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The Supreme Court Once Again Says No to Taxpayer Standing—The Implications of *DaimlerChrysler Corp. v. Cuno*

By Natasha Patel*

I. INTRODUCTION

Does Article III of the United States Constitution allow taxpayers to use litigation as a means of obtaining a remedy for potential harm caused to them as a result of tax breaks given to private corporations by municipal and state governments?[1] In *DaimlerChrysler Corp. v. Cuno*, the Supreme Court held that taxpayers do not have standing to bring such a lawsuit.[2] Toledo, Ohio had been the site of a manufacturing plant of a certain model of a vehicle now made by the DaimlerChrysler Corporation.[3] The City of Toledo and the State of Ohio wanted to continue this sixty year economic relationship with the corporation.[4] In their effort to continue the relationship, the City of Toledo and the State of Ohio gave the DaimlerChrysler Corporation local and state tax breaks as an incentive for the corporation to expand a manufacturing plant in Toledo.[5] In *Cuno,* a

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1. Article III of the Constitution states: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." U.S. CONST. art. III, § 2, cl. 1.

2. DaimlerChrysler Corp. v. Cuno, 126 S. Ct. 1854, 1860 (2006).

3. *Id.* at 1859.

4. *Id.*

5. *Id.* "Ohio levies a franchise tax 'upon corporations for the privilege of doing business in the state, owning or using a part of all of its capital or property in the state, or holding a certificate of compliance authorizing it to do business in the state.'" *Id.* (quoting Wesnovtek Corp. v. Wilkins, 825 N.E.2d 1099, 1100 (2005)).

group of taxpayers filed suit against the tax commissioner of Ohio, as well as the DaimlerChrysler Corporation claiming that the tax breaks violated the Commerce Clause.[6] Before addressing this issue, the Supreme Court focused on whether or not the taxpayers had standing to bring the lawsuit.[7] The taxpayers attempted to establish standing, as required under Article III of the Constitution, by claiming that the tax break resulted in a burden for them, and thus caused injury to them.[8] In line with previous decisions, the Supreme Court held that the taxpayers must show that the injury was direct in order to have

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"With consent from local school districts, the partial property tax waiver can be increased to a complete exemption." *Id.* (citing OHIO REV. CODE ANN. §5708.62(D)(1) (2005).

6. *Id.* The Commerce Clause states, "the Congress shall have Power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3. In *United States v. Lopez*, the Court stated,

> First, Congress may regulate the use of the channels of interstate commerce...Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, even though the threat may come only from intrastate activities...Finally, Congress' commerce authority includes the power to regulate those activities having substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.

United States v. Lopez, 514 U.S. 549, 558-59 (1995) (citing Houston, E. & W. Tex. Ry. Co. v. United States and Tex. & Pac. Ry. Co. v. United States, 234 U.S. 342 (1914), S. R.R. Co. v. United States, 222 U.S. 20 (1911), and NLRB v. Jones & Laughlin Steel, 301 U.S. 1, 37 (1937)).

While Congress has the authority to regulate commerce, it does not always exercise its power. Veena Iyer, *Cuno v. DaimlerChrysler, Inc. Dormant Commerce Clause Limits State Location Tax Incentives*, 40 HARV. C.R.-C.L. L. REV. 523, 526 (2005). When this occurs, states may be allowed to exercise power over that particular issue regarding commerce. *Id.* (citing Cuno v. DaimlerChrysler, Inc., 386 F.3d 738, 742 (2004)). However, this is not done without any restrictions from Congress. States are able to tax citizens with the restrictions being: "1. the activity taxed has a substantial nexus with the taxing state; 2. the tax is fairly apportioned to activities conducted by the taxpayers in the state, 3. the tax does not discriminate against interstate commerce; and 4. the tax is fairly related to benefits provided by the state." *Id.* (citing *Cuno,* 386 F.3d at 742).

7. *Cuno*, 126 S. Ct. at 1859.

8. *Id.*

standing to bring such lawsuit; if they could not do so, they had no standing to bring the lawsuit.[9]

The intent of this note is to evaluate the *Cuno* decision and its influence. This note will begin with a historical background section that will outline the Court's past decisions regarding the issue of standing.[10] The next part of the note will summarize the facts of the *Cuno* case.[11] Following this, a synopsis of the holding of *Cuno* and the concurring opinion will be set forth.[12] This synopsis will be followed by a discussion of the legal and social impact of the Court's holding in *Cuno*.[13] A conclusion will follow the discussion of the legal and social impact.[14]

II. HISTORICAL BACKGROUND

Article III of the Constitution states, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."[15]

The party bringing the matter before the Court has the burden of establishing that his/her claim falls within the category of controversies the Court has the authority to decide.[16] The Supreme Court has used Article III to discern which cases it has the authority to decide and which cases it does not; often times Justices were careful not to overstep the limitations of judicial review.[17] Article III

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9. *Id.* at 1862. *See* Frothingham v. Mellon, tried with Massachusetts v. Mellon, 262 U.S. 447 (1923). *See also* Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992). In *Frothingham,* the Court rejected taxpayer standing because the injuries claimed by the party were not direct and unique. *Cuno*, 126 S. Ct. at 1862 (citing *Frothingham,* 262 U.S. at 488). In *Lujan*, the Court once again rejected a taxpayer claim because the injury claimed by the taxpayer was not "'actual or imminent.'" *Id.* (quoting *Lujan*, 504 U.S. at 560).

10. *See infra* notes 15-77 and accompanying text.

11. *See infra* notes 78 - 95 and accompanying text.

12. *See infra* notes 96 - 213 and accompanying text.

13. *See infra* notes 214 - 279 and accompanying text.

14. *See infra* notes 280 - 284 and accompanying text.

15. U.S. CONST. art. III, § 2, cl. 1.

16. DaimlerChrysler Corp. v. Cuno, 126 S. Ct. 1854, 1860 (2006).

17. Chief Justice Marshall explained, "[d]etermining that a matter before the federal courts is a proper case or controversy under Article III therefore assumes

restricts the judicial branch's authority to "cases" or "controversies."[18] This restriction requires the party bringing the lawsuit before the court to prove an "injury in fact," so that "courts will not 'pass upon...abstract, intellectual problems,' but adjudicate 'concrete, living contests between adversaries.'"[19]

Chief Justice Marshall was especially concerned with the judiciary branch of the government overstepping its boundaries and impeding on the other branches of government.[20] His cautionary attitude toward the Court exercising jurisdiction over cases which it has no authority to hear is evidenced in the *Marbury v. Madison.*[21]

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particular importance in ensuring that the Federal Judiciary respects 'the proper and properly limited role of the courts in a democratic society.'" *Id.* (quoting Allan v. Wright, 468 U.S. 737, 750 (1984)). Chief Justice Marshall believed that the limitation of judicial review was vital to maintaining the authority vested in all three branches of government set forth in the United States Constitution. *Id.* at 1861.

18. Fed. Election Comm'r v. Akins, 524 U.S. 11, 20 (1998).

19. *Id.* at 20 (quoting Coleman v. Miller, 307 U.S. 433, 460 (1939) (Frankfuter, J., dissenting)).

20. *See* Allan v. Wright, 468 U.S. 737, 750 (1984))

21. Marbury v. Madison, 5 U.S. 137 (1803). During his presidency, John Adams appointed the plaintiff in this case as a justice of the peace. *Id.* at 155. While Adams sealed the affidavit which contained the appointment of the plaintiff, the document did not come into the hands of the person to whom it was addressed. *Id.* Plaintiff brought suit to secure his position as a justice of the peace and requested a writ of mandamus. *Id.* A writ of mandamus was defined in the opinion as,

> a command issu[ed] in the King's name from the court of King's Bench, and directed to any person, corporation, or inferior court of judicature within the King's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the court of King's Bench has previously determined, or at least suppose[d], to be consonant to right and justice.

Id. at 168.

The Court held the plaintiff was entitled to a legal remedy, however, section 13 of the Act of 1789, which gave the Supreme Court the power to is issue writs of mandamus to an officer, was in contention with the Constitution and therefore unenforceable. *Id.* at 162, 168, 178, 180. While *Marbury* differs from *Cuno* in that *Marbury* is not a case brought by a taxpayer who argued that a legislative act is unconstitutional, the cases are similar in that the Court explained that it wanted to insure its actions were within the authority vested in it by the United States Constitution. *See id.* at 175-77; *see also Cuno,* 126 S. Ct. at 1860.

Keeping in mind the limitations of judicial review, the Court has often held that taxpayers who bring their lawsuit before the Court lack standing to bring such an action.[22]

The Court's holding in *Frothingham v. Mellon,* one of the earliest suits to discuss the issue of taxpayer standing, evidenced the Court's reluctance to allow taxpayer controversies to be heard by a federal judiciary.[23] In *Frothingham*, the plaintiff challenged the Act of November 23, 1921, also known as the "'Maternity Act."'[24] The Act granted funding to the states, in order for the states to use the funds to prevent the deaths of infants and mothers.[25] The spending was to have been overseen by a federal bureau and should the bureau have deemed that a State did not spend the money in an appropriate manner, the State would no longer receive funding.[26] The plaintiffs

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22. DaimlerChrysler Corp. v. Cuno, 126 S. Ct. 1854, 1862; *see* United States v. Richardson, 418 U.S. 166, 167 (1974). In United States v. Richardson, a taxpayer brought suit based upon an allegation of misappropriation of federal spending. *Richardson*, 418 U.S. at 167. The plaintiff in *Richardson* alleged that the Central Intelligence Agency misappropriated federal funds under the Central Intelligence Agency Act of 1949. *Id.* at 168-69. To prove this allegation, plaintiff requested documents that detailed the expenditures of the Central Intelligence Agency. *Id.* The plaintiff also requested that the Court deem unconstitutional the provision that requires the Central Intelligence Agency to report its spending solely to its Director. *Id.* at 168-69. The plaintiff claimed his injury was in not being able to obtain the documents of expenditures from the Central Intelligence Agency and having to settle for documents he deemed as "fraudulent." *Id.* at 169. In its reasoning, the Court quoted itself in *Frothingham* stating,

> The party who invokes the [judicial] 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 172 (quoting *Frothingham*, 262 U.S. at 488).

The Court held that the plaintiff did not have standing. *Id.* at 201-02. The Court reasoned that the plaintiff could not establish a direct injury to himself. *Id.* The Court also noted that one is not equipped to judge the spending of an agency unless it has information about the agency and its role in the government. *Id.* The Court took public policy into account when it expressed that the nature of the work of the Central Intelligence Agency is such that it is in the nation's best interest not to give the public its information. *Id.*

23. *Frothingham*, 262 U.S. at 447.

24. *Id.* at 479.

25. *Id.*

26. *Id.*

in this case were the State of Massachusetts and a taxpayer resident in the state of Massachusetts; the State subsequently brought suit against an official who oversaw the management of the Act.[27] The State argued the Act was not in line with the Constitution because it interfered with the rights that are conferred to the States.[28] The taxpayer argued that the Act created an injury to her because the Act, by placing the burden of taxation on her, would in turn cause a governmental taking of her property absent due process of law.[29] The Court concluded the plaintiff taxpayer did not have standing to bring this case because she did not establish how the Act affected her in a direct manner.[30] The Court held a taxpayer lacks standing to contest an Act of Congress based on constitutional grounds.[31]

Flast v. Cohen allowed the Court to discern between a plaintiff who has met the threshold of standing under Article III of the United States Constitution and one who has not.[32] In *Flast*, the plaintiffs challenged the constitutionality of Title I and II of the Elementary and Secondary Education Act of 1965 because the taxes collected from taxpayers were being used to fund religiously affiliated schools.[33] The plaintiffs argued the spending of tax funds on religiously affiliated schools was a violation of the Establishment and Free Exercise Clause of the First Amendment of the United States Constitution.[34] The test that the Court created required a taxpayer to

> establish a logical link between the status [of the taxpayer] 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 [Article I Section VIII of the United States Constitution]. It will not be sufficient to allege an

27. *Id.*
28. *Frothingham*, 262 U.S. at 447.
29. *Id.* at 481-82.
30. *Id.* at 488.
31. *Id.*
32. Flast v. Cohen, 392 U.S. 83, 103 (1968).
33. *Id.* at 85-86.
34. *Id.* at 86.

> incidental expenditure of tax funds in the administration of an essentially regulatory statute.[35]

The Court decided that the taxpayer had standing in this case because the spending decision of the legislature was in violation of his constitutional rights.[36] This taxpayer was able to connect his status as a taxpayer to the legislative act that caused him injury.[37]

In *Lujan v. Defenders of Wildlife,* the Court further reiterated its requirements for standing in a taxpayer lawsuit.[38] In *Lujan*, there was a dispute over Lujan's, the Secretary of the Interior, construal of section 7 of the Endangered Species Act of 1973.[39] Lujan's version of the Act applied solely to those actions "within the United States or on the high seas."[40] The plaintiff in this case was a wildlife conservation organization which had requested an injunction requiring Lujan to reinstate the original interpretation of the statute.[41] The plaintiff argued Lujan's current interpretation was at odds with the "geographic scope of §7(a)(2)."[42] The Court cites three minimum criteria that the wildlife organization must meet to assert it has standing to bring a suit.[43] The first requirement is: "[t]he plaintiff must have suffered an 'injury in fact' – an invasion of legally protected interest which is...concrete and particularized."[44] The Court requires the injury to the plaintiff be "'actual or imminent, not 'conjectural' or 'hypothetical.'"[45] Secondly, "there must be a causal connection action between the injury and the conduct complained of -- the injury has to be 'fairly...trace[able] to the challenged action of the defendant and not...the result [of] the independent action of some

35. *Id.* at 102.
36. *Id.* at 106.
37. *Id.*
38. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).
39. *Id.* at 557-58.
40. *Id.* at 558.
41. *Id.* at 559.
42. *Id.*
43. *Id.* at 560.
44. *Id.* (citing Warth v. Seldin, 422 U.S. 490, 508 (1975) and Sierra Club v. Morton, 405 U.S. 727, 740-741 (1972)).
45. *Id.* (citing Whitmore v. Arkansas, 495 U.S. 149,155 (1990) quoting Los Angeles v. Lyons, 461 U.S. 95, 102 (1983)).

third party not before the court.'"[46] Lastly, "it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"[47] In its decision the Supreme Court reasoned that at the pleading stage of litigation, the allegations of injury to the plaintiff as a result of actions by the defendant will suffice.[48] However, if there is a motion to dismiss by the defendant, the plaintiff has to give specific facts which support the plaintiff's general claim of injury.[49] If the defendant moves for a summary judgment, the plaintiff is required once again to assert more specific facts.[50] In the *Lujan*, the plaintiff asserted that its injury was that the new interpretation would lead to the "extinction of endangered and threatened species."[51] The Court responded to this assertion of injury by reasoning that the injury that the wildlife organization claimed was not in fact an injury to it, but an injury to a "cognizable interest."[52] The Court also reasoned that the plaintiff failed to evidence "redressability" by criticizing the general Government action instead of the specific decision of funding that they allege cause them harm.[53] The Court ultimately held that the plaintiff did not establish the three requirements set forth above, and therefore, lacked standing to bring this lawsuit.[54]

The Court has also been reluctant to allow taxpayers to bring suit against other government entities such as the Internal Revenue Service.[55] *Allen v. Wright* was a class action lawsuit brought by the mothers and fathers of African American public school students.[56] The plaintiffs in the case alleged the Internal Revenue Service wrongly released private schools that practiced ethnic prejudice from

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46. *Id.* at 560-61 (quoting Simon v. E. Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976)).
47. *Id.* at 560 (quoting *Simon*, 426 U.S. at 38, 43).
48. *Id.*
49. *Id.* at 561.
50. *Id.* (citing FED. R. CIV. P. 56(e)).
51. *Id.* at 562.
52. *Id.* at 563.
53. *Id.* at 568.
54. *Id.* at 578.
55. Allen v. Wright, 468 U.S. 737 (1984).
56. *Id.* at 739.

tax liability.[57] The Court held that there was a direct injury to the plaintiffs, but did not find that the injury could be sufficiently linked to the government entity that is named as a defendant in the suit.[58] Therefore, the Court held that the plaintiffs in the case did not have standing to bring a lawsuit.[59]

The Supreme Court has extended the requirements needed for taxpayer standing when challenging an act of the federal government to acts by a state government.[60] In *ASARCO, Inc. v. Kadish*, a group of taxpayers brought an action requesting the court to nullify a state statute that pertained to mineral leases on state lands.[61] The taxpayers alleged that the statute did not observe the requirements that the legislative branch set forth to the States prior to the States renting or selling the land.[62] The government argued that the taxpayers did not have standing to bring this case in a federal court.[63] While the plaintiffs stated their injury as being: "deprive[ed] the school trust funds of millions of dollars thereby resulting in unnecessarily higher taxes," the Court did not find that the plaintiffs established a causal link between their injuries and the action of the government; furthermore, the Court did not find that granting the relief that the plaintiffs requested would have the outcome of lifting the tax burden from the plaintiff.[64] Therefore, the Court held that the taxpayers in this situation lacked standing.[65]

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57. *Id.* The Internal Revenue Service will withdraw a school's tax exempt status if it does not demonstrate that it

> admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school-administered programs.

Id. at 740 (quoting REV. PROC. 75-50, 1975-2 C.B. 587).

58. *Id.* at 756-57.

59. *Id.* at 765-66.

60. ASARCO, Inc. v. Kadish, 490 U.S. 605 (1989).

61. *Id.* at 610.

62. *Id.*

63. *Id.* at 613.

64. *Id.* at 614.

65. *Id.* at 616-17.

While the Court has been reluctant to hold that the taxpayers have standing to assert a lawsuit against a government entity, there have been some occasions in which the Court has held that the taxpayer had standing.[66] *Richards v. Jefferson County,* demonstrates a lawsuit in which taxpayers were deemed to have standing because the injury caused to them was direct.[67] The plaintiffs in this case worked in the private sector of Richards County.[68] They objected to an occupation tax levied upon them by Jefferson County.[69] In its reasoning the Court categorized taxpayer lawsuits into two groups.[70] The first group consisted of lawsuits by taxpayers who were using their position as taxpayers to permit them to bring a lawsuit for the purpose of stating their grievances concerning the misappropriation of public, fiscal resources; these taxpayers also only suffer a circuitous injury.[71] The second group consisted of taxpayers the Court felt "deserved their [own] day in court."[72] The Court held that the taxpayers in this lawsuit fell into the second category; the Court further concluded that the plaintiffs in this lawsuit were not adequately represented in the previous litigation and therefore are not precluded from bringing their own suit.[73]

DaimlerChrysler Corp. v. Cuno is the latest of an array of cases in which taxpayers file suit because they allege to be injured by governmental actions.[74] The action stems from a tax exemption given to a corporation by the State of Ohio after meeting the requirements of a provision of Ohio's revenue code, which states, "[w]ith consent from local school districts, the partial property tax waiver can be increased to a complete exemption."[75] The *Cuno* decision further reiterates the Courts caution of overstepping its

66. Richards v. Jefferson County, 517 U.S. 793 (1996).
67. *Richards*, 517 U.S. 793.
68. *Id.* at 794.
69. *Id.* at 794-95.
70. *Id.* at 803.
71. *Id.*
72. *Id.*
73. *Id.* at 803, 805.
74. DaimlerChrysler Corp. v. Cuno, 126 S. Ct. 1854, 1854 (2006).
75. *Id.* at 1859.

authority in presiding over taxpayer lawsuits unless a direct injury can be established by the plaintiff.[76]

III. FACTS

The state of Ohio and the city of Toledo located in the state of Ohio desired to have DaimlerChrysler expand its manufacturing operations in Toledo, Ohio.[77] The manufacturing operation in Toledo, Ohio dated back to 1941.[78] Jeeps, the type of vehicle that the state of Ohio wished for the DaimlerChrysler Corporation to continue to manufacture in Toledo, were first created for the United States Military by a motor company whose operations were in Toledo, Ohio.[79] More than half a century later, Ohio and the City of Toledo wished to support further production and expansion of production of the Jeep in Toledo, Ohio.[80] In order to facilitate this expansion, the city of Toledo in conjunction with the state of Ohio contracted a deal with the DaimlerChrysler Corporation in which the corporation would receive tax benefits in exchange for an expansion of operations in Toledo.[81] In 1998, the benefit was approved by the local school districts, as required by Ohio law.[82] DaimlerChrysler began buying appliances for its expansion after its property tax was suspended as a result of a waiver given to the corporation by the state of Ohio.[83]

The plaintiffs, who were mainly taxpayers from Toledo, but also included taxpayers from other cities in Ohio and the State of Michigan, claim that the deal between the State of Ohio, the City of Toledo, and DaimlerChrysler violated the Commerce Clause.[84] Furthermore, the plaintiffs asserted that the tax break given to DaimlerChrysler did indeed result in a "'disproportionate burden'"

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76. *Cuno*, 126 S. Ct. 1854.
77. *Id.* at 1859.
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id.* at 1859.
82. *Id.*
83. *Id.*
84. *Id.*

on them.[85] The plaintiffs wanted to remand their claim to state court when it was filed in District Court because the plaintiffs had "'substantial doubts about their ability to satisfy either the constitutional or the prudential limitations on standing in federal court.'"[86] The District Court did not remand, reasoning "'at the bare minimum the Plaintiffs who are taxpayers have standing to object to property tax exemption and franchise tax credit statutes under the 'municipal taxpayer standing' rule articulated in *Massachusetts v. Mellon*.'"[87] The District Court decided the case on the merits and decided that the contract between the DaimlerChrysler Corporation, the State of Ohio, and the City of Toledo located in Ohio did not violate the Commerce Clause.[88] The Court of Appeals for the Sixth Circuit held that the local tax did not violate the Commerce Clause but the state tax break was a violation of the Commerce Clause.[89] The plaintiffs filed a writ of certiorari in order to have the validity of the property tax exemption reviewed.[90] The defendants also filed a writ of certiorari in order to have the rejection of the franchise tax credit reviewed.[91] Before making a decision on whether the tax breaks violated the Commerce Clause, the Supreme Court addressed

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85. *Id.* (quoting App. 18a, 23a, 28a. n2).

86. *Id.* at 1860 (quoting Pls.' Supplemental Mot. for Remand to State Court (No. 3:00cv7247), p. 13, R. Doc. 17).

87. *Id.* at 1860 (quoting *Frothingham*, 262 U.S. 447 (1923)). As discussed earlier, *Frothingham* involved a case in which the plaintiffs were taxpayers who brought a lawsuit because the State of Massachusetts was using state funds to prevent the deaths of infants and mothers, as was required by the Maternity Act adopted by Congress. *Id.* at 479. The State of Massachusetts also brought a lawsuit against the same individual that the taxpayers brought suit against. *Id.*. The taxpayer argued that the Act creates an injury to her because the Act, by placing the burden of taxation on her, will in tern cause a governmental taking of her property absent due process of law. *Id.* at 481-82. The Court concluded plaintiff taxpayer did not have standing to bring this case because she cannot establish how this Act affected her in a direct manner. *Id.* at 488. The Court held a taxpayer lacks standing to contest an act of Congress based on constitutional grounds. *Id.*

88. *Cuno,* 126 S. Ct. at 1860.

89. *Id.*

90. *Id.*

91. *Id.*

the issue of whether the plaintiffs had standing to bring such a lawsuit.[92]

The Supreme Court held that the taxpayers did not have standing to bring an objection to the tax credits that the City of Toledo or the State of Ohio gave to the DaimlerChrysler Corporation.[93] Therefore, the judgments of the District Court and the Court of Appeals for the Sixth Circuit were considered to be in error and ordered to be "vacated in part, and...remanded for dismissal of plaintiffs' challenge to the franchise tax credit."[94]

IV. ANALYSIS OF THE COURT'S OPINION

A. Chief Justice Roberts' Majority Opinion

Chief Justice Roberts began his opinion by reciting the facts of this case.[95] The beginning of the opinion also cited the Ohio law that allowed for such tax breaks to a corporation.[96] The opinion proceeded to trace the history of *Cuno* from the District Court to its current status at the United States Supreme Court.[97] The opinion first

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92. *Id.* More specifically, the Supreme Court first wanted to address whether the plaintiffs had standing on the issue of objecting to the franchise tax credit. *Id.*

93. *Id.* at 1868.

94. *Id.*

95. *Id.* at 1859.

96. *Id.* Ohio law requires the collection of franchise tax "'upon corporations for the privilege of doing business in the state, owning or using a part or all of its capital or property in [the] state, or holding a certificate of compliance authorizing it to do business in [the] state.'" *Id.* (quoting Wesnovtek Corp. v. Wilkins, 825 N.E.2d 1099, 1100, citing OHIO REV. CODE ANN. §5733.01 (Lexis 2005)). Furthermore, a taxpayer who buys "'new manufacturing machinery and equipment' and installs it at sites in the State receives a credit against the franchise tax." *Id.* (quoting *Wilkins*, 825 N.E.2d at 1100, citing OHIO REV. CODE ANN. §5709.62(C)(1)(a) (Lexis 2005)).

97. *Id.* at 1860. The plaintiffs wanted to remand their claim to state court when it was filed in District Court because the plaintiffs had "'substantial doubts about their ability to satisfy either the constitutional or the prudential limitations on standing in federal court.'" *Id.* (quoting Pls.' Supplemental Mot. for Remand to State Court (No. 3:00cv7247), p.13, Record Doc. 17.) The District Court did not remand, reasoning, "'at a bare minimum the Plaintiffs who are taxpayers have standing to object to property tax exemption and franchise tax credit statutes under the 'municipal taxpayer standing' rule articulated in *Massachusetts v. Mellon*.'" *Id.*

addressed the issue of whether or not the plaintiffs have standing under Article III of the United States Constitution to bring a lawsuit that contests a franchise tax credit given to DaimlerChrysler Corporation by the State of Ohio and the city of Toledo.[98]

Chief Justice Roberts proceeded to give a historical analysis on how the Court has dealt with issues of standing in the past.[99] He first referenced Chief Justice Marshall's opinion in *Marbury v. Madison*.[100] In *Marbury*, Chief Justice Marshall expressed his belief in the importance of each role of the government exercising the powers given to it by the United States Constitution.[101] Chief Justice Roberts stated, "[d]etermining that a matter before the federal courts is a proper case or controversy under Article III therefore assumes particular importance in ensuring that the Federal Judiciary respects "'the proper – properly limited – role of the courts in a democratic society."[102] He further reiterated this point by quoting *Raines v. Byrd*, "'no principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.'"[103] Chief Justice Roberts then analyzed the requirement of case-or-controversy that is needed to fulfill the requirement of standing under Article III

The District Court decided the case on the merits and decided that the contract between the DaimlerChrysler Corporation, the state of Ohio, and the city of Toledo located in Ohio did not violate the Commerce Clause. *Id.* The Court of Appeals for the Sixth Circuit held that the local tax did not violate the Commerce Clause but the state tax break was a violation of the Commerce Clause. *Id.* The plaintiffs filed a writ of certiorari in order to have the validity of the property tax exemption reviewed. *Id.* The defendants also filed a writ of certiorari to have the rejection of the franchise tax credit reviewed. *Id.* Before making a decision on whether the tax breaks violated the Commerce Clause, the Supreme Court addressed the issue of whether the plaintiffs had standing to bring such lawsuit. *Id.*

98. *Id.* Chief Justice Roberts quoted *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.* "'We have 'an obligation to assure ourselves" of litigants' standing under Article III.'" *Id.* (quoting Friends of Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180 (2000)).

99. *Id.*

100. *Cuno,* 126 S. Ct. at 1860.

101. *Id.* (citing Marbury v. Madison, 5 U.S. 137 (1803)).

102. *Id.* (citing *Wright*, 468 U.S. at 750 (quoting Warth v. Seldin, 422 U.S. 490, 498 (1975))).

103. *Id.* at 1861 (quoting Raines v. Byrd, 521 U.S. 811, 818 (1997)).

of the United States Constitution.[104] He began by giving an essential component for standing: "'a plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'"[105] He pointed out that the burden of proving that the case is within the limits of the types of cases that the Supreme Court has the authority to preside over falls on the plaintiff.[106] Chief Justice Roberts then addressed the plaintiffs' first argument as to the establishment of standing.[107] The plaintiffs asserted that they have standing because of the fact that they are taxpayers and as taxpayers they have been injured as a result of the contract between DaimlerChrysler and the State of Ohio.[108] "'[The agreement] depletes the funds of the State of Ohio to which the plaintiffs contribute through their tax payments and thus 'diminishes the total funds available for lawful uses and imposes disproportionate burdens on' them."[109] Chief Justice Roberts addressed the fact that the Court has made many decisions regarding the standing of a federal taxpayer.[110] He explained that the Court has mostly denied standing to those who bring a lawsuit and assert standing based on the fact that he/she is a federal taxpayer.[111] Chief Justice Roberts explained that the common thread amongst the previous cases in which the Court has rejected standing can be found in *Frothingham*, one of the first cases in which the Supreme Court even addressed the issue.[112]

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104. *Id.*

105. *Id.* (quoting *Allen*, 468 U.S. at 751).

106. *Id.*

107. *Id.* at 1862.

108. *Id.*

109. *Id.* (quoting App. 28a citing Resp't.'s Br. 24).

110. *Id.*

111. *Id.* Chief Justice Roberts alluded to the Court's decision in Ala. Power Co. v. Ickes, in which the Court reasoned "'the interest of a taxpayer in the moneys of the federal treasury furnishes no basis' to argue that a federal agency's loan practices are unconstitutional." *Id.* (quoting Ala. Power Co. v. Ickes, 302 U.S. 464, 478 (1938)). *See* Schlesinger v. Reservists Comm. To Stop the War, 418 U.S. 208 (1974); *see also* United States v. Richardson, 418 U.S. 166 (1974).

112. *Id.*

> [I]nterest in the moneys of the Treasury...is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment of the funds so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventative powers of a court of equity.[113]

Chief Justice Roberts reasoned that the logic applied in *Frothingham* is applicable to *Cuno*.[114] He then cited the reasoning used by the Court in the past to reject the notion of taxpayer standing.[115] He began by citing *Lujan*, which states "[s]tanding has been rejected in such cases because the alleged injury is not 'concrete and particularized.'"[116] He further reasoned that the injury that the taxpayers are claiming are not unique to them but an example in which they have "'suffer[ed] in some indefinite way in common with people generally.'"[117] Chief Justice Roberts opined that this case falls into the same category as *Lujan* in that "the 'injury [the plaintiffs claim to suffer from] is not 'actual or imminent,' but instead 'conjectural or hypothetical.'"[118]

Chief Justice Roberts asserted that the plaintiffs have not provided evidence that tax breaks given to the DaimlerChrysler Corporation by the State of Ohio have actually caused a depletion of money in the state funds.[119] Furthermore, he alluded to the fact that the motive of the State of Ohio to give such a tax break to the DaimlerChrysler Corporation was to encourage a growth in the state's economy, which served to improve state funds.[120] Chief Justice Roberts furthered his reasoning that the injury claimed by the plaintiffs in this case is only theoretical and not realized by arguing

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113. *Id.*(quoting *Frothingham*, 262 U.S. at 486-487).

114. *Id.*

115. *Id.*

116. *Id.* (quoting *Lujan*, 504 U.S. at 560).

117. *Id.* (quoting *Frothingham* 262 U.S. at 488).

118. *Id.* (quoting *Lujan*, 504 U.S. at 560).

119. *Id.*

120. *Id.* Some of the plaintiffs were residents of Michigan. *Id.* These plaintiffs were making the same argument as the Ohio residents in that an expansion planned for Michigan would cause them injury by depleting Michigan state funds. *Id.*

that the injury caused to the plaintiff is conditioned on how congressional representatives react to a depletion in funds that was caused by the tax break.[121] Chief Justice Roberts found that the plaintiffs' claim of injury required one to suppose that legislatures will raise taxes in an effort to combat the deficit resulting from the tax break given to DaimlerChrysler Corporation.[122] Following this line of reasoning, Chief Justice Roberts stated that there is a requirement of further supposition in the plaintiffs' claim of injury in that it requires one to suppose that voiding the tax break given to DaimlerChrysler would increase state funds and, thus, benefit taxpayers by decreasing the amount of taxes that they are required to pay.[123] Based on this argument, he concluded that the type of hypothetical claim of injury by the plaintiffs is inadequate to proclaim that the plaintiffs have standing under Article III of the United States Constitution.[124] Chief Justice Roberts' line of reasoning on this point is supported by a similar argument made by Justice Kennedy in *Kadish* and the arguments by the majority opinion in *Warth*.[125]

Chief Justice Roberts advanced the idea that allowing taxpayers to claim that an increase in state revenue should automatically result in a decrease in tax burden for them is in violation of the powers given to state governments.[126] He supported this argument by stating that the federal government is not given the power of deciding how state funds should be allocated.[127] "To the contrary, the decision of how to allocate any such savings is the very epitome of a policy judgment committed to the 'broad and legitimate discretion' of lawmakers which 'the courts cannot presume either to control or to

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121. *Id.* at 1862-63.

122. *Id.*

123. *Id.* at 1863.

124. *Id.*

125. *Id.* (citing *Kadish*, 490 U.S. at 614). In *Kadish*, Justice Kennedy stated, "'[I]t is pure speculation where the lawsuit would result in any actual tax relief for respondents.'" *Id.* (quoting *Kadish*, 490 U.S. at 614). In *Warth*, the Court found a lack of standing for a plaintiff taxpayer who claimed injury because of "'the conjectural nature of the asserted injury.'" *Id.* (quoting *Warth*, 422 U.S. at 509).

126. *Id.*

127. *Id.*

predict.'"[128] While the Court's previous decisions regarding taxpayer standing applied to federal taxpayers, Chief Justice Roberts drew a parallel to state taxpayers.[129] His conclusion is supported by the Court's decision in *Doremus v. Board of Education of Hawthorne*, in which the Court stated "'the interests of a taxpayer in the moneys of the federal treasury are too indeterminable, remote, uncertain, and indirect' to support standing to challenge 'their manner of expenditure.'"[130] In the majority opinion in *Doremus*, the Court explicitly stated, "in rejecting a federal taxpayer challenge to a federal statute 'as equally true when a state Act is assailed: the [taxpayer] must be able to show...that he has sustained...some direct injury...and not merely that he suffers in some indefinite way in common with people generally.'"[131]

Chief Justice Roberts continued his reasoning by opining that the taxpayers in this situation have not sufficiently fulfilled the requirements needed for standing and the basis of their claim is not unique from the claims made by previous taxpayers who have been denied standing.[132] In fact, he compared the claims made by the taxpayers in this situation to the claim made by the taxpayer in *Frothingham*, in which a taxpayer claimed that the Maternity Act was likely to result in an injury to the taxpayer in the form of a taking of property absent "'due process of law.'"[133] Chief Justice Roberts reiterated that the power of deciding how to spend state funds is given solely to the states and the taxpayer has no power to dictate how the money should be spent.[134] Furthermore, he stated that the federal government does not have the power to dictate how the states shall allocate their funds.[135] Chief Justice Roberts also cited policy

128. *Id.* (quoting *Kadish*, 490 U.S. at 615).

129. *Id.*

130. *Id.* (quoting Doremus v. Bd. of Ed. of Hawthorne, 342 U.S. 429, 433 (1952)).

131. *Id.* (quoting *Doremus*, 342 U.S. at 433-34 (quoting *Frothingham*, 262 U.S. at 488)).

132. *Id.*

133. *Id.* (quoting *Frothingham,* 262 U.S. at 486).

134. *Id.* (citing *Kadish* at 490 U.S. at 6150.

135. *Id.* at 1864.

reasons for not concluding that taxpayers do not have standing to bring a lawsuit unless their injuries are direct.[136]

> Indeed, because state budgets frequently contain an array of tax and spending provisions, any number of which may be challenged on a variety of bases, affording state taxpayers standing to press such challenges simply because their tax burden gives them an interest in the state treasury would interpose the federal courts as 'virtually continuing monitors of the wisdom and soundness' of state fiscal administration, contrary to the more modest role Article III envisions for federal courts.[137]

Chief Justice Roberts then addressed the claim made by the plaintiffs that an exception to the Court's decision should exist for those taxpayers whose claims involve a violation of the Commerce Clause.[138] The plaintiffs attempted to further their claim by comparing their situation to that of the plaintiffs in *Flast*, in which the plaintiffs claim was based on a violation of the Establishment Clause.[139] Plaintiffs looked to the holding in *Flast*, "because 'the Establishment Clause...specifically limit[s] the taxing and spending power conferred by Art. I, §8, a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending

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136. *Id.*

137. *Id.* (quoting Laird v. Tatum, 408 U.S. 1, 15 (1972)).

138. *Id.* Plaintiffs specifically say that an exception should be made for those who are addressing a supposed violation of the Commerce Clause in terms of "state tax or spending." *Id.*

139. *Id.* (citing *Flast,* 393 U.S. at 88). In *Flast*, the plaintiffs are challenging the constitutionality of Title I and II of the Elementary and Secondary Education Act of 1965 because the taxes collected from taxpayers were being used to fund religiously affiliated schools. *Flast*, 392 U.S. at 85-86. Plaintiffs argued the spending of tax funds on religiously affiliated schools is a violation of the Establishment and Free Exercise Clause of the First Amendment of the United States Constitution. *Id.* at 86. The test that the Court created requires a taxpayer to "establish a logical link between the status and the type of legislative enactment attacked." *Id.* at 103.

clause is in derogation of' the Establishment Clause."[140] In its decision in *Flast,* the Court gave potential plaintiffs a guideline in which the Court would be willing to establish standing.[141] If the plaintiffs can establish that there is "'[constitutional] limitation' on Art. I, §8" the Court will decide in favor of standing.[142] However, the plaintiffs in this case have admitted that the only constitutional challenge that has been concluded as sufficient for standing is the Establishment Clause.[143] Chief Justice Roberts' reasoning then led him to the conclusion that the Establishment Clause is a "narrow exception...to the general rule against taxpayer standing" and is the only exception that the Court is willing to give for taxpayer standing.[144]

Chief Justice Roberts also attacked the plaintiffs' comparison of the situation to that of the plaintiffs in *Flast.*[145] "Whatever rights plaintiff have under the Commerce Clause, they are fundamentally unlike the right not to 'contribute three pence...for the support of any one [religious] establishment.'"[146] Chief Justice Roberts reasoned that the plaintiffs in *Cuno* have made a broad generalization in their comparison to the plaintiffs in *Flast.*[147] He believed that plaintiffs' comparison of the Commerce Clause to the Establishment Clause is so broad that "almost any constitutional constraint on government power would 'specifically limit' a State's taxing and spending power for *Flast* purposes."[148] He concluded that a finding that a situation involving the Commerce Clause is similar to a situation involving the Establishment Clause would create a loss of a guideline that allows the Court to differentiate the types of "constitutional provisions that we [the Court] have recognized constrain governments' taxing and

140. *Cuno,* 126 S. Ct. at 1864 (quoting *Flast,* 392 U.S. at 105-106).
141. *Id.*
142. *Id.* (quoting *Flast,* 392 U.S. at 105).
143. *Id.* (citing Resp't.'s Br. 12).
144. *Id.*
145. *Id.*
146. *Id.* (quoting *Flast,* 392 U.S. at 103).
147. *Id.* at 1865.
148. *Id.* (quoting *Flast,* 392 U.S. at 105).

spending decisions."[149] Chief Justice Roberts also believed that allowing a broad generalization of this situation would be contrary to the Court's decision in *Flast*, in which the Court expressed that it does not wish to "transform federal courts into forums for taxpayers 'general grievances.'"[150] He then proceeded to give a synopsis of the Court's reasoning in *Flast*.[151]

He begins his synopsis by stating, "*Flast* is consistent with the principle, underlying the Article III prohibition on taxpayer suits, that a litigant may not assume a particular disposition of government funds in establishing standing."[152] He then explained that the Court in *Flast* cited that the history of the Establishment Clause leads one to reasonably conclude that the drafters worried that government spending would be used to support a specific faith over another or to support any sort of faith at all.[153] Based on this reasoning in *Flast*, Chief Justice Roberts inferred that "[t]he Court therefore understood the 'injury' alleged in Establishment Clause challenges to federal spending to be the very 'extract[ion] and spend[ing]' of 'tax money' in aid of religion alleged by a plaintiff."[154] He distinguished the argument based on the Establishment Clause and the argument based on the Commerce Clause by reasoning that an injury caused by the Establishment Clause can be remedied by an injunction of the government spending, but an injury caused by the Commerce Clause can only be remedied if the legislatures used the funds to the gain of the specific taxpayer.[155] In other words, Chief Justice Roberts rationalized that a remedy for an Establishment Clause violation regarding the spending of the legislature is a general injunction, even if the taxpayer who brought the lawsuit does not receive any personal gain, whereas a Commerce Clause violation regarding the spending

149. *Id.* (citing Ark. Writers' Project, Inc. v. Ragland, 481 U.S. 221 (1987)) *Ragland* was a case in which a state sales tax was nullified because the Court held that it violated the Free Press Clause. *Id.*

150. *Id.* (quoting *Flast*, 392 U.S. at 106).

151. *Id.*

152. *Id.*

153. *Id.* (citing *Flast*, 392 U.S. at 103).

154. *Id.* (quoting *Flast,* 392 U.S. at 106).

155. *Id.* (citing Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc., 454 U.S. 464, 514 (1982) (Stevens, J., dissenting)).

of the legislature would only be remedied if the taxpayer were to receive a gain.[156]

In the last part of his opinion, Chief Justice Roberts addressed the plaintiffs' argument regarding their position as "municipal taxpayers" and their ability to contest the "state franchise tax credit," which is at the center of the lawsuit.[157] The plaintiffs used this argument to draw a comparison to the situation in *Frothingham*. In *Frothingham*, the Court allowed standing for "municipal residents to enjoin the 'illegal use of the moneys of a municipal corporation' relying on 'the peculiar relation of the corporate taxpayer to the corporation' to distinguish such a case from the general bar on taxpayer suits.'"[158] Chief Justice Roberts noted that this argument did not persuade the Court of Appeals based on the "merits" of the argument.[159] He then identified a weakness in the plaintiffs' argument in that they have not given the Court a causal link between their claimed injury and the decisions of the government at the local level.[160] Chief Justice Roberts viewed the plaintiffs' argument as an attempt to "leverage the notion of municipal taxpayer standing beyond challenges to municipal action."[161] He then identified the two ways he believed that the plaintiffs attempted to use their status to challenge state spending decisions.[162]

The taxpayers' first attempt to "leverage" their position as municipal taxpayers to actions at the state level as the plaintiffs' argument that Ohio's laws oblige that the earnings from the franchise tax be dispersed at the municipal level and that the tax benefit given to the DaimlerChrysler Corporation has caused a deduction in the amount of finances available for disbursement and the taxpayers will be responsible to make up for the deficit.[163] Chief Justice Roberts disregarded this argument because it is a contention against state

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156. *Id.* (citing *Valley Forge*, 454 U.S. at 514 (Stevens, J., dissenting)).
157. *Id.*
158. *Id.* (quoting, *Frothingham*, 262 U.S. at 486-487).
159. *Id.*
160. *Id.*
161. *Id.*
162. *Id.* at 1866-68.
163. *Id.* at 1865 (citing OHIO REV. CODE ANN. § 5733.12 (Lexis 2005)).

spending rather than spending at the municipal level.[164] Based on this reasoning, Chief Justice Roberts dismissed this argument for the same reasons that were cited earlier, when he rejected taxpayer standing for the plaintiffs when they challenged spending at the state level.[165] He contended that this argument by the plaintiffs is an attempt to bring one issue before the Court under the guise that it is an entirely different issue.[166]

Chief Justice Roberts then explained the dangers of "assuming that any revenue increase resulting from a taxpayer suit will be put to a particular use."[167] He cited the fact that Ohio's General Assembly "suspended" the method of delivering funds generated from the franchise tax to the municipal level in 2001 and has done so after that year also.[168] He concluded from this example that the result of a tax benefit to the DaimlerChrysler Corporation does not equal a burden to the local level of government.[169] Instead, the burden is theoretically based on the actions of the state government and whether or not the state government will suspend the distribution of funds to the local level.[170] A theoretical injury is not sufficient for plaintiff standing under Article III of the United States Constitution and has been consistently rejected by the Court.[171]

The second method to "leverage" their status as a municipal taxpayer and their standing to contest "municipal property tax exemption into a challenge to the franchise tax credit by relying on *Mine Workers v. Gibbs*."[172] Plaintiffs argued that the supplemental

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164. *Id.*

165. *Id.* at 1866.

166. *Id.*

167. *Id.*

168. *Id.* (citing Amended Substitute H. B. 94, 124th General Assembly § 140 (2001)).

169. *Id.*

170. *Id.*

171. *Id.* (citing *Kadish,* 490 U.S. at 614).

172. *Id.* (citing Mine Workers v. Gibbs, 383 U.S. 715 (1966)). In *Gibbs,* respondent was given damages by the United Mine Workers of America because a lower court found that the United Mine Workers of America breached the Labor Management Relations Act of 1947. *Id.* at 718. Members of a mining group were physically stopped from working on a mine. *Id.* The respondent also claimed that the actions of the petitioner caused him to be fired and lose contracts he had made during the course of his employment. *Id.* at 720. The Court held that the

jurisdiction in *Gibbs* would apply to their case so long as the District Court held that they have met the requirements needed for standing.[173] The decision in *Gibbs* determined that federal-question jurisdiction over a claim may authorize a federal court to exercise jurisdiction over state-law claims that may be viewed as part of the same case because they "derive from a common nucleus of operative fact" as the federal claim.[174] Chief Justice Roberts began his analysis of this argument by stating an assumption made by the plaintiffs in that they believe that the *Gibbs* decision "stands for the proposition that federal jurisdiction extends to all claims sufficiently related to a claim within Article III to be part of the same case, regardless of the nature of the deficiency that would keep the former claims out of federal court if presented on their own."[175] Chief Justice Roberts noted that the Court has been more careful in applying the *Gibbs* decision.[176] He cited an illustration of the Court's reluctance to broadly apply the principle in *Gibbs*.[177] His illustration was the Court's rejection of applying *Gibbs* in lawsuits involving "non-diverse parties when jurisdiction was based on diversity."[178] Chief Justice Roberts also stated that the Court will not grant supplemental jurisdiction to suits that do not meet the condition of "amount-in-controversy."[179] He further noted the Court has recently stated "'we have not...applied *Gibbs*' expansive interpretive approach to other aspects of the jurisdictional statutes.'"[180] Chief Justice Roberts explained that the Court has not used the decision in *Gibbs* to allow a federal court to have supplemental jurisdiction over a suit when that

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respondent did not establish that the union encouraged or was responsible for the violent actions of some of its members. *Id.* at 742. Therefore, the Court reversed the holding of the lower court. *Id.*

173. *Cuno*, 126 S. Ct. at 1866 (citing Resp't.'s Br. 17-18).

174. *Id.* (quoting *Gibbs*, 383 U.S. at 725).

175. *Id.*

176 *Id.*

177. *Id.* at 1866-67.

178. *Id.* at 1867 (citing Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365 (1978)).

179. *Id.* (citing Finley v. United States, 490 U.S. 545 (1989)).

180. *Id.* (quoting Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546 (2005)). In *Allapattah*, 28 U.S.C. § 1367 was used to permit a "federal court in a diversity action to exercise supplemental jurisdiction over additional diverse plaintiffs whose claims failed to meet the amount-in-controversy" requirement. *Id.*

suit does not meet the requirements of Article III, including that of standing.[181] He disagreed with an expansion of the ruling in *Gibbs* in light of the fact the Court has repeatedly held that a plaintiff must meet the requirement of standing for each individual issue he presents to the Court.[182] Chief Justice Roberts then stated that the Court has always required the plaintiffs to show standing for each issue in their suit despite the fact that the issues and the relief requested resulted from a "common nucleus of operative fact."[183] He further reiterated the fact that the Court required plaintiff to show standing for each individual issue by arguing that the requirement would be illogical if standing was easily transferable from one issue to another issue in the same lawsuit, considering that all lawsuits which request relief "derive from a 'common nucleus of operative fact.'"[184]

Chief Justice Roberts proceeded to analyze the effect of the plaintiffs' argument that standing would be considered sufficient for all claims of relief if standing was found for one claim and all subsequent claims arose from a "common nucleus of operative fact."[185] He began by stating, "the doctrines of mootness, ripeness, and political question all originate in Article III's 'case' or

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181. *Id.*

182. *Id.* (citing *Allen*, 468 U.S. at 752). In *Allen*, the Court stated "'the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the *particular claims* asserted.'" *Id.* (quoting *Allen*, 468 U.S. at 752 (emphasis added)). In *Allen,* parents of African American public school students brought a lawsuit in which they claimed injury from an Internal Revenue Service tax exemption for a private school that practiced racial discrimination in its admission of students. *Allen,* 468 U.S. 737, 739 (1984). The plaintiffs further alleged that the actions of the Internal Revenue Service causes them an actual injury because it hinders their children from getting an education at the school by providing support to the school despite its discriminatory practice. *Id.* at 739-40. The Court held that the plaintiffs did not have standing to bring the lawsuit because they did not establish a direct injury caused by the actions of the Internal Revenue Service. *Id.* at 740.

183. *Cuno,* 126 S. Ct. at 1867.

184. *Id.* (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc,, 528 U.S. 167, 175-79 (2000)).

185. *Id.* (quoting *Laidlaw*, 528 U.S. at 175).

'controversy' language, no less than standing does."[186] If the plaintiffs' argument was implemented by the Court, then the cases that involve mootness, ripeness, and political questions would be deemed appropriate for the Court to hear under the "case" or "controversy" requirement of Article III because they would be from the same "operative facts" as a claim that did not have a problem with mootness, ripeness, or political question.[187] Chief Justice Roberts then reasoned that allowing the plaintiffs' argument to succeed would cause a substantial change in how the Court deals with these types of issues because the Court could not rely on its previous rulings, which have held that the Court can not hear cases that involve mootness, or ripeness, or political question issues.[188] He concluded that the plaintiffs' interpretation of *Gibbs* would lead to a complete modification of what types of cases the Courts are authorized to hear and this modification is inconsistent with Article III.[189] Plaintiff's interpretation of *Gibbs* would corrode the purpose of Article III.[190] The Article III standing requirement would become void for all practical purposes because the plaintiffs' interpretation of *Gibbs* would not require the "actual injury requirement" that the Court has required in the past.[191] "The actual-injury requirement would hardly serve the purpose to the political branches[s] if once a plaintiff demonstrated harm from one particular inadequacy in government administration, the court were authorized to remedy all inadequacies in that administration."[192] Chief Justice Roberts

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186. *Id.* (citing Nat'l Park Hospitality Assn. v. Dep't of Interior, 538 U.S. 803, 808; Arizonans for Official English, 520 U.S. 43, 67; Reservists Comm. To Stop the War, 418 U.S. at 215).

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.* Chief Justice Roberts explained, "determining that a matter before the federal courts is a proper case or controversy under Article III therefore assumes particular importance in ensuring that the Federal Judiciary respects 'the proper and properly limited role of the courts in a democratic society.'" Cuno, 126 S. Ct. at 1860 (quoting *Wright*, 468 U.S. at 737).

191. *Id.* at 1867-68.

192. *Id.* at 1867-68 (quoting Lewis v. Casey, 518 U.S. 343, 357 (1996)). In *Lewis*, the Court stressed that "'the remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.'" *Id.* at 1868 (quoting *Lewis*, 518 U.S. at 358). In *Lewis*, the plaintiffs were prisoners in

restated his conclusion that the plaintiffs' have not established the requirement of injury needed for standing under Article III for their claim against the Ohio state levy.[193] Chief Justice Roberts also stated that if the plaintiffs were able to establish standing for their claim regarding municipal taxes, that would not allow the plaintiffs to transfer standing from that issue to the issue of "state taxes."[194] Chief Justice Roberts then addressed the cases that the plaintiffs use to support their contention that a broad reading of *Gibbs* should apply to their situation.[195] The plaintiffs supported their argument using cases from the Court of Appeals.[196] Chief Justice Roberts highlighted the fact that a couple of the cases used by the plaintiffs "hold only that, once a litigant has standing to request invalidation of a particular agency action, it may do so by identifying all grounds on which the agency may have 'failed to comply with its statutory mandate.'"[197] He explained that the cases do not stand for the contention that having standing to dispute one government action gives a plaintiff standing to dispute another government action that has not caused the plaintiff any direct harm.[198] Chief Justice Roberts dismissed the plaintiffs' argument that a third case is analogous to

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various correctional facilities in the state of Arizona. *Lewis*, 518 U.S. at 346. The class action lawsuit was brought by the prisoners because they allege that they were being denied a right to use the legal facilities and resources in the prisons. *Id.* In addition to a general lawsuit on behalf of all of the prisoners, the suit also included specific claims on behalf of two groups of prisoners, those who were separated from the general prison population and those who lacked the ability to read and write in English or at all. *Id.* at 346-47. The plaintiffs claim that these two groups were not given sufficient legal aid for their cases. *Id.* In its reasoning, the Court stated that the prisoners who are not a part of the two specific groups must show that the lack of access to the legal resources in the prison caused them a direct injury. *Id.* at 348. The Court was not persuaded by the plaintiffs' argument that they were directly injured. *Id.* at 356. The Court did not feel that the plaintiffs had did not have a direct injury for the purpose of establishing standing. *Id.* The Court did hold that the two groups of prisoners was able to establish a direct injury. *Id.* The Court reversed the judgment of the lower court, which gave the prisoners the remedy of an injunction against the prisons. *Id.* at 348, 364.

193. *Cuno*, 126 S. Ct at 1867-68.

194. *Id.*

195. *Id.*

196. *Id.* at 1868, n.5

197. *Id.* (quoting Sierra Club v. Adams, 405 U.S. 727, 737 (1972)).

198. *Id.*

their situation.[199] He alluded to the fact that the Court in the third case used by the plaintiffs was deciding an issue that involved the "unprofessional conduct by those attorneys who are practicing before them" and this issue is too different from the plaintiffs' situation to be deemed analogous.[200]

Chief Justice Roberts began the conclusion of his opinion by stating that the plaintiffs have not established the requirements needed for standing under Article III of the United States Constitution for the issue of the state franchise tax.[201] As a result of the plaintiffs lacking standing to bring this lawsuit before the Court, the District Court and the Court of Appeals who decided this case on the merits did so without having the authority to hear the case.[202] Chief Justice Roberts directed the "judgment of the Sixth Circuit is therefore, vacated in part, and the cases are remanded for dismissal of plaintiffs' challenge to the [state] franchise tax credit."[203]

B. Justice Ginsburg's Concurring Opinion

Justice Ginsburg's concurring opinion began with an affirmation of the majority opinion's highlighting of the Court's previous decision regarding the issue of standing under Article III.[204] Justice Ginsburg reasoned that the Court's opinion in this case holds true with respect to previous decisions such as *Frothingham.*[205] She stated her agreement with the majority opinion's analogy between this case and *Frothingham*, in that the "taxpayer's interest" is "minute and indeterminable."[206] She alluded to the decision of *Doremus*, in which the Court applied its reasoning in *Frothingham.*[207] Justice Ginsburg then stated that the only

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199. *Id.*

200. *Id.* (quoting Jackson v. United States, 881 F.2d 707, 710-711 (9th Cir. 1989)).

201. *Id.* at 1868.

202. *Id.* at 1868.

203. *Id.*

204. *Id.* (Ginsburg, J., concurring).

205. *Id.* (Ginsburg, J., concurring).

206. *Id.* (Ginsburg, J., concurring) (quoting *Frothingham*, 342 U.S. at 434).

207. *Id.* (Ginsburg, J., concurring). One of the plaintiffs in *Doremus* was a taxpayer who has a daughter that attends the school involved in the suit. *Doremus*,

recognized exception to *Frothingham* is the Establishment Clause claim brought before the Court in *Flast*.[208] After stating that an exception exists, Justice Ginsburg stated that the Court has thus far been unwilling to expand this exception to other matters.[209]

Justice Ginsburg supported her concurrence with the conclusion reached in *Frothingham*: taxpayers do not have standing to bring a lawsuit in reaction to the spending decisions of a government entity unless they can prove a direct injury.[210] However, she did not agree with the restrictions the Court put on plaintiff standing in *Simon v.*

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342 U.S. at 431. This lawsuit was brought by the plaintiffs because they believed that a statute which required the school to recite from the Bible was unconstitutional. *Id.* at 432. The plaintiffs argued that they had standing because the reading from the Bible has caused them an injury. *Id.* However, the Court disagreed with this argument because of a stipulation made by the parties to the lawsuit in which they agreed that any student was free to leave during the recitation from the Bible. *Id.* The plaintiffs in this case did not take advantage of the ability to leave during the recitations. *Id.* Furthermore, the daughter of one of the plaintiffs had already graduated from the school by the time the lawsuit reached the Court. *Id.* The Court reasoned, "[it] does not sit to decide arguments after events have put them to rest." *Id.* at 433 (citing United States v. Alaska Steamship Co., 253 U.S. 113, 116 (1920)). The Court also reasoned that the taxpayers in this lawsuit need to show that their financial interest have been injured in a way that is not commonly shared with every taxpayer as a result of the government action. *Id.* at 435. The Court held that the plaintiffs were not able to show that their interest has been injured in a way that is unique to them and not shared by every taxpayer; therefore the plaintiffs lacked standing to bring this lawsuit. *Id.* The dissent by Justice Douglass disagreed with the reasoning of the majority. *Id.* (Douglas, J., dissenting). Justice Douglas argued that the case should be heard and decided on the merits because "there is no group more interested in the operation and management of the public schools than the taxpayers who support them and the parents whose children attend them." *Id.* (Douglas, J., dissenting). Justice Douglas proceeded to argue that the plaintiffs would have a valid argument when claiming that the recitation of the Bible takes away from another program that the school could be running and the program that was sacrificed as a result of the Bible program was the program that the taxes were meant to support. *Id.* (Douglas, J., dissenting). Justice Douglas concluded his opinion by stating that New Jersey, without any worry of constitutionality, would be able to allow the taxpayers to bring this lawsuit before its courts by giving taxpayers the authority to bring this suit. *Id.* at 435-36 (Douglas, J., dissenting).

208. *Cuno*, 126 S. Ct. at 1868.

209. *Id.* (citing Bowen v. Kendrick, 487 U.S. 589, 618 (1988)).

210. *Id.*

Eastern Ky. Welfare Rights Org.[211] She concluded her concurring opinion by reiterating that she agrees with the decision reached by the Court, but does not agree with the reasoning in *Simon*, which the majority opinion used to support its conclusion.[212]

V. IMPACT OF THE COURT'S DECISION

A. Legal Impact

This decision has solidified the Court's unwillingness to allow taxpayers to bring a lawsuit unless they can prove they have been directly harmed.[213] Furthermore, the holding has also confirmed the fact that the Establishment Clause is the only exception the Court has

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211. *Id.* (citing *Simon*, 426 U.S. 26 (1976)). In *Simon*, plaintiffs brought an action against the Secretary of the Treasury and the Commissioner of Internal Revenue. *Simon*, 426 U.S. at 28. The plaintiffs argued that the Internal Revenue Service was in violation of its own code and of the Administrative Procedure Act when it allowed a tax break to a nonprofit hospital. *Id.* The hospital only provided emergency services to the plaintiffs who have brought the lawsuit. *Id.* Plaintiffs attempted to establish a direct injury for the purposes of standing by arguing that they were injured because they did not have access to services other than emergency services at the hospital. *Id.* at 40-41. The Court reasoned,

> Although the law of standing has been greatly changed in [recent] years, we have steadfastly adhered to the requirement that, at least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.

Id. at 41 (quoting Linda v. Richard, 410 U.S. 614, 617 (1973)).

In other words, the "case or controversy" limitation of Art. III still requires that a federal court act only to redress injury which fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.

The plaintiffs in this case did not make the hospitals parties to the lawsuit and brought this action against the Internal Revenue Service under the premise that their actions have caused an injury to them via the lack of service by the hospital. *Id.* at 40-42. The Court did not find a causal link between the Internal Revenue Service's actions and the injury of the plaintiffs. *Id.* at 42. The Court held that the plaintiffs did not have standing to bring this lawsuit. *Id.* at 28.

212. *Cuno,* 126 S. Ct. at 1869.

213. *Id.* at 1854.

been willing to deem sufficient for standing requirements under Article III.[214]

The holding in this case impacts other programs which a state can offer to corporations. For example, a state that chooses to give a corporation a cash-back incentive for operating in the state instead of a tax break is likely protected against a taxpayer lawsuit.[215] The holding in this case may protect states in the situation because the economic result of the two types of programs are the same and therefore, one can apply the reasoning used in this decision to the situation where a taxpayer brings a lawsuit against a state program that gives a cash back incentive to corporations operating in the state.[216]

The Supreme Court has stated that the fundamental inquiry under the dormant Commerce Clause is the 'actual effect' of a state's tax policies upon interstate commerce. From this premise, if the property tax exemption is constitutionally infirm because of its economic ramifications, the comparable cash grant must similarly violate the dormant Commerce Clause because of its equivalent economic effects on interstate commerce.[217]

While the Court did not go to the merits of the taxpayer's claim as to the constitutionality of the property tax exemption, the Court did hold that the taxpayer's did not have standing to bring such a suit against the state in the first place.[218] Therefore, if one were to follow the reasoning of the above argument regarding the "equivalent economic effects on interstate commerce," one could reasonably conclude that the cash-back incentive would also be shielded from taxpayer lawsuits because a taxpayer who has not been directly injured would not have standing to bring such a lawsuit before the Court.[219]

Another situation in which this logic would apply is if the local government "granted to [a corporation] a no-interest loan equivalent

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214. *Id.* at 1864-65.

215. Edward A. Zelinsky, *DaimlerChrysler v. Cuno and the Constitutionality of State Tax Incentives for Economic Development: Cuno: the Property Tax Issue*, 4 GEO. J.L. & PUB. POL'Y 119, 123 (2006).

216. *Id.*

217. *Id.*

218. *Id.* at 1859.

219. Zelinsky, *supra* note 215 at 123.

economic effect to the property tax exemption."[220] If the local government provided this type of incentive to a corporation such as DaimlerChrysler, it could be protected from a taxpayer lawsuit because this holding would not allow the lawsuit due to lack of standing.[221]

A third situation that would likely grant states protection against taxpayer lawsuits is if the local government actually charged a corporation the property tax that it owes under state law, but in exchange for the property tax, the local government would "in kind services (e.g., worker raining, roads, sewers) of equal value..."[222] Again, using the logic from this case and the situations discussed above,[223] the taxpayer would not have standing to bring a lawsuit for this type of contractual agreement between the government and the corporation unless that taxpayer was able to prove that he or she was directly injured by the agreement.[224]

While one can conjure a number of situations in which the state can give a monetary incentive to corporations in exchange for the corporation's promise to operate in the state, most of these situations will be protected against an attack by a taxpayer plaintiff because this holding will not allow the taxpayer to bring the lawsuit unless he or she can prove that it has caused him an injury that is not shared by taxpayers as a whole.[225] This decision, however, has not clarified situations where a state's interference with commerce among the states is within Constitutional limitations.

In the past, the Court has grappled with whether a state tax "discriminates against interstate commerce."[226] One such case is *Boston Stock Exchange v. Miss. State Tax Commission*.[227] In that 1968 case, the Court was presented with the issue of whether a

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220. *Id.*

221. *See Cuno,* 126 S. Ct. 1854 (2006).

222. Zelinsky, *supra* note 215 at 123.

223. *See infra* notes 216-222 and accompanying text.

224. *Cuno*, 126 S. Ct. at 1862-63.

225. *Id.*

226. S. Mohsin Reza, Comment, *DaimlerChrysler v. Cuno: an Escape from the Dormant Commerce Clause Quagmire?* 40 U. RICH. L. REV. 1229, 1239-40 (2006).

227. *Id.* (citing Complete Auto Transit, Inc. v. Brady Chairman, Miss. Tax Comm'n., 430 U.S. 274 (1977)).

change to New York's tax law regarding the exchange of "securities" violated the Constitution.[228] This change to the tax law was New York's reaction to the growth of stock exchanges in other United States cities.[229] The change in the law resulted in a smaller tax rate for exchanges that happened in the state of New York, as opposed to those that happened in another state.[230] This decreased tax rate would also extend to those who were not residents of New York but chose to do an exchange in New York.[231] The change in the law also resulted in a higher tax rate for out of state residents who transfer stocks from other states.[232] The Supreme Court decided that the change in the law did "discriminate against interest commerce because the 'obvious effect of the tax is to extend a financial advantage to sales on the New York [stock] exchanges at the expense of regional exchanges.'"[233] The Court did express that its holding was not meant to stifle the growth of trade among the states.[234] This case served as a reference for a type of interference with commerce among the states that is not permissible.[235] However, the Court did not give direction as to how to create such an incentive without interfering with commerce among the states.[236]

Another case presented before the Supreme Court regarding a tax break given by a state was *Westinghouse Electric. Corp. v. Tully*.[237] In *Tully*, the state of New York began offering a tax break after learning that the Internal Revenue Code was revised by Congress.[238] The legislation allowed for the formation of a type of business known

228. *Id.* (citing Boston Stock Exch. v. State Tax Comm'n, 429 U.S. 319 (1977).

229. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 323).

230. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 324).

231. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 324-25).

232. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 324-25).

233. *Id.* (quoting *Boston Stock Exch.*, 429 U.S. at 331).

234. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 336).

235. *Id.*

236. *Id.* (citing Walter Hellerstien & Dan T. Coenen, *Commerce Clause Restrains on State Business Development Incentives,* 81 CORNELL L. REV. 789, 795-96 (1996)).

237. *Id.* (citing Westinghouse Elec. Corp. v. Tully, 466 U.S. 388, 389 (1984)).

238. *Id.* at 1241-42 (citing *Tully*, 466 U.S. at 390).

as "Domestic International Sales Corporation."[239] The purpose of this legislation was to help domestic businesses in sending more products abroad.[240] The aid that Congress sought to provide to the domestic business came in the form of tax breaks.[241] The tax break exempted a Domestic International Sales Corporation from having to pay tax on revenue.[242] New York was apprehensive about adopting this legislation because it would have created a $20-$30 million deficit in the state's tax income per year.[243] However, the state of New York feared lack of adoption might cause corporations to do their business in other states that have adopted the legislation.[244] In response to the federal legislation, New York created its own legislation, which was intended to fulfill the following purposes: "(1) consolidate the income of the [Domestic International Sales Corporation] with the income of its parent for state tax purposes and; (2) provide a partial franchise tax credit to the parent company by lowering the tax rate to thirty percent on [Domestic International Sales Corporation] income as reflected in consolidated return."[245] Westinghouse Electric Export, a subsidiary of one of the parties to this case, was primarily in the business of exportation.[246] The company failed to report all of its Domestic International Sales Corporation revenue on its tax forms.[247] The New York Tax Commission subsequently challenged the corporation as to the proper amount of Domestic International Sales Corporation revenue.[248] The corporations responded by filing a claim that alleged "'the tax benefit of the [Domestic International Sales Corporation] export credit to gross receipts from shipments attributable to a New York place of business violated the Commerce, Due Process, and Equal Protection

239. *Id.* (citing *Tully*, 466 U.S. at 390).
240. *Id.* at 1242 (citing *Tully*, 466 U.S. at 390).
241. *Id.* (citing *Tully*, 466 U.S. at 390).
242. *Id.* (citing *Tully*, 466 U.S. at 392.
243. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 392-93).
244. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 393).
245. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 394).
246. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 394).
247. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 395).
248. *Id.* (citing *Boston Stock Exch.* ,429 U.S. at 395-96).

Clauses.'"[249] The Supreme Court held that New York's legislation was in violation of the Commerce Clause.[250] The reason cited by the Court was that while the legislation encouraged business growth in New York, it did so at the detriment of growth in other States.[251] The decision reiterated the Court's reasoning in *Boston Exchange* in that a tax is a constitutional violation if used to create growth in one state at the detriment of the growth in another state.[252] The Court remained consistent in noting that this decision would not render states helpless in attempts to create economic growth within their own boundaries so long as other states do not suffer the consequences of the incentives used to create the growth.[253]

Had the Court not addressed the issue of standing prior to the issue of whether the tax credits were constitutional, the *Cuno* case would have become authority on the constitutionality of tax credits given by states to corporations as incentive to jump-start the economy of the state. Prior to *Cuno,* the most current case that the Court decided regarding the issue of tax credits was *New Energy Company of Indiana v. Limbach.*[254] In *Limbach*, the Court made a decision regarding an Ohio law which allowed the state to give "fuel dealers a tax credit for each gallon of ethanol sold against the state's motor fuel sales tax if that ethanol was produced in Ohio or in another state that gave an incentive to Ohio-produced ethanol."[255] A company in Indiana brought an action against the state due to the fact it was could not receive such a benefit because Indiana did not provide a tax break and only provided a subsidy.[256] Ohio contended that its tax incentive program served as an example for other states to follow in the way of tax incentives as a means of encouragement for economic growth.[257] The Court was not persuaded by this argument

249. *Id.* (at 1242-43 (quoting *Boston Stock Exch.*,429 U.S. at 400-01).

250. *Id.* (at 1243 citing *Boston Stock Exch.*, 429 U.S. at 400-01).

251. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 406).

252. *Id. See Boston Stock Exch.*, 429 U.S. at 336.

253. *Id.* (citing *Boston Stock Exch.*, 429 U.S. at 406 n.12 (citing Bacchus Imps., Ltd. v. Dias, 468 U.S. 263, 265, 273 (1984))).

254 *Id.* at 1244 (citing New Energy Co. of Ind. v. Limbach, Tax Comm'n of Ohio, 486 U.S. 269 (1988)).

255. *Id.* (citing *Limbach*, 486 U.S. at 271).

256. *Id.* (citing *Limbach*, 486 U.S. at 272-73).

257. *Id.* (citing *Limbach*, 486 U.S. at 274).

and held that the tax incentive was not valid.[258] The Court also addressed the argument made by Ohio that a state can use a legislative act that promotes state and municipal purpose despite the fact that it may interfere with interstate commerce if the state can establish that the same results would not be achieved in a manner that did not interfere with interstate commerce.[259] While the Court agreed that there are instances in which a state can interfere with interstate commerce for a local purpose, it also expressed that the state must meet a high standard to prove that the means of interfering with interstate commerce was necessary to meet the end result.[260] Ohio attempted to argue that two "local purposes" were served by its program: "(1) promoting ethanol, a component of gasohol, would reduce harmful exhaust emissions and; (2) providing a reciprocity condition would help persuade other states to provide incentives for ethanol production as well."[261] The Court held that the reasons cited by Ohio for its actions did not meet the high standard that the Court requires to uphold such action as constitutional.[262] This decision demonstrates that the Court is unlikely to declare State programs which "discriminate" against other state policies constitutional, especially if the effects of the "discrimination" can be achieved through "nondiscriminatory alternatives."[263]

This decision could have served to create a guideline for determining which specific actions a State can take without interfering with the Commerce Clause. However, because the plaintiffs lacked standing to bring the case, no such clarification occurred.

B. Social Impact

This decision will heavily impact the means in which disgruntled taxpayers get relief for government spending they feel has caused a negative impact on them. Taxpayers who cannot prove that they

258. *Id.* (citing *Limbach*, 486 U.S. at 276 (citing Kane v. New Jersey, 242 U.S. 160 (1916))).

259. *Id.* (citing *Limbach*, 486 U.S. at 278).

260. *Id.* at 1244-45 (citing *Limbach*, 486 U.S. at 278).

261. *Id.* at 1245 (citing *Limbach*, 486 U.S. at 279-80).

262. *Id.* (citing *Limbach*, 486 U.S. at 280).

263. *Id.* at 1245.

have suffered a direct injury from a decision that the legislature made regarding the allocation of state funds will not meet the standing requirement to bring their lawsuit before the Court.[264] Therefore, taxpayers will have to resort to actions other than lawsuits to remedy their contention to the way that the legislature is spending taxpayer funds. If taxpayers are unhappy about the actions of the legislature, their only course of action might be to use their voting power to elect new officials. In other words, the taxpayers will have to deal with the legislatures on a direct basis and cannot use the judicial system to change the course of legislative action which does not directly harm the taxpayers.

The decision will also have a heavy impact on the states. Based on this decision, states who wish to give incentives to companies in an attempt to revive the state's economy can do so without having to fear legal action brought by a taxpayer. One of the only times the states might have to defend its actions in a courtroom will be if the taxpayer who has brought a lawsuit against the state was directly harmed in a way that is not shared amongst the common population.[265] Besides being directly affected, the taxpayer might force a state to defend its actions if the taxpayer is bringing a lawsuit that claims that the action of the state was in violation of the Establishment Clause.[266]

The societal impact also reaches other corporations that have considered making a contractual agreement with state governments.[267] For example, Philip Morris, a corporation involved in the tobacco industry, made a decision to move its operations from New York City to Richmond, Virginia.[268] Philip Morris planned to spend $250 million on equipment and $50 million on its plant in

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264. *See Cuno*, 126 S. Ct. at 1863-64.

265. *See Cuno,* 126 S. Ct. at 1863.

266. *See id.* at 1864.

267. S. Mohsin Reza, Comment, *DaimlerChrysler v. Cuno: an Escape from the Dormant Commerce Clause Quagmire?* 40 U. RICH. L. REV. 1229 (2006).

268. *Id.* (citing John Reid Blackwell, *Tobacco Town, USA; Philip Morris USA Will Move its NYC Headquarters Here in June*, RICHMOND TIMES-DISPATCH, Mar. 5, 2003, at A1).

Virginia.[269] In exchange for this economic investment, Virginia was to provide Philip Morris with a tax breaks worth approximately $30 million.[270] Philip Morris is among the many companies that are taking advantage of tax incentives given to the corporations by state and local governments.[271] Part of the argument of those who do not believe that credits should be given, is that these programs allow state governments to unfairly decide which corporations will be extended this offer.[272] Another argument is that the tax revenue that the State loses by giving corporations a tax break could have been used to make "improvements" in State.[273] However, some believe that the tax incentives given by the States do not equalize the benefits received by the States by having corporation expand operations in the State.[274] These critics question the motives of the corporations that expand in states that offer tax breaks as incentives for the expansion.[275] They do not believe that the real reason for the relocation is the tax incentive.[276]

In this age of outsourcing, politicians face immense pressure to keep jobs at home, and when new jobs are created, they are quick to associate themselves with job growth. Therefore, it can be expected that politicians and the state tax analysts who work for them are resistant to limiting incentives or any other tools that may help their

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269. *Id.* (citing John Reid Blackwell, *Tobacco Town, USA; Philip Morris USA Will Move its NYC Headquarters Here in June*, RICHMOND TIMES-DISPATCH, Mar. 5, 2003, at A1).

270. *Id.* (citing John Reid Blackwell, *Tobacco Town, USA; Philip Morris USA Will Move its NYC Headquarters Here in June*, RICHMOND TIMES-DISPATCH, Mar. 5, 2003, at A1).

271. *Id.* at 1241 (citing Bush Bernard, *Nissan Deal New Benchmark, Economic Developers Say*, THE TENNESSEAN, Dec. 4, 2005, at 3A).

272. *Id.* at 1232 (citing Scott Bass, *Illegal Bait? The Latest in Business Lures: Tax Incentives may be Unconstitutional,* STYLE WKLY., Aug. 31, 2005, available at http://www.styleweekly.com/article.asp?idarticle=10880).

273. *Id.* at 1231 (citing Michael Mazerov, Center on Budget & Policy Priorities, *Should Congress Authorize States to Continue Giving Tax Breaks to Businesses?* (2005), available at http://www.cbpp.org/2-18-05sfp.pdf).

274. *Id.* (citing David Brunori, *The Politics of State Taxation: Helping States to Hurt Themselves*, STATE TAX TODAY, June 6, 2005, available at 2005 STT 107-5 (LEXIS)).

275. *Id.* at 1232-33.

276. *Id.*

state compete for jobs with other states. Unsurprisingly, opponents of tax incentives have been unsuccessful, thus far, in convincing state legislatures to forego these tax credits.[277]

The *Cuno* decision did not resolve whether these critics were correct, but it did resolve the fact that the Court will not likely find a taxpayer established standing to bring a suit against a state for offering tax incentives to corporations.[278]

II. CONCLUSION

The *Cuno* decision further reiterates the Court's unwillingness to allow standing for taxpayer lawsuits against a government entity or a corporation.[279] The Court held to its previous decisions in which they have required the taxpayer to show that the injury that they allege in the lawsuit be unique to them, and not something that is shared by all taxpayers in general.[280] The only exception that the Court has recognized for taxpayer standing is when the claim involves an alleged violation of the Establishment Clause.[281] This decision has served to demonstrate the Court's consistency in not allowing standing for taxpayer lawsuits.[282] Furthermore, this decision sends the message to taxpayers that they must use another means to remedy an injury that is shared with all taxpayers.[283]

277. *Id.* at 1232-33.
278. *See Cuno*, 126 S. Ct. 1854.
279. *See id.*
280. *Id.* at 1863-64.
281. *Id.* at 1865 (citing *Flast*, 392 U.S. at 88).
282. *See id.*
283. *See id.*