SUPREME COURT OF THE UNITED STATES

Nos. 04–1704 and 04–1724

DAIMLERCHRYSLER CORPORATION, ET AL., PETITIONERS
04–1704 *v.*
CHARLOTTE CUNO ET AL.

WILLIAM W. WILKINS, TAX COMMISSIONER FOR THE STATE OF OHIO, ET AL., PETITIONERS
04–1724 *v.*
CHARLOTTE CUNO ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[May 15, 2006]

JUSTICE GINSBURG, concurring in part and concurring in the judgment.

Today's decision, the Court rightly points out, is solidly grounded in longstanding precedent, *Frothingham* v. *Mellon* (decided with *Massachusetts* v. *Mellon*), 262 U. S. 447 (1923), and *Doremus* v. *Board of Ed. of Hawthorne,* 342 U. S. 429 (1952), decisions that antedate current jurisprudence on standing to sue. See *ante*, at 7, 9. *Frothingham* held nonjusticiable a federal taxpayer's suit challenging a federal-spending program. See 262 U. S., at 487 (describing taxpayer's interest as "minute and indeterminable"). *Doremus* applied *Frothingham*'s reasoning to a state taxpayer's suit. 342 U. S., at 434. These decisions exclude from federal-court cognizance claims, not delineated by Congress, presenting generalized grievances. An exception to *Frothingham*'s rule, recognized post-*Doremus* in *Flast* v. *Cohen,* 392 U. S. 83 (1968), covers certain al-

leged violations of the Establishment Clause. The *Flast* exception has not been extended to other areas. See *Bowen* v. *Kendrick,* 487 U. S. 589, 618 (1988); cf. Enrich, Saving the States from Themselves: Commerce Clause Constraints on State Tax Incentives for Business, 110 Harv. L. Rev. 377, 417–418 (1996).

One can accept, as I do, the nonjusticiability of *Frothingham*-type federal and state taxpayer suits in federal court without endorsing as well the limitations on standing later declared in *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26 (1976) *(EKWRO)*, *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.,* 454 U. S. 464 (1982), *Allen* v. *Wright,* 468 U. S. 737 (1984), and *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555 (1992). See *EKWRO*, 426 U. S., at 54–66 (Brennan, J., concurring in judgment); *Valley Forge*, 454 U. S., at 513–515 (STEVENS, J., dissenting); *Allen*, 468 U. S., at 783–795 (STEVENS, J., dissenting), and the overturned Court of Appeals opinion, *Wright* v. *Regan*, 656 F. 2d 820, 828–832 (CADC 1981) (Ginsburg, J.); *Defenders of Wildlife*, 504 U. S., at 582–585 (STEVENS, J., concurring in judgment); Sunstein, What's Standing after *Lujan*? Of Citizen Suits, "Injuries," and Article III, 91 Mich. L. Rev. 163, 203–205, 228–229 (1992) (contrasting *Lujan*, *Allen*, and *EKWRO* with *Regents of Univ. of Cal.* v. *Bakke,* 438 U. S. 265 (1978)); Fletcher, The Structure of Standing, 98 Yale L. J. 221, 267–270 (1988) (commenting on *Flast* and *Valley Forge*). Noting this large reservation, I concur in the judgment, and in the balance of the Court's opinion.