

No. 25-888

---

---

IN THE  
**Supreme Court of the United States**

---

ANOKA HENNEPIN EDUCATION MINNESOTA  
(AMERICAN FEDERATION OF TEACHERS LOCAL 7007),

*Petitioner,*

v.

DON HUIZENGA, *et al.*,

*Respondents.*

---

**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Eighth Circuit**

---

**BRIEF OF THE NATIONAL SCHOOL  
ATTORNEYS ASSOCIATION AND OTHER  
PUBLIC SCHOOL PROFESSIONAL  
ORGANIZATIONS AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONER**

---

M MOORE  
ZUCKERMAN SPAEDER LLP  
2100 L St., NW, Ste. 400  
Washington, DC 20037

AARON S.J. ZELINSKY  
*Counsel of Record*  
ZUCKERMAN SPAEDER LLP  
100 East Pratt St.  
Ste. 2440  
Baltimore, MD 21202  
(410) 949-1167  
azelinsky@zuckerman.com

*Counsel for Amici Curiae*

March 2, 2026

---

---

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

INTERESTS OF *AMICI CURIAE*..... 1

ARGUMENT ..... 2

I. Public schools face a tidal wave of potential lawsuits..... 2

II. The out-of-pocket loss rule ensures that municipal taxpayer plaintiffs have suffered concrete injury. .... 7

    a. The out-of-pocket loss rule separates genuine Article III disputes from generalized policy grievances..... 7

    b. The out-of-pocket loss rule permits only concrete taxpayer cases to proceed in the federal courts..... 10

III. The uniquely municipal funds rule ensures that a plaintiff’s injury is actually traceable to municipal funds. .... 11

    a. The uniquely municipal funds rule ensures the claimed injury is traceable to the municipalities actions as required by Article III..... 12

    b. The uniquely municipal funds rule reflects the reality that municipalities receive funding from a variety of sources..... 14

CONCLUSION ..... 17

## TABLE OF AUTHORITIES

### CASES

<i>ACLU-NJ v. Twp. of Wall</i> , 246 F.3d 258 (3d Cir. 2001) .....	8, 12
<i>Altman v. Bedford Cent. Sch. Dist.</i> , 245 F.3d 49 (2d Cir. 2001) .....	9, 10
<i>Burwell v. Portland Sch. Dist. No. 1J by &amp; through Portland Sch. Bd.</i> , No. 20-35499, 2021 WL 2071980 (9th Cir. May 24, 2021) .....	5
<i>Cajune v. Indep. Sch. Dist. 194</i> , No. CV 21-1812 ADM/BRT, 2022 WL 179517 5 (D. Minn. Jan. 19, 2022) .....	5
<i>Cantrell v. City of Long Beach</i> , 241 F.3d 674 (9th Cir. 2001) .....	12
<i>Citizens for Quality Educ. San Diego v. Barrera</i> , 333 F. Supp. 3d 1003 (S.D. Cal. 2018) .....	10
<i>Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, New York</i> , 98 F.4th 386 (2d Cir. 2024) .....	11
<i>D.C. Common Cause v. D.C.</i> , 858 F.2d 1 (D.C. Cir. 1988) .....	8
<i>DaimlerChrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006) .....	13
<i>Doe v. Duncanville Indep. Sch. Dist.</i> , 70 F.3d 402 (5th Cir. 1995) .....	8, 9

<i>Doe v. Heritage Acad., Inc.</i> , No. CV-16-03001-PHX-SPL, 2017 WL 6001481 (D. Ariz. June 9, 2017).....	5
<i>Doe v. Madison Sch. Dist. No. 321</i> , 177 F.3d 789 (9th Cir. 1999) .....	5, 7
<i>Does 1-7 v. Round Rock Indep. Sch. Dist.</i> , 540 F. Supp. 2d 735 (W.D. Tex. 2007) .....	9
<i>Doremus v. Bd. of Ed. of Borough of Hawthorne</i> , 342 U.S. 429 (1952) .....	13
<i>Feldman v. Bowser</i> , 315 F. Supp. 3d 299 (D.D.C. 2018).....	10
<i>Freedom From Religion Found., Inc. v. Zielke</i> , 845 F.2d 1463 (7th Cir. 1988) .....	7
<i>Huizenga v. Indep. Sch. Dist. No. 11</i> , 149 F.4th 990 (8th Cir. 2025).....	7, 11, 13
<i>Huizenga v. Indep. Sch. Dist. No. 11</i> , 544 F. Supp. 3d 862 (D. Minn. 2021) .....	6
<i>I-Lead Charter Sch.-Reading v. Reading Sch. Dist.</i> , No. CV 16-2844, 2017 WL 2653722 (E.D. Pa. June 20, 2017).....	5
<i>Lee v. Milwaukee Pub. Sch. Sys.</i> , No. 25-CV-106-PP, 2025 WL 2605392 (E.D. Wis. September 9, 2025) .....	5
<i>Legend Lake Prop. Owners Ass'n, Inc. v. Menominee Cnty.</i> , No. 24-C-1369, 2025 WL 3781544 (E.D. Wis. Nov. 26, 2025) .....	4

<i>Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents</i> , No. 23-CV-7052-SJB-LGD, 2025 WL 3182580 (E.D.N.Y. Nov. 14, 2025) .....	5
<i>Morse v. Frederick</i> , 551 U.S. 393 (2007) .....	2
<i>Nichols v. City of Rehoboth Beach</i> , 836 F.3d 275 (3d Cir. 2016) .....	9
<i>PLANS, Inc. v. Sacramento City Unified Sch. Dist.</i> , 319 F.3d 504 (9th Cir. 2003) .....	5, 7
<i>Protect Our Parks, Inc. v. Chicago Park Dist.</i> , 971 F.3d 722 (7th Cir. 2020) .....	14, 15
<i>Separation of Hinduism From Our Schs. v. Chicago Pub. Schs.</i> , No. 20 C 4540, 2021 WL 3633939 (N.D. Ill. Aug. 17, 2021) .....	5
<i>Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs</i> , 641 F.3d 197 (6th Cir. 2011) .....	15
<i>Spokeo, Inc. v. Robins</i> , 578 U.S. 330 (2016) .....	12
<i>Woodring v. Jackson Cnty., Indiana</i> , 986 F.3d 979 (7th Cir. 2021) .....	12

## **RULES**

Sup. Ct. R. 37.6.....	1
Sup. Ct. R. 37.2.....	1

**OTHER AUTHORITIES**

- Ashley Jochim et al.,  
*Navigating Political Tensions Over Schooling*,  
 The Center on Reinventing Public Education  
 (2023) <https://crpe.org/asdp-2023-politics-brief/>  
 (last visited February 26, 2026)..... 3
- Fair Labor Standards Act ..... 4
- FY 2023, Institute of Education Sciences, Revenues  
 and Expenditure for Public Elementary and  
 Secondary Education: School Year 2022-23  
 (Fiscal Year 2023), (2025),  
[https://ies.ed.gov/ies/2025/04/revenues-and-  
 expenditures-public-elementary-and-secondary-  
 education-school-year-2022-23-fiscal-year](https://ies.ed.gov/ies/2025/04/revenues-and-expenditures-public-elementary-and-secondary-education-school-year-2022-23-fiscal-year). (last  
 visited February 2, 2026) ..... 15
- How is K-12 Education Funded?*,  
 Peter G. Peterson Found., (last visited  
 February 27, 2026),  
[https://www.pgpf.org/article/how-is-k-12-education-  
 funded/](https://www.pgpf.org/article/how-is-k-12-education-funded/) ..... 16
- Individuals with Disabilities Education Act..... 4
- John Rogers et al.  
*The Costs of Conflict: The Fiscal Impact of  
 Culturally Divisive Conflict on Public Schools in  
 the United States*, UCLA/IDEA Publications  
 (2024), [https://idea.gseis.ucla.edu/publications/costs-  
 of-conflict](https://idea.gseis.ucla.edu/publications/costs-of-conflict) (last visited February 26, 2026)..... 3

Peetz, Caitlyn,  
*How Schools Think Their Legal Expenses Will  
Change Under Trump*, Education Week (2025),  
[https://www.edweek.org/leadership/how-schools-  
think-their-legal-expenses-will-change-under-  
trump/2025/06](https://www.edweek.org/leadership/how-schools-think-their-legal-expenses-will-change-under-trump/2025/06) (last visited February 26, 2026)..... 3

Title IX of the Education Amendments of 1972..... 4

**INTERESTS OF *AMICI CURIAE***<sup>1</sup>

This brief is submitted on behalf of four organizations that represent public school officials and employees. Amici have extensive experience with our nation's public schools and the legal challenges they face. Amici submit this brief to assist the Court in understanding the significance of this Petition for America's public schools.

**The National School Attorneys Association (“NSAA”)** is an independent and non-partisan network of attorneys who represent public schools. NSAA members are licensed attorneys who represent public school districts, state school board associations, and public community colleges that belong to state school board associations. NSAA's members routinely advocate on behalf of public schools and represent those schools in courts across the country.

**AASA, The School Superintendents Association (“AASA”)** represents 10,000 school district leaders and advocates. AASA advocates for equitable access for all students to the highest quality public education, and develops and supports school system leaders. AASA members set the pace for academic achievement and serve as the CEOs of school systems. AASA helps shape policy, oversee its

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici curiae and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. *See* Sup. Ct. R. 37.6. Counsel timely notified the parties' counsel of record of the intent to file this brief. *See* Sup. Ct. R. 37.2.

implementation, and represents school districts to the public at large.

**The Association of School Business Officials International (“ASBO”)** is a nonprofit association that provides programs, resources, services, and a global network to school business professionals. ASBO members are the finance and operations leaders of school systems who manage educational resources to support student learning. Among other aspects of education administration, school business professionals are responsible for budgeting, procurement, human resource management, facility maintenance and security, transportation, and food services.

**The Consortium of State School Boards Associations (COSSBA)** is a nonpartisan, national alliance of 25 state school board associations. COSSBA is currently comprised of 27 state associations that serve over 7,500 school boards comprised of 52,000 members who work in service to nearly 27 million students. COSSBA is dedicated to sharing resources and information to support, promote and strengthen state school boards associations as they serve their local school districts and board members.

## **ARGUMENT**

### **I. Public schools face a tidal wave of potential lawsuits.**

As this Court has observed, public school administrators “have a difficult job, and a vitally important one.” *Morse v. Frederick*, 551 U.S. 393, 409 (2007). That job has become even more difficult in

recent years, as public schools have become a focal point for disagreements about religion, politics, and personal beliefs. While “[p]ublic schooling has always been politically fraught,” today “the politics of education seem more heated than ever.” Ashley Jochim et al. *Navigating Political Tensions Over Schooling*, The Center on Reinventing Public Education (2023) <https://crpe.org/asdp-2023-politics-brief/> (last visited February 26, 2026)., American School District Panel. This increased focus on schools has manifested in heated school board elections, public campaigns regarding school funding, and an increase in litigation against public schools.

The rise in lawsuits adds significant expense to already strained public school budgets. One study recently observed that, of all the expenses schools incur to deal with increased polarization “legal expenses comprised the largest area of costs.” John Rogers et al. *The Costs of Conflict: The Fiscal Impact of Culturally Divisive Conflict on Public Schools in the United States*, UCLA/IDEA Publications (2024), <https://idea.gseis.ucla.edu/publications/costs-of-conflict> (last visited February 26, 2026). In 2025, an Education Week Research Center survey found that “[n]early half of school district leaders expect their district’s legal expenses to increase over the next year as they navigate a rapidly evolving federal education landscape.” Peetz, Caitlyn, *How Schools Think Their Legal Expenses Will Change Under Trump*, Education Week (2025), <https://www.edweek.org/leadership/how-schools-think-their-legal-expenses-will-change-under-trump/2025/06> (last visited February 26, 2026). Thus, an increase in suits against schools means that public schools must spend more on legal expenses. These suits

divert funds from a public school's primary purpose (education of students) to secondary concerns (legal expenses and insurance fees).

Suits filed against public schools challenge a broad range of school policies, from school funding schemes to school efforts to curb student use of cellphones in the schoolhouse. Some suits are appropriately channeled into federal courts. For example, schools routinely face suits in federal court for alleged violations of Title IX of the Education Amendments of 1972, the Individuals with Disabilities Education Act, and the Fair Labor Standards Act. Those cases arrive in federal court because they allege violations of rights created by federal law. But there are other suits against schools that make their way to federal court on less stable footing: municipal taxpayer suits.

Municipal taxpayer suits involve a different structure entirely. The municipal taxpayer's injury is not the violation of a statutory right or constitutional provision. Rather the municipal taxpayer plaintiff alleges that he has paid municipal taxes, and that the municipality then spent local tax revenues in an inappropriate matter. The taxpayer, the theory goes, is injured because the municipality misspent money he contributed.

At first glance, municipal taxpayer standing may appear to be a narrow ramp into federal court. Yet in practice, municipal taxpayer standing opens the door to a wide range of suits against schools. These include challenges to school board decisions to close

failing schools or to open new ones;<sup>2</sup>how much autonomy to give charter schools; alleged hostility to charter schools.<sup>3</sup> Other suits include disputes over the content of school posters, school protest efforts, and “quiet time” policies in elementary schools.<sup>4</sup> Schools have faced federal lawsuits challenging multiple facets of their operations - from mascots to school curriculum to graduation programming.<sup>5</sup>

In many cases, plaintiffs invoke municipal taxpayer standing against schools because they otherwise have no connection to the school. That is, the

---

<sup>2</sup> *Legend Lake Prop. Owners Ass’n, Inc. v. Menominee Cnty.*, No. 24-C-1369, 2025 WL 3781544 (E.D. Wis. Nov. 26, 2025) (challenging county decision to open a new school); *Lee v. Milwaukee Pub. Sch. Sys.*, No. 25-CV-106-PP, 2025 WL 2605392 (E.D. Wis. September 9, 2025) (challenging school closure decision).

<sup>3</sup> *Doe v. Heritage Acad., Inc.*, No. CV-16-03001-PHX-SPL, 2017 WL 6001481, at \*1 (D. Ariz. June 9, 2017) (challenging charter school funding); *I-Lead Charter Sch.-Reading v. Reading Sch. Dist.*, No. CV 16-2844, 2017 WL 2653722 (E.D. Pa. June 20, 2017), appeal dismissed, No. 17-2570 (3rd Cir.) (challenging revocation of a charter school’s grant).

<sup>4</sup> *Cajune v. Indep. Sch. Dist. 194*, No. CV 21-1812 ADM/BRT, 2022 WL 179517 5 (D. Minn. Jan. 19, 2022) (school posters); *Burwell v. Portland Sch. Dist. No. 1J by & through Portland Sch. Bd.*, No. 20-35499, 2021 WL 2071980 (9th Cir. May 24, 2021) (school protests); *Separation of Hinduism From Our Schs. v. Chicago Pub. Schs.*, No. 20 C 4540, 2021 WL 3633939, at \*4 (N.D. Ill. Aug. 17, 2021) (school quiet time policy).

<sup>5</sup> *Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents*, No. 23-CV-7052-SJB-LGD, 2025 WL 3182580, at \*25 (E.D.N.Y. Nov. 14, 2025) (mascot); *PLANS, Inc. v. Sacramento City Unified Sch. Dist.*, 319 F.3d 504, 505 (9th Cir. 2003) (curriculum); *Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 791 (9th Cir. 1999) (graduation ceremony).

plaintiff is not a school employee, nor is he a student or a school parent. Were that otherwise, the plaintiff could seek standing on the basis of a more direct injury without resorting to taxpayer standing. For example, consider the instant case. As the district court observed in its first opinion, “[p]laintiffs have no connection to the school other than their status as taxpayers, so they use taxpayer standing as a basis for suit....” *Huizenga v. Indep. Sch. Dist. No. 11*, 544 F. Supp. 3d 862, 864–65 (D. Minn. 2021) *rev’d and remanded*, 44 F.4th 806 (8th Cir. 2022). Municipal taxpayer standing therefore provides an otherwise unavailable pathway for some disputes to be heard in federal court.

Against this backdrop, the decision below adds fuel to the flames. As the Petition articulates, the Eighth Circuit declined to join other circuits in adopting two key anchors of municipal taxpayer standing: the out-of-pocket loss rule and the uniquely municipal funds rule. As explained *infra*, both rules appropriately limit municipal taxpayer suits to only those suits where the plaintiff can plausibly allege that his tax dollars have been misspent. Absent these two guardrails, the federal courthouse doors swing open to any municipal taxpayer who might disagree with municipal policy. While the Eighth Circuit’s decision applies to all municipal taxpayer suits (and not just those filed against public schools), the decision below would further widen the floodgates for suits against schools. The Court should grant the Petition.

**II. The out-of-pocket loss rule ensures that municipal taxpayer plaintiffs have suffered concrete injury.**

As the decision below recognized, the circuits are split on whether the “good-faith pocketbook action” requirement extends to municipal taxpayer standing...” *Huizenga v. Indep. Sch. Dist. No. 11*, 149 F.4th 990, 996 (8th Cir. 2025). Under this standard, also known as the out-of-pocket loss rule, a plaintiff must show that the defendant government incurs an actual out-of-pocket loss because of the challenged policy. The Second, Third, Fifth, Ninth, Tenth, and D.C. Circuits apply the out-of-pocket loss rule; the Eighth (including in this case) and Sixth Circuits do not. *See* Pet.at 22–24.

**a. The out-of-pocket loss rule separates genuine Article III disputes from generalized policy grievances.**

The out-of-pocket loss rule ensures that only plaintiffs with concrete and particularized injuries are granted municipal taxpayer standing, and the rule reflects common-sense standing principles. As one court has explained, “[a] plaintiff’s status as a municipal taxpayer is irrelevant for standing purposes if no tax money is spent on the allegedly unconstitutional activity.” *Freedom From Religion Found., Inc. v. Zielke*, 845 F.2d 1463, 1470 (7th Cir. 1988); *see also Doe v. Madison Sch. Dist. No. 321*, 177 F.3d 789, 793 (9th Cir. 1999) (en banc) (“ [T]axpayer standing, by its nature, requires an injury resulting from a government’s expenditure of tax revenues.”) (internal citations omitted). By rejecting the out-of-

pocket loss rule, the decision below opens the federal courthouse doors to suits challenging municipal actions that involve no net expenditure of municipal funds whatsoever. “A good-faith pocketbook challenge identifies a measurable sum of public funds being used to further a challenged activity.” *PLANS, Inc. v. Sacramento City Unified Sch. Dist.*, 319 F.3d 504, 506 (9th Cir. 2003). Without the out-of-pocket loss rule, federal courts risk becoming fora for disagreements about generalized policy grievances, rather than hearing disputes about a particular case or controversy.

The out-of-pocket loss rule serves to contain municipal taxpayer challenges to only genuine disputes in two ways: First, courts applying the rule generally require that plaintiffs demonstrate that any municipal expenditure exceeds a de minimis amount. By requiring a non-trivial expenditure of municipal funds, courts ensure that taxpayers are, in fact, challenging an actual expenditure of tax funds, rather than using municipal taxpayer standing as a vehicle for disputing policy better addressed through other venues. *See ACLU-NJ v. Twp. of Wall*, 246 F.3d 258, 262, 264 (3d Cir. 2001) (Alito, J). (holding that plaintiffs lacked municipal taxpayer standing because “there is no indication that the portion of such expenditure attributable to the challenged elements of the display would have been more than the de minimis expenditure that was involved in the Bible reading in *Doremus.*”); *see also D.C. Common Cause v. D.C.*, 858 F.2d 1, 4 (D.C. Cir. 1988) (holding that “municipal taxpayers lack standing when they challenge a regulatory program that only incidentally involves expenditures of public funds.”).

Second, courts applying the out-of-pocket loss rule also generally require plaintiffs to show that the municipality will incur incremental costs as a result of the challenged policy. So-called “ordinary costs” (what the municipality would have spent anyway) do not qualify as an injury for the purpose of municipal taxpayer standing. For example, in *Duncanville*, the Fifth Circuit reasoned that a school’s use of tables it already owned could not support a finding that the municipal taxpayer had suffered an injury sufficient to confer standing. *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402, 408 (5th Cir. 1995). “[T]he use of supplies already ‘on hand’ does not support taxpayer standing.” *Does 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F. Supp. 2d 735, 743 (W.D. Tex. 2007); *see also Doe*, 177 F.3d at 794 (9th Cir. 1999) (explaining that “ordinary costs of graduation that the school would pay whether or not the ceremony included a prayer” are not sufficient to establish taxpayer standing). In *Altman*, the Second Circuit found that plaintiffs could not invoke taxpayer standing because the only cost they had identified was the use of school supplies like “crayons, clay, or construction paper,” and had failed to allege that those supplies were purchased “solely for the activities that plaintiffs challenged.” *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 74 (2d Cir. 2001). Thus, the incremental cost requirement further underscores the need for a legitimate injury to the municipal taxpayer plaintiff, one based on the actual increased expenditure of government resources, not a generalized objection to policy with which the plaintiffs disagree.

**b. The out-of-pocket loss rule permits only concrete taxpayer cases to proceed in the federal courts.**

While separating out generalized grievances that lack concrete loss, the out-of-pocket loss still allows legitimate claims to proceed through the courts. Circuits that have adopted the rule require plaintiffs to show only that “the municipality has actually expended funds on the allegedly illegal elements of the disputed practice.” *Nichols v. City of Rehoboth Beach*, 836 F.3d 275, 282 (3d Cir. 2016). Under this relatively forgiving standard, the municipal taxpayer plaintiff is not required to show a loss out of his own pocket. Rather, he must only demonstrate that the municipality expended its own money to fund the challenged program. As the Second Circuit explained, municipal taxpayer standing “does not depend on the plaintiff’s ability to show a likelihood that resulting savings will inure to the benefit of the taxpayer” because courts assume that “a municipal taxpayer’s relationship to the municipality is ‘direct and immediate’ such that the taxpayer suffers concrete injury whenever the challenged activity involves a measurable appropriation or loss of revenue.” *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 73 (2d Cir. 2001) (internal citation omitted). Thus, “a plaintiff who claims standing to challenge a municipality’s expenditure of public funds based solely on her status as a taxpayer must show that funds were actually expended for discrete identified, unlawful purposes—thus demonstrating that the expenditure injured her.” *Feldman v. Bowser*, 315 F. Supp. 3d 299, 311 (D.D.C. 2018) (Jackson, J.).

Municipal taxpayers frequently bring federal suits to challenge municipal policies disfavored by plaintiffs. Such lawsuits are common and recurring. But courts applying the out-of-pocket loss rule routinely reject such challenges absent allegations of a tax dollar appropriation funding the challenged activity. *See, e.g., Citizens for Quality Educ. San Diego v. Barrera*, 333 F. Supp. 3d 1003, 1022–23 (S.D. Cal. 2018) (“Without more, these allegations and averments which assume that taxpayer funds must have been spent on the challenged conduct are insufficient.”); *Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, New York*, 98 F.4th 386, 392 (2d Cir. 2024) (rejecting “Plaintiffs’ contention that municipal-taxpayer standing is satisfied because the Village dispersed funds in order to pass the” challenged law). As these cases illustrate, the out-of-pocket loss rule has real-life consequences for school districts and other municipal defendants in federal courts.

### **III. The uniquely municipal funds rule ensures that a plaintiff’s injury is actually traceable to municipal funds.**

In the decision below, the Eighth Circuit ruled that the plaintiff did not have to show or allege that municipal expenditures from the challenged activity are “uniquely attributable to local tax dollars.” *Huizenga v. Indep. Sch. Dist. No. 11*, 149 F.4th 990, 998 (8th Cir. 2025). The record established that the challenged activity was paid for by the school district’s general fund, which “intermingles state, federal, and local funds.” *Id.* In the Third, Seventh, Ninth, and Tenth Circuits, the plaintiff would be required to show that the funds expended were uniquely municipal

rather than coming from a large pot of funds. That test is correct, and the Court should grant certiorari to make clear that this rule applies, limiting the ability for taxpayers to bring suits to those cases where there are actually municipal funds at issue.

**a. The uniquely municipal funds rule ensures the claimed injury is traceable to the municipality's actions as required by Article III.**

The uniquely municipal funds rule stems from Article III's traceability requirement. To establish standing, a plaintiff needs not just an injury, but an injury "that is fairly traceable to the challenged conduct of the defendant." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), as revised (May 24, 2016). Disagreement among the circuit courts over the uniquely municipal funds rule boils down to disagreement over what a municipal taxpayer plaintiff must allege to demonstrate that his injury is traceable to the challenged conduct. In other words, the uniquely municipal funds rule requires that a plaintiff show that his injury is the result of municipal expenditures, rather than flowing from other funds (including state and federal funds) to which the taxpayer has at best an attenuated relationship.

Courts that have adopted the uniquely municipal funds rule underscore that the rule provides a necessary nexus between a plaintiff's status as a municipal taxpayer and the challenged misuse of those municipal funds. *See Cantrell v. City of Long Beach*, 241 F.3d 674, 683 (9th Cir. 2001) ("the pleadings of a valid taxpayer suit must set forth the relationship

between taxpayer, tax dollars, and the allegedly illegal government activity.”); “*Woodring v. Jackson Cnty., Indiana*, 986 F.3d 979, 985 (7th Cir. 2021) (“There is no evidence that the County uses tax money to power the display, as opposed to some other source of revenue such as licensing fees, contracts, or donations.”); *ACLU-NJ v. Twp. of Wall*, 246 F.3d 258, 263 (3d Cir. 2001) “[P]laintiffs have failed to establish that the Township has spent any money, much less money obtained through property taxes, on the religious elements of the 1999 display.” The rule serves to limit lawsuits to those genuinely related to actual municipal expenditures in which the plaintiff taxpayer has a genuine interest, rather than the broader pot of money used to fund education.

On the other hand, some courts, including the Eighth Circuit here, have rejected the uniquely municipal funds rule and held that the special interest a municipal taxpayer has in the use of his tax dollars is not diluted if municipal budgets commingle local, state, and federal funds. *Huizenga v. Indep. Sch. Dist. No. 11*, 149 F.4th 990, 998 (8th Cir. 2025) (“the residents’ direct and immediate interest in school district expenditures is not diluted where the General Fund contains municipal, state, and federal funds.”). But such a rule allows plaintiffs to bring suits against nearly any federal and state expenditures under the guise of municipal taxpayer standing, frustrating the Court’s clear limiting principles in those other cases, and improperly shoehorning challenges where the taxpayer would lack standing to challenge a federal or state expenditure into a municipal taxpayer box. See *Doremus v. Bd. of Ed. of Borough of Hawthorne*, 342 U.S. 429, 433 (1952) (stating 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.”); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006) (holding that “rationale for rejecting federal taxpayer standing applies with undiminished force to state taxpayers.”) The mere presence of municipal funds in a comingled account should not allow taxpayers to bring challenges they would otherwise be unable to if the funds were limited to state and federal sources.

**b. The uniquely municipal funds rule reflects the reality that municipalities receive funding from a variety of sources.**

The modern municipality receives a significant amount of funding from state and federal sources. Thus, the uniquely municipal funds rule captures the reality of modern municipal funding: many of the funds for education are not provided by the municipality, and therefore should not be subject to a challenge via municipal taxpayer standing.

For example, in *Protect Our Parks*, the Seventh Circuit considered a municipal taxpayer challenge to projects undertaken by the City of Chicago associated with building a presidential library. In applying the municipal funds rule, the Seventh Circuit explained that “[i]t is not enough to simply allege that the City is spending money; the existence of municipal taxpayer standing depends on *where the money comes from.*” *Protect Our Parks, Inc. v. Chicago Park Dist.*, 971 F.3d

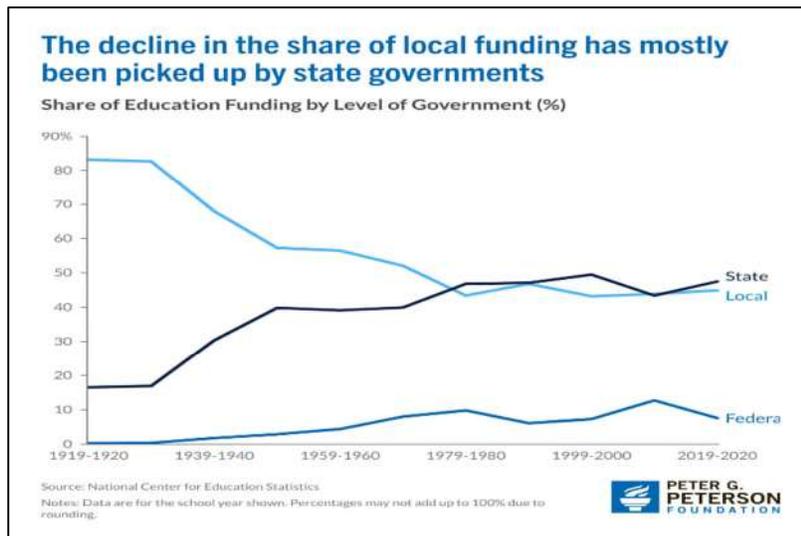
722, 735 (7th Cir. 2020) (emphasis added). The Seventh Circuit reviewed publicly available budget data for the city, explaining that “nearly a third of the City’s revenue comes from nontax sources.” *Id.* The plaintiffs had failed to provide any evidence that the city actually spent municipal tax money on the project, and thus the court found no municipal taxpayer standing, explaining “[i]t would be far too simplistic to conclude that the City is spending *tax* money on a project simply because it is spending *some* money on a project.” *Id.* at 735-736.

Judge Sutton, in a concurrence in *Smith*, observed how municipal funding schemes have evolved over the last century: “Perhaps in 1923 it was easy to speak of city and state treasuries as distinct. Yet today, particularly in the context of a public school case, it is pure fiction to think of municipal (or county) treasuries as holding money raised only through local taxes. Most city budgets contain state and federal dollars, often substantial sums of them, and many school district budgets consist *primarily* of state and federal dollars.” *Smith v. Jefferson Cnty. Bd. of Sch. Comm’rs*, 641 F.3d 197, 222 (6th Cir. 2011) (Sutton, J. concurring).

This point is borne out in empirical data. Recent statistics from the Department of Education shows that, on average, local funds make up only 42% of school district revenue. National Center for Education Statistics 5 Table 1. Source of revenues and type of expenditures for public elementary and secondary education, by state or jurisdiction: FY 2023, Institute of Education Sciences, Revenues and Expenditure for Public Elementary and Secondary Education: School Year 2022-23 (Fiscal Year 2023), (2025),

<https://ies.ed.gov/ies/2025/04/revenues-and-expenditures-public-elementary-and-secondary-education-school-year-2022-23-fiscal-year>. (last visited February 2, 2026). As shown below, one hundred years ago, local government funded over 80% of public school costs. But over the last century that figure has fallen steadily. Indeed, state and local funds now account for roughly equal portions of public education funding, and the federal government's share has increased as well.

*Figure 1*



*How is K-12 Education Funded?*, Peter G. Peterson Found., (last visited February 27, 2026), <https://www.pgpf.org/article/how-is-k-12-education-funded/>.

The uniquely municipal funds rule recognizes the reality of school funding by requiring a plaintiff to challenge actual municipal funds, rather than using taxpayer standing to bootstrap otherwise nonviable claims against federal and state funding. This Court

should grant certiorari to clarify, at a minimum, that municipal taxpayer standing is not a workaround to bring challenges to state and federal funding that would otherwise be precluded.

### CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's petition for certiorari.

March 2, 2026

Respectfully submitted,

AARON S.J. ZELINSKY  
*Counsel of Record*  
ZUCKERMAN SPAEDER LLP  
100 East Pratt St.  
Ste. 2440  
Baltimore, MD 21202  
Tel. (410) 949-1167  
azelinsky@zuckerman.com

M MOORE  
ZUCKERMAN SPAEDER LLP  
2100 L St., NW  
Ste. 400  
Washington, DC 20037