

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

**Taxpayer Suits.**—Save for a narrow exception, standing is also lacking when a litigant attempts to sue to contest governmental action that he claims injures him as a taxpayer. In *Frothingham v. Mellon*,<sup>386</sup> the Court denied standing to a taxpayer suing to restrain disbursements of federal money to those states that chose to participate in a program to reduce maternal and infant mortality; her claim was that Congress lacked power to appropriate funds for those purposes and that the appropriations would increase her taxes in future years in an unconstitutional manner. Noting that a federal taxpayer’s “interest in the moneys of the Treasury . . . is comparatively minute and indeterminate” and that “the effect upon future taxation, of any payment out of the funds . . . [is] remote, fluctuating and uncertain,” the Court ruled that plaintiff had failed to allege the type of “direct injury” necessary to confer standing.<sup>387</sup>

Taxpayers were found to have standing, however, in *Flast v. Cohen*,<sup>388</sup> to contest the expenditure of federal moneys to assist religious-affiliated organizations. The Court asserted that the answer to the question whether taxpayers have standing depends on whether the circumstances of each case demonstrate that there is a logical nexus between the status asserted and the claim sought to be adjudicated. First, there must be a logical link between the status of taxpayer and the type of legislative enactment attacked; this means that a taxpayer must allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Article I, § 8, rather than also of incidental expenditure of funds in the administration of an essentially regulatory statute. Second, there must be a logical nexus between the status of taxpayer and the precise nature of the constitutional infringement alleged; this means that the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the taxing and spending power, rather than simply arguing that the enactment is generally beyond the powers delegated to Congress. Both *Frothingham* and *Flast* met the first test, because they attacked a spending program. *Flast* met the second test, because the Establishment Clause of the First Amendment operates as a specific limitation upon the exercise of the taxing and spend-

presents an insuperable jurisdictional obstacle.” The Court, however, found that “EPA’s steadfast refusal to regulate greenhouse gas emissions presents a risk of harm to Massachusetts that is both ‘actual’ and ‘imminent.’” *Id.* at 517, 521.

<sup>386</sup> Usually cited as *Massachusetts v. Mellon*, 262 U.S. 447 (1923), the two suits having been consolidated.

<sup>387</sup> 262 U.S. at 487, 488. In *Hein v. Freedom from Religion Foundation, Inc.*, 127 S. Ct. 2553, 2559 (2007), the Court added that, “if every federal taxpayer could sue to challenge any Government expenditure, the federal courts would cease to function as courts of law and would be cast in the role of general complaint bureaus.”

<sup>388</sup> 392 U.S. 83 (1968).