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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 ERIC J. KIKKERT,  
Plaintiff,

9 v.

10 DONALD TRUMP, *et al.*,  
11 Defendants.

CASE NO. 2:25-cv-00861-JHC

ORDER

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13 **I**  
**INTRODUCTION**

14 Before the Court is Defendants' Motion to Dismiss, Dkt. # 13, and Plaintiff's Motion for  
15 Leave to File Supplemental Evidence,<sup>1</sup> Dkt. # 20. The Court has reviewed the materials filed in  
16 connection with the motions, the record, and the governing law. Being fully advised, the Court  
17 GRANTS Defendants' Motion to Dismiss, DENIES Plaintiff's Motion for Leave to File  
18 Supplemental Evidence, and DISMISSES this matter with prejudice.

19 **II**  
**BACKGROUND**

20 According to the complaint, Plaintiff, Eric J. Kikkert, is a U.S. Army veteran, federal  
21 taxpayer, and current resident of King County, Washington. Dkt. # 1 at 1. Plaintiff brings this  
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24 <sup>1</sup> This motion was not properly noted; nor was any response filed. But as mentioned below, it  
must be denied as moot.

1 action against Defendants President Donald Trump (President of the United States),  
2 Representative Tom Cole (Chair of the House Appropriations Committee), Senator Susan  
3 Collins (Chair of the Senate Appropriations Committee), Representative Mike Johnson (Speaker  
4 of the House), and Senator John Thune (Senate Majority Leader) in their official capacities.<sup>2</sup> *Id.*  
5 at 3. Plaintiff alleges that by using federal taxes to fund Israel’s recent military operations,  
6 Defendants have breached numerous international treaties, federal statutes, and provisions of the  
7 U.S. Constitution. *Id.* at 2. Plaintiff further alleges that he has standing to bring this suit,  
8 claiming that his “\$72.72 in 2023 excise taxes are part of the \$3.8 billion in annual U.S. military  
9 aid to Israel” and said aid is “causing Plaintiff irreparable spiritual harm by forcing him to  
10 contravene his faith and his veteran’s oath to defend the Constitution, a sacred text in his  
11 religion, and desecrating his familial legal of military service spanning give generations.” *Id.* at  
12 4. Plaintiff seeks a declaratory judgment and permanent injunctive relief. *Id.* at 8.

13 Defendants move to dismiss Plaintiff’s claims for lack of subject-matter jurisdiction and  
14 failure to state a claim under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Dkt. # 13.  
15 Plaintiff cross-moves for leave to file supplemental evidence under Federal Rule of Civil  
16 Procedure 15(d) and Local Civil Rule 7. Dkt. # 20.

### 17 III 18 DISCUSSION

#### 19 A. Subject Matter Jurisdiction & Article III Standing

20 Federal Rule of Civil Procedure 12(b)(1) applies to a motion to dismiss for lack of  
21 subject matter jurisdiction. The party invoking federal jurisdiction bears the burden of proving  
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23 <sup>2</sup> Plaintiff previously filed suit in state court against the State of Washington and the “United  
24 States Federal Government.” The case raised similar claims and factual allegations as the present case.  
The case was removed to federal court in April 2025 and then dismissed with prejudice for lack of subject  
matter jurisdiction. *See Kikkert v. Washington, et al.*, No. 25-00746-TL, Dkt. # 23 (Apr. 30, 2025).

1 it. *See FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990). A defendant may contest jurisdiction  
2 through a “facial” attack, in which the defendant accepts the truth of the plaintiff’s allegations  
3 but asserts that they are “insufficient on their face to invoke federal jurisdiction.” *Leite v.*  
4 *Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting *Safe Air for Everyone v. Meyer*, 373  
5 F.3d 1035, 1039 (9th Cir. 2004)). In resolving a facial attack, a court must accept the plaintiff’s  
6 allegations as true and draw all reasonable inferences in plaintiff’s favor. *Id.* The court then  
7 must determine “whether the allegations are sufficient as a legal matter to invoke the court’s  
8 jurisdiction.” *Id.* (citing *Pride v. Correa*, 719 F.3d 1130, 1133 (9th Cir. 2013)). If, at any time, a  
9 federal court determines that it lacks subject-matter jurisdiction, it must dismiss the action. *See*  
10 Fed. R. Civ. P. 12(h)(3).

11 One component of subject matter jurisdiction under Article III is standing. As noted by  
12 the Supreme Court, “[f]ederal courts do not possess a roving commission to publicly opine on  
13 every legal question” nor do they “exercise general legal oversight of the Legislative and  
14 Executive Branches.” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021). Instead, Article  
15 III limits the power of the federal courts to decide cases and controversies where plaintiffs can  
16 demonstrate a sufficient “personal stake” in the outcome. *Id.* For a plaintiff to have a sufficient  
17 “personal stake” in the outcome, or “standing,” they must demonstrate: (1) “an injury in fact that  
18 is concrete, particularized, and actual or imminent” which is (2) “fairly traceable to the  
19 challenged action” and (3) likely “redressable by a favorable ruling.” *See id.*; *Lujan v. Defs. of*  
20 *Wildlife*, 504 U.S. 555, 560–61; *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013).

21 In the context of suits against the government, the Supreme Court has been clear: “a  
22 plaintiff raising only a generally available grievance about government—claiming only harm to  
23 his and every citizen’s interest in proper application of the Constitution and laws, and seeking  
24 relief that no more directly and tangibly benefits him than it does the public at large—does not

1 state an Article III case or controversy.” *Lujan*, 504 U.S. at 573–74. Accordingly, the Supreme  
2 Court has instructed district courts to deny standing to plaintiffs based on mere allegations of  
3 statutory or constitutional violations in the absence of other concrete harm. *See TransUnion*, 594  
4 U.S. at 426 (statutory violations); *Valley Forge Christian College v. Americans United for*  
5 *Separation of Church and State*, 454 U.S. 464, 474 (1982) (constitutional violations). It has also  
6 discouraged lower courts from recognizing “standing theories that require guesswork as to how  
7 independent decisionmakers will exercise their judgment.” *Clapper*, 568 U.S. at 413.

8 Most notably for this case, the Supreme Court has repeatedly held that the mere fact of  
9 being a taxpayer is not enough to establish Article III standing.<sup>3</sup> The only exception to this  
10 general rule is a narrow exception provided by *Flast v. Cohen*, 392 U.S. 83 (1968). In *Flast*, the  
11 Supreme Court held that plaintiffs bringing an Establishment Clause challenge can assert  
12 standing based on their taxpayer status if they can establish: (1) “a logical link between that  
13 status and the type of legislative enactment attacked”; and (2) “a nexus between that status and  
14 the precise nature of the constitutional infringement alleged.” *Id.* at 102. But the Supreme Court  
15 has also “repeatedly emphasized that the *Flast* exception has a narrow application” and “must be  
16 applied with rigor.” *Hein*, 551 U.S. at 609 (citations omitted). Plaintiffs who rely on *Flast* to assert  
17 standing thus face an uphill battle.

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20 <sup>3</sup> *See, e.g., Frothingham v. Mellon*, 262 U.S. 447, 488 (1923) (“The party who invokes the power  
21 [of judicial review] must be able to show, not only that the statute is invalid, but that he has sustained or is  
22 immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely  
23 that he suffers in some indefinite way in common with people generally.”); *Ariz. Christian Sch. Tuition*  
24 *Org. v. Winn*, 563 U.S. 125, 130 (2011) (“[T]he mere fact that a plaintiff is a taxpayer is not generally  
deemed sufficient to establish standing in federal court.”); *Hein v. Freedom From Religion Found., Inc.*,  
551 U.S. 587, 599 (2007) (“As a general matter, the interest of a federal taxpayer in seeing that Treasury  
funds are spent in accordance with the Constitution does not give rise to the kind of redressable ‘personal  
injury’ required for Article III standing.”); *Bowen v. Kendrick*, 487 U.S. 589, 618 (1988) (“[W]e have  
consistently adhered to *Flast* and the narrow exception it created to the general rule against taxpayer  
standing.”).

1 If a party invoking federal jurisdiction fails to establish injury-in-fact, causation,  
2 redressability, or all three, the court cannot find Article III standing and must dismiss the  
3 complaint for lack of subject matter jurisdiction. *See generally Lujan*, 504 U.S. at 561.

4 B. Analysis

5 Defendants argue that Plaintiff’s complaint must be dismissed for lack of standing.<sup>4</sup> *See*  
6 Dkt. # 13 at 5–7. Having reviewed the record and the applicable case law, the Court agrees.

7 Plaintiff has not met his burden of establishing the three elements of Article III standing.  
8 As for injury-in-fact, Plaintiff contends that has standing under *Flast*, “as a taxpayer challenging  
9 specific appropriations under the 2023 NDAA that violate constitutional limits,” and under  
10 *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993), “due to a concrete,  
11 particularized injury to his Free Exercise rights caused by compelled funding of acts that  
12 desecrate his faith.” Dkt. # 1 at 5. But neither *Flast* nor *Church of Lukumi* provides an adequate  
13 basis to confer Article III injury-in-fact.

14 As for his *Flast* argument, Plaintiff is correct that in some circumstances, “*Flast* permits  
15 taxpayer standing for challenges to congressional spending violating specific constitutional  
16 limits.” Dkt. # 18 at 2. But Plaintiff misunderstands how *Flast* has been applied by courts to  
17 date.<sup>5</sup> First, *Flast* and its progeny are primarily focused on Establishment Clause challenges. As  
18 noted in *Flast*, “[t]he Establishment Clause was designed as a specific bulwark against [ ]  
19 potential abuses of governmental power” and “operates as a specific constitutional limitation

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21 <sup>4</sup> Defendants also argue that Plaintiff’s complaint must be dismissed on other grounds (claim  
22 preclusion, political-question doctrine, Speech-or-Debate Clause, and no cause of action). *See* Dkt. # 13  
at 3. But, because the Court’s resolution of Defendants’ standing argument disposes of the entire case,  
the Court declines to address Defendants’ other arguments.

23 <sup>5</sup> The Court notes that in addition to cases, Plaintiff cites analyses from various legal sources  
24 (*Cornell LII*, *Harvard Law Review*, etc.). *See* Dkt. #15. But as this Court is bound exclusively by  
Supreme Court and Ninth Circuit precedent, the standing analyses in these secondary sources cannot  
override or alter the specific holdings and principles contained in the underlying caselaw. The Court thus  
declines to address them here.

1 upon the exercise by Congress of the taxing and spending power conferred by Art. I, s 8.” *Flast*,  
2 392 U.S. at 104. Here, however, Plaintiff does not bring an Establishment Clause challenge. *See*  
3 *generally* Dkt. # 1. This distinguishes this matter from Plaintiff’s cited cases.<sup>6</sup>

4 Second, Plaintiff’s case is beyond the scope of the challenges recognized under the *Flast*  
5 exception. As for Plaintiff’s claims against the President, “challenges to actions of the executive  
6 branch are not cognizable in a federal taxpayer action.” *Mahorner v. Bush*, 224 F. Supp. 2d 48,  
7 51 (D.D.C. 2008) (citations omitted); *see also Valley Forge*, 454 U.S. at 479. Plaintiff thus  
8 cannot use *Flast* to assert standing for his claims against the President. Plaintiff’s claims against  
9 the members of Congress also fail, as *Flast* does not give rise to general taxpayer standing  
10 whenever Congress violates a statute, constitutional provision, or other obligation. Rather, *Flast*  
11 applies only when a taxpayer asserts that in exercising its taxing and spending powers, Congress  
12 has exceeded a specific constitutional limitation on its taxing and spending power.<sup>7</sup> As Plaintiff  
13 has not alleged that Congress has violated any specific *constitutional* limitation on its *taxing and*  
14 *spending power*, Plaintiff cannot avail himself of the *Flast* exception here.

15 Finally, the Supreme Court has consistently emphasized the narrow nature of the *Flast*  
16 exception.<sup>8</sup> In fact, since *Flast* was decided, the Supreme Court has declined to recognize  
17 taxpayer standing in many cases, particularly in cases involving challenges that are not brought  
18 under the Establishment Clause.<sup>9</sup> As this Court is bound by this case law, it is not able to adopt a

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20 <sup>6</sup> *See, e.g., Flast*, 392 U.S. at 85 (Establishment Clause challenge); *Bowen*, 487 U.S. at 620  
21 (same); *Awad v. Ziriox*, 670 F.3d 1111, 1121 (10th Cir. 2012) (same). Plaintiff’s other cited case, *Sherley*  
22 *v. Sebelius*, 689 F.3d 776 (D.C. Cir. 2012), does not recognize standing under the *Flast* test, instead  
23 relying on the doctrine of competitor standing.

24 <sup>7</sup> *See Flast*, 392 U.S. at 106; *Valley Forge*, 454 U.S. at 480; *Americans United for Separation of*  
*Church & State v. Reagan*, 786 F.2d 194, 199 (3d Cir. 1986).

<sup>8</sup> *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 348 (2006); *Bowen*, 487 U.S. at 618; *Hein*,  
551 U.S. at 609.

<sup>9</sup> *See, e.g., DaimlerChrysler*, 547 U.S. at 349 (rejecting standing based on federal taxpayer status  
under the Commerce Clause); *United States v. Richardson*, 418 U.S. 166, 174 (1974) (rejecting standing

1 novel or expanded understanding of the *Flast* exception in this case. Accordingly, the Court  
2 concludes that Plaintiff has failed to establish Article III injury-in-fact under *Flast*.

3 As for his Free Exercise argument, Plaintiff fails to allege specific facts to give rise to  
4 Article III standing. As the Ninth Circuit recently explained, a party bringing a Free Exercise  
5 Clause challenge can establish injury-in-fact by demonstrating a concrete injury to their ability to  
6 exercise their religion. *Kumar v. Koester*, 131 F.4th 746, 754 (9th Cir. 2025). Being “offended  
7 by an alleged association,” however, is not enough to give rise to Article III standing. *Id.* Like  
8 the plaintiffs in *Kumar*, Plaintiff’s claim that the government’s funding of Israeli military  
9 operations using federal taxes operations has “force[d] him to commit sacrilege” and is causing  
10 “irreparable spiritual distress,” *see* Dkt. # 1 at 2, does not amount to an alleged injury to his  
11 ability to exercise his religion. It is thus insufficient to establish Article III injury-in-fact.

12 Because Plaintiff has not established injury-in-fact, the Court finds that Plaintiff lacks  
13 Article III standing and thus the complaint must be dismissed for lack of subject matter  
14 jurisdiction. The Court also finds that given the nature of Plaintiff’s claims, amendment would  
15 be futile, as the allegation of additional facts cannot change the reality that Plaintiff lacks  
16 standing to bring these claims. In reaching this conclusion, however, the Court makes no  
17 judgment as to the legitimacy of Plaintiff’s concerns or the merits of the legal arguments and  
18 factual allegations of the complaint. Rather, in dismissing Plaintiff’s case for lack of subject  
19 matter jurisdiction, the Court merely seeks to uphold the well-established principle that federal  
20 courts are courts of limited jurisdiction and may only decide those “Cases” and “Controversies”  
21 which Article III identifies as “the business of the courts rather than of the political branches.”  
22 *Lujan*, 504 U.S. at 576.


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24 based on federal taxpayer status under Article I, § 9, cl. 7); *Valley Forge*, 454 U.S. at 482 (rejecting  
standing based on federal taxpayer status under the Property Clause).

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**IV**  
**CONCLUSION**

Because the Court lacks subject matter jurisdiction and amendment would be futile, the Court GRANTS Defendants' motion and DISMISSES Plaintiff's complaint with prejudice. As Plaintiff's case is dismissed, the Court DENIES Plaintiff's motion as moot.<sup>10</sup>

Dated this 1st day of October, 2025.

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John H. Chun  
United States District Judge

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<sup>10</sup> The Court notes that granting this motion would have no effect on the standing analysis above.