that, as a taxpayer, he is in danger of suffering any particular concrete injury as a result of the operation of this statute. . . .

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It can be argued that if respondent is not permitted to litigate this issue, no one can do so. In a very real sense, the absence of any particular individual or class to litigate these claims gives support to the argument that the subject matter is committed to the surveillance of Congress, and ultimately to the political process. Any other conclusion would mean that the Founding Fathers intended to set up

something in the nature of an Athenian democracy or a New England town meeting to oversee the conduct of the National Government by means of lawsuits in federal courts. The Constitution created a representative Government with the representatives directly responsible to their constituents at stated periods of two, four, and six years; that the Constitution does not afford a judicial remedy does not, of course, completely disable the citizen who is not satisfied with the "ground rules" established by the Congress for reporting expenditures of the Executive Branch. Lack of standing within the narrow confines of Art. III jurisdiction does not impair the right to assert his views in the political forum or at the polls. Slow, cumbersome, and unresponsive though the traditional electoral process may be thought at times, our system provides for changing members of the political branches when dissatisfied citizens convince a sufficient number of their fellow electors that elected representatives are delinquent in performing duties committed to them.

As our society has become more complex, our numbers more vast, our lives more varied, and our resources more strained, citizens increasingly request the intervention of the courts on a greater variety of issues than at any period of our national development. The acceptance of new categories of judicially cognizable injury has not eliminated the basic principle that to invoke judicial power the claimant must have a "personal stake in the outcome," or a "particular, concrete injury," or "a direct injury"; in short, something more than "generalized grievances." Respondent has failed to meet these fundamental tests; accordingly, the judgment of the Court of Appeals is

Reversed.

JUSTICE POWELL, concurring.

I join the opinion of the Court because I am in accord with most of its analysis, particularly insofar as it relies on traditional barriers against federal taxpayer or citizen standing. . . . I write solely to indicate that I would go further than the Court and would lay to rest the approach undertaken in *Flast*. I would not overrule *Flast* on its facts, because it is now settled that federal taxpayer standing exists in Establishment Clause cases. I would not, however, perpetuate the doctrinal confusion inherent in the *Flast* two-part "nexus" test. That test is not a reliable indicator of when a federal taxpayer has standing, and it has no sound relationship to the question whether such a plaintiff, with no other interest at stake, should be allowed to bring suit against one of the branches of the Federal Government. In my opinion, it should be abandoned.

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The ambiguities inherent in the *Flast* "nexus" limitations on federal taxpayer standing are illustrated by this case. There can be little doubt about respondent's fervor in pursuing his case, both within administrative channels and at every level of the federal courts. The intensity of his interest appears to bear no relationship to the fact that, literally speaking, he is not challenging directly a congressional exercise of the taxing and spending power. On the other hand, if the involvement of the taxing and spending power has some relevance, it requires no great leap in reasoning to conclude that the Statement and Account Clause, Art. I, § 9, cl. 7, on which respondent relies, is inextricably linked to that power. And that Clause might well be seen as a "specific" limitation on congressional spending. Indeed, it could be viewed as the most democratic of limitations. Thus, although the Court's application of *Flast* to the instant case is probably literally correct, adherence to the *Flast* test in this instance suggests, as does *Flast* itself, that the test is not a sound or logical limitation on standing.

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For purposes of determining whether a taxpayer or citizen has standing to challenge the actions of the Federal Government, I fail to perceive a meaningful distinction between constitutional clauses that set forth duties and those that set forth prohibitions. In either instance, the relevant inquiry is the same -- may a plaintiff, relying on nothing other than citizen or taxpayer status, bring suit to adjudicate whether

an entity of the Federal Government is carrying out its responsibilities in conformance with the requirements of the Constitution? . . .

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Relaxation of standing requirements is directly related to the expansion of judicial power. It seems to me inescapable that allowing unrestricted taxpayer or citizen standing would significantly alter the allocation of power at the national level, with a shift away from a democratic form of government. I also believe that repeated 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. We should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch. Moreover, the argument that the Court should allow unrestricted taxpayer or citizen standing underestimates the ability of the representative branches of the Federal Government to respond to the citizen pressure that has been responsible in large measure for the current drift toward expanded standing. Indeed, taxpayer or citizen advocacy, given its potentially broad base, is precisely the type of leverage that in a democracy ought to be employed against the branches that were intended to be responsive to public attitudes about the appropriate operation of government. . . .

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Quite apart from this possibility, we risk a progressive impairment of the effectiveness of the federal courts if their limited resources are diverted increasingly from their historic role to the resolution of public-interest suits brought by litigants who cannot distinguish themselves from all taxpayers or all citizens. The irreplaceable value of the power articulated by Chief Justice Marshall lies in the protection it has afforded the constitutional rights and liberties of individual citizens and minority groups against oppressive or discriminatory government action. It is this role, not some amorphous general supervision of the operations of government, that has maintained public esteem for the federal courts and has permitted the peaceful coexistence of the countermajoritarian implications of judicial review and the democratic principles upon which our Federal Government in the final analysis rests.

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JUSTICE DOUGLAS, dissenting.

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From the history of the clause it is apparent that the Framers inserted it in the Constitution to give the public knowledge of the way public funds are expended. No one has a greater "personal stake" in policing this protective measure than a taxpayer. Indeed, if a taxpayer may not raise the question, who may do so? The Court states that discretion to release information is in the first instance "committed to the surveillance of Congress," and that the right of the citizenry to information under Art. I, § 9, cl. 7, cannot be enforced directly, but only through the "[slow,] cumbersome, and unresponsive" electoral process. One has only to read constitutional history to realize that statement would shock Mason and Madison. Congress of course has discretion; but to say that it has the power to read the clause out of the Constitution when it comes to one or two or three agencies is astounding. That is the bare-bones issue in the present case. Does Art. I, § 9, cl. 7, of the Constitution permit Congress to withhold "a regular Statement and Account" respecting any agency it chooses? Respecting all federal agencies? What purpose, what function is the clause to perform under the Court's construction? The electoral process already permits the removal of legislators for any reason. Allowing their removal at the polls for failure to comply with Art. I, § 9, cl. 7, effectively reduces that clause to a nullity, giving it no purpose at all.

The sovereign in this Nation is the people, not the bureaucracy. The statement of accounts of public expenditures goes to the heart of the problem of sovereignty. If taxpayers may not ask that

rudimentary question, their sovereignty becomes an empty symbol and a secret bureaucracy is allowed to run our affairs.

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JUSTICE STEWART, with whom JUSTICE MARSHALL joins, dissenting.

The Court's decisions in *Flast v. Cohen* (1968), and *Frothingham v. Mellon* (1923), throw very little light on the question at issue in this case. For, unlike the plaintiffs in those cases, Richardson did not bring this action asking a court to invalidate a federal statute on the ground that it was beyond the delegated power of Congress to enact or that it contravened some constitutional prohibition. Richardson's claim is of an entirely different order. It is that Art. I, § 9, cl. 7, of the Constitution, the Statement and Account Clause, gives him a right to receive, and imposes on the Government a corresponding affirmative duty to supply, a periodic report of the receipts and expenditures "of all public Money." In support of his standing to litigate this claim, he has asserted his status both as a taxpayer and as a citizen-voter. Whether the Statement and Account Clause imposes upon the Government an affirmative duty to supply the information requested and whether that duty runs to every taxpayer or citizen are questions that go to the substantive merits of this litigation. Those questions are not now before us, but I think that the Court is quite wrong in holding that the respondent was without standing to raise them in the trial court.

Seeking a determination that the Government owes him a duty to supply the information he has requested, the respondent is in the position of a traditional Hohfeldian plaintiff. He contends that the Statement and Account Clause gives him a right to receive the information and burdens the Government with a correlative duty to supply it. Courts of law exist for the resolution of such right-duty disputes. When a party is seeking a judicial determination that a defendant owes him an affirmative duty, it seems clear to me that he has standing to litigate the issue of the existence *vel non* ["or not"] of this duty once he shows that the defendant has declined to honor his claim. If the duty in question involved the payment of a sum of money, I suppose that all would agree that a plaintiff asserting the duty would have standing to litigate the issue of his entitlement to the money upon a showing that he had not been paid. I see no reason for a different result when the defendant is a Government official and the asserted duty relates not to the payment of money, but to the disclosure of items of information.

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Richardson is not asserting that a taxing and spending program exceeds Congress' delegated power or violates a constitutional limitation on such power. Indeed, the constitutional provision that underlies his claim does not purport to limit the power of the Federal Government in any respect, but, according to Richardson, simply imposes an affirmative duty on the Government with respect to all taxpayers or citizen-voters of the Republic. Thus, the nexus analysis of *Flast* is simply not relevant to the standing question raised in this case.

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On the merits, I presume that the Government's position would be that the Statement and Account Clause of the Constitution does not impose an affirmative duty upon it; that any such duty does not in any event run to Richardson; that any such duty is subject to legislative qualifications, one of which is applicable here; and that the question involved is political and thus not justiciable. Richardson might ultimately be thrown out of court on any one of these grounds, or some other. But to say that he might ultimately lose his lawsuit certainly does not mean that he had no standing to bring it.

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JUSTICE BRENNAN, dissenting.[1]

The "standing" of a plaintiff to be heard on a claim of invasion of his alleged legally protected right is established, in my view, by his good-faith allegation that "'the challenged action has caused him injury in fact.'". . .

Richardson plainly alleged injury in fact. My Brother Stewart demonstrates this in his analysis of Richardson's claimed right to have the budget of the Central Intelligence Agency published. The claim was not merely that failure to publish was a violation of the Constitution. The claim went further and alleged that this violation deprived Richardson, as an individual, and not as an inseparable part of the citizenry, of a right given him by Art. I, § 9, cl. 7. Moreover, his complaint, properly construed, alleged that the violations caused him injury not only in respect of his right as a citizen to know how Congress was spending the public fisc, but also in respect of his right as a voter to receive information to aid his decision how and for whom to vote. These claims may ultimately fail on the merits, but Richardson has "standing" to assert them.

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[1] Justice Brennan's dissent appeared in the related case of *Schlesinger v. Reservists to Stop the War*, 418 U.S. 208, 235 (1973).