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Raines v. Byrd: A Death Knell for the Congressional Suit?

In Raines v. Byrd, the Supreme Court of the United States denied standing to six members of Congress who challenged the constitutionality of the Line Item Veto Act. In its first consideration of congressional standing in nearly two decades, the Court held that a perceived diminution in institutional voting strength did not create a sufficiently particularized injury in fact to satisfy the Article III "case or controversy" requirement.

I. FACTUAL BACKGROUND

On April 9, 1996, President Clinton signed into law the Line Item Veto Act ("the Act") passed by the 104th Congress. In operation, the Act gives the President the power to "cancel in whole" specific spending provisions within certain types of appropriations bills without invoking the traditional constitutional veto authority. Once an item has been canceled, the Act immediately prohibits the challenged expenditure or tax benefit "from having legal force or effect." Reinstatement of any canceled provision can be accomplished only through bicameral passage of an itemized "disapproval bill" within thirty days, to which the President may again dissent through the use of the conventional veto power. Congress can override this presidential veto only as prescribed in Article I. The Act overwhelmingly passed the Senate on March 27,

1. 117 S. Ct. 2312 (1997).
2. Id. at 2322-23.
4. 2 U.S.C. § 691(a) allows the President, after signing a bill into law, to cancel (1) any dollar amount of discretionary budget authority; (2) any item of new direct spending; or (3) any limited tax benefit.
5. U.S. CONST. art. I, § 7, cl. 2.
7. 2 U.S.C. § 691b(a).
1996 by a vote of 69 to 31.\(^9\) A day later, the House passed the identical bill by a 232 to 177 margin.\(^10\)

The Act went into effect on January 1, 1997.\(^11\) The following day, six individual Congressmen filed a complaint in the District Court for the District of Columbia against the Secretary of the Treasury and the Director of the Office of Management and Budget.\(^12\) They alleged the Act contravened “the text and purpose of . . . the Presentment Clause.”\(^13\) Defendants raised objections to the claim’s justiciability, alleging that plaintiffs lacked standing to seek relief, that the case was not yet ripe for judicial resolution because the cancellation power had not yet been exercised by the President, and that the “equitable discretion” doctrine required dismissal in deference to substantial separation of powers concerns.\(^14\)

The district court, relying on traditional standing requirements, held that plaintiffs had shown at “an irreducible minimum” an injury (1) that was personal to them, (2) that had actually been inflicted by defendants or was certainly impending, and (3) that was redressable by judicial decree.\(^15\) The court accepted plaintiffs’ assertion that the Act impaired their Article I voting power through its practical dilution of any appropriations vote to mere approval of a “menu” of proposed expenditures\(^16\) from which the President could pick and choose.\(^17\)

\(^9\) Raines, 117 S. Ct. at 2315.
\(^10\) Id.
\(^13\) Id. at 27.
\(^14\) Id. at 30.
\(^15\) Id. (citing Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472 (1982)).
\(^16\) Id. at 31. The District Court analogized the Line Item Veto Act to the Impound Control Act of 1974 (“ICA”) passed more than two decades earlier. Prior to enactment of the ICA, Presidents had created an informal ability to “impound,” or refuse to spend, any legislatively approved appropriation that conflicted with their particular foreign policy objectives or purported to advance an unconstitutional purpose. The ICA, unlike the Line Item Veto Act, treated any future exercise of rescissionary power by the executive branch merely as a counter-proposal, which would then require affirmative approval by Congress to take effect. The court noted that Congress's failure or refusal to act under the ICA would result in the rescission’s expiration, a key distinction from the automatic implementation scheme mandated by the Line Item Veto Act. Id. at 29-30.
\(^17\) Id. at 31.
Act the dynamic of lawmaking is fundamentally altered," the court explained.\textsuperscript{18}

Rejecting defendants' argument that the claim lacked ripeness until the President exercised the authority granted under the Act,\textsuperscript{19} the court proceeded to address the merits of plaintiffs' claims, finding (1) that Congress had exceeded its traditional power to delegate;\textsuperscript{20} (2) that the authority it purported to grant the executive branch was a "basic" legislative function; and (3) that the existence of legislative alternatives, such as repeal or suspension of the Act's effect on particular legislation, did not alter the President's new standing as "co-maker of the Nation's laws."\textsuperscript{21} The court denied defendants' motion to dismiss and held the Act unconstitutional.\textsuperscript{22}

Pursuant to the Act's provisions for a direct\textsuperscript{23} and expedited appeal,\textsuperscript{24} defendants sought review in the Supreme Court. After noting proper jurisdiction, a six-member majority led by Chief Justice Rehnquist vacated the judgment of the district court, finding that appellees lacked standing to initiate the suit.\textsuperscript{25}

II. THE LEGAL HISTORY OF STANDING JURISPRUDENCE

The Supreme Court's current test for general standing finds its genesis in Allen v. Wright,\textsuperscript{26} a case brought by parents of children attending public schools in districts undergoing desegregation. In Wright private taxpayers sought injunctive relief against the Internal Revenue Service, alleging that the agency was prolonging the desegregation process through its continued recognition of discriminatory private schools as "tax-exempt."\textsuperscript{27} In denying standing to plaintiffs, Justice O'Connor stated that "the law of Article III standing is built on a single basic
idea—the idea of separation of powers."²⁸ The proper inquiry was whether plaintiff had alleged (1) a "personal injury" that (2) was "fairly traceable to the defendant's allegedly unlawful conduct" and (3) was "likely to be redressed" by a favorable judicial decision.²⁹ The Court conceded that the language of this test was somewhat imprecise but concluded that an "extensive body of case law" already existed to guide lower courts through the appropriate analysis.³⁰

The Court clarified these basic principles in Lujan v. Defenders of Wildlife³¹ after environmental groups challenged a joint regulation promulgated by the Secretary of the Interior that revised the "consultation" requirement of the Endangered Species Act.³² Noting that the groups' "desire to use and observe an animal species" was a cognizable interest for standing purposes, the Court nevertheless denied standing because plaintiffs could not show they would be "directly affected" by the Secretary's enforcement of the regulation beyond their "special interest" in the subject.³³ The Court explained that to satisfy the Article III standing requirements, a plaintiff must first have suffered an actual or imminent "injury in fact"—an element the Court defined as harm "affect[ing] the plaintiff in a personal and individual way."³⁴ Second, the injury must be "fairly traceable" to the defendant's conduct and may not be "th[e] result [of] the independent action of some third party not before the court."³⁵ Third, "it must be 'likely,' as opposed to merely 'speculative,'" that the requested relief would resolve the dispute.³⁶

In contrast, when a member of a co-equal branch of government seeks relief via the federal judiciary for alleged injuries suffered while serving in an official capacity, federal courts are more vigilant in protecting the stringent standing requirements mandated by Article III. Despite the perfunctory statement that "there are no special standards for determin-

²⁸. Id. at 752.
²⁹. Id. at 751 (citing Valley Forge, 454 U.S. at 472).
³⁰. Id.
³². Endangered Species Act of 1973, 16 U.S.C. § 1536 (1994). Under the Act all federal agencies were required to consult with the Secretary of the Interior to insure that any action funded or carried out by the agency was not likely to "jeopardize the continued existence of any endangered species" or adversely impact the habitat of these species. See id. § 1536(a)(2).
³³. Lujan, 504 U.S. at 562-63.
³⁴. Id. at 560.
³⁵. Id. at 560 n.1.
³⁶. Id. at 560 (quoting Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42 (1976)).
³⁷. Id. at 561.
ing Congressional standing questions, federal courts must in addition to the three-part analysis consider the "prudential" concern of unnecessarily intruding on an inter-branch political dispute.

The leading case on legislative standing arose in 1939 in Coleman v. Miller. In 1937 the Kansas Senate reconsidered ratification of the proposed Child Labor Amendment, which had been submitted for state approval thirteen years earlier pursuant to Article V of the United States Constitution. The vote resulted in twenty ballots cast for ratification and an equal number opposed. The Lieutenant Governor, as presiding officer of the Senate, cast his deciding ballot in favor of ratification. The twenty Senators who had voted against ratification sought, and were denied, mandamus relief by the Supreme Court of Kansas, which refused to compel the Secretary of the Senate to record that the proposal had not received Senate approval.

Upon review by the Supreme Court of the United States, Chief Justice Hughes held that petitioners had standing to seek judicial protection of their interest in "maintaining the effectiveness of their votes." The Court reasoned that but for the ballot of the Lieutenant Governor, the Senators' votes would have been sufficient to defeat ratification. As it was, the affected Senators' votes were "virtually held for naught."

Federal lawmakers have consistently attempted to rely on Coleman for its holding that legislators have a vested interest in securing the viability of their voting strength through the judicial process. In Kennedy v. Sampson, a United States Senator challenged the consti-

40. 307 U.S. 433 (1939).
41. 43 Stat. 670 (1924).
42. See Harrington, 307 U.S. at 435-36. In the thirteen years following its submission to the states, twenty-six legislatures had rejected the proposed amendment; it was ratified in only five. Id. at 436.
43. Id. at 436.
44. Plaintiffs also included one senator who had voted in favor of the amendment plus three members of the state House of Representatives. Id.
45. Id. at 437.
46. Id. at 438.
47. See id.
48. Id.
50. 511 F.2d 430 (D.C. Cir. 1974).
tionality of the presidential “pocket veto,” alleging its use denied him the full effect of his vote in favor of the bill in question. The D.C. Circuit expanded Coleman to include members of Congress claiming total vote nullification. Circuit Judge Tamm ruled that “no more essential interest could be asserted by a legislator” than vindication of the effectiveness of his vote. The court also held that individual legislators seeking this type of relief need not solicit approval from other members of the affected voting block before initiating litigation because the plaintiff need only be “among the injured, . . . not . . . the most grievously or most directly injured.”

The D.C. Circuit has subsequently refused to extend Coleman beyond the limited situation of a complete nullification of a lawmaker’s prior vote on a specific piece of legislation as the result of a deviation from constitutionally mandated legislative procedure. In Harrington v. Bush, the court cautioned that a separation of powers issue arises whenever “a federal court decides a case brought by a United States legislator.” Existence of a potential conflict is not dispositive in standing analysis, but it is a concern of which the court must “properly take notice.”

In Harrington an individual Congressman brought suit claiming the Central Intelligence Agency (“CIA”) was actively misappropriating funds for illegal purposes. The Representative sought a detailed accounting record of CIA expenditures, arguing that any illegal activity would directly “bear upon” his voting duty both in regards to future appropriations bills benefitting the agency and to his constitutional obligation to initiate impeachment proceedings if necessary. The misuse of funds, it was argued, also diluted the quality and effectiveness of his earlier appropriations votes. The court quickly rejected the “bear upon” arguments, finding they “clearly do[] not support a claim of standing in this case because plaintiff has not suffered a “distinct and palpable

51. The D.C. Circuit has played a crucial role in the development of congressional standing doctrine due to the court’s unique jurisdiction and the subsequent reluctance of the Supreme Court to review cases brought by legislators. See David G. Mangum, Comment, Standing Versus Justiciability: Recent Developments in Participatory Suits Brought by Congressional Plaintiffs, 1982 B.Y.U. L. Rev. 371, 376 n.29 (1982).
52. Kennedy, 511 F.2d at 436.
53. Id.
54. Id. at 435.
55. 553 F.2d 190 (D.C. Cir. 1977).
56. Id. at 204-05 n.67.
57. Id.
58. Id. at 198-99 (citation omitted).
59. Id. at 204.
60. Id. at 207.
injury to himself."\textsuperscript{61} At best, plaintiff had alleged an institutional injury shared equally by all members of Congress.\textsuperscript{62} Fully aware of the underlying political motivation for the suit, the court concluded that "to accept these grounds for standing would in effect allow . . . an individual legislator [to] have a roving commission to obtain judicial relief under most circumstances"\textsuperscript{63} and would "open the Judiciary to an arguable charge of providing 'government by injunction.'"\textsuperscript{64}

The Supreme Court of the United States eventually confronted the issue of adjudicating inter-branch lawsuits in \textit{Goldwater v. Carter}.\textsuperscript{65} In a highly fractionalized per curiam opinion that is noted more for what it did \textit{not} say than for what it held,\textsuperscript{66} the Court dismissed a claim by Congressmen seeking to enjoin the executive branch from unilaterally terminating a defense treaty with the Republic of China.\textsuperscript{67} None of the four opinions mentioned standing as a possible rationale for the dismissal. In concluding that the dispute was not yet ripe for adjudication, Justice Powell warned that the judiciary should avoid interfering with "issues affecting the allocation of power between the President and Congress" until a political impasse is reached.\textsuperscript{68} Judicial review was only proper after "each branch has taken action asserting its constitutional authority."\textsuperscript{69} Otherwise, "small groups or even individual Members of Congress" would seek judicial intervention before the normal political process has had the opportunity to resolve the conflict.\textsuperscript{70}

After \textit{Goldwater}, lower courts interpreted Justice Powell's opinion as authorizing greater discretionary power to confer or deny congressional standing on a case-by-case basis. The D.C. Circuit in \textit{Riegle v. Federal Open Market Committee}\textsuperscript{71} adopted the use of a "doctrine of circumscribed equitable discretion"\textsuperscript{72} as a means to preclude standing even when the congressional plaintiff otherwise satisfied constitutional

\begin{itemize}
\item \textsuperscript{61} \textit{Id.} at 208 (quoting \textit{Warth v. Seldin}, 422 U.S. 490, 501 (1975)).
\item \textsuperscript{62} \textit{Id.} at 199-200 n.41.
\item \textsuperscript{63} \textit{Id.} at 214.
\item \textsuperscript{64} \textit{Id.} at 215 (quoting \textit{Schlesinger v. Reservists to Stop the War}, 418 U.S. 208, 222 (1974)).
\item \textsuperscript{65} \textit{444 U.S. 996} (1979).
\item \textsuperscript{66} See \textit{Riegle v. Federal Open Mkt. Comm.}, 656 F.2d 873, 880 (D.C. Cir. 1981).
\item \textsuperscript{67} \textit{Goldwater}, 444 U.S. at 996.
\item \textsuperscript{68} \textit{Id.} at 997 (Powell, J., concurring).
\item \textsuperscript{69} \textit{Id.} at 996.
\item \textsuperscript{70} \textit{Id.}
\item \textsuperscript{71} 656 F.2d 873 (D.C. Cir. 1981).
\item \textsuperscript{72} The doctrine of "circumscribed equitable discretion" was created by the Supreme Court as an efficient means to dismiss baseless claims for injunctive relief by plaintiffs seeking shelter from imminent criminal proceedings. \textit{Mangum}, supra note 52, at 384-85.
\end{itemize}
standing requirements. If the plaintiff could still "obtain substantial relief from his fellow legislators through the enactment, repeal, or amendment of [the statute or regulation]," courts should decline to hear the dispute. The court reasoned that application of circumscribed equitable discretion as an additional tier of analysis would avoid the separation of powers issue normally implicated by justiciability concerns while assuring adjudication of legitimate claims that could only be brought by a legislative plaintiff.

Circumscribed equitable discretion was tested only three years later in Moore v. United States House of Representatives. Eighteen Congressmen filed complaints challenging the constitutionality of the Tax Equity and Fiscal Responsibility Act of 1982, alleging the bill violated the Origination Clause. The district court dismissed the complaint, finding that plaintiffs lacked standing for failure to allege a sufficient injury in fact and, alternatively, that the issue was not proper for the court to decide. The D.C. Circuit reversed on the standing issue, noting that plaintiffs had alleged the specific and concrete injury of deprivation of an opportunity to vote in a constitutionally prescribed manner. However, "remedial discretion" mandated dismissal of plaintiffs' claim as an exercise of "judicial self-restraint in particular matters intruding upon a coordinate branch of government." The fact that "private taxpayers have been found to have standing" on this issue further compelled the court to dismiss the action because "the issue will not go unresolved."

73. 656 F.2d at 881.
74. Id. According to the court in Riegle, the availability of a "collegial or 'in-house' remedy," which traditionally would bar a suit by a member of Congress, acted to differentiate between legislators and private plaintiffs. Id. at 877-78. By requiring the legislator to exhaust all alternative methods of relief before seeking judicial intervention, the D.C. Circuit reasoned that the standing analysis typically used in legislative suits is fundamentally flawed. Id. at 879. "[T]he inappropriateness of the collegial remedy principle as an aspect of congressional standing analysis has resulted in its inconsistent application in the case law of this court." Id.
75. Id. at 881.
76. See id.
77. 733 F.2d 946 (D.C. Cir. 1984).
79. U.S. CONST. art. I, § 7, cl. 1 states that "[a]ll bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills."
80. 733 F.2d at 950.
81. Id. at 951.
82. Id. at 954.
83. Id. at 956.
After the decisions in Moore and Riegle, the D.C. Circuit further disapproved of congressional suits relying on the premise that the absence of a proper private plaintiff will allow the issue to escape judicial resolution. Melcher v. Federal Open Market Committee provides a noteworthy example of how cognizant the courts have become of these equitable concerns. In Melcher a Senator challenged the constitutionality of the appointment process for members of the Federal Reserve System's open market committee. The district court granted judgment for the committee on the merits but found that the lower court should have exercised its discretion to decline to hear the case. Senator Melcher, relying on the suggestion in Riegle that the unavailability of a private plaintiff may affect legislative standing, argued that the court should allow the suit when a private plaintiff would not be able to mount a constitutional challenge. The court rejected this contention, noting that the discussion in Riegle concerning private plaintiffs was mere dicta. Circuit Judge Starr explained that "[c]ourts are not at liberty to embark upon a broad, undifferentiated mission of vindicating constitutional rights . . . [T]hat a constitutional violation might go unredressed does not, in itself, permit the federal courts to entertain the suit."

Before the Supreme Court decision in Raines v. Byrd, congressional standing principles, as developed by the D.C. Circuit, generally mirrored the requirements established for private plaintiffs with two notable contextual distinctions. First, the injury in fact needed to be sufficiently concrete and could not include any claims of diminution of congressional voting power or overall effectiveness. The complaints had to show either (1) the total nullification of a prior vote on a specific piece of legislation or (2) a direct injury resulting from deviation from a constitutionally mandated procedure. In cases involving a departure from mandatory procedure, the plaintiff might have constitutional standing per se but still fail for "prudential" reasons if the reviewing court determined that adjudication would unnecessarily encroach upon an inter-branch political dispute.

84. 836 F.2d 561 (D.C. Cir. 1987).
85. Id. at 562.
86. Id.
87. Id.
88. Id. at 563.
89. Id. at 564.
90. Id. at 564-65.
93. Id. at 210.
The second key distinction of congressional standing doctrine required legislative plaintiffs to exhaust all collegial and institutional remedies before seeking judicial review. Unlike cases initiated by a private litigant, courts needed to determine whether judicial intervention was absolutely necessary in the particular instance. The "collegial remedy" issue caused considerable confusion when the D.C. Circuit originally held that the existence of a simultaneous political remedy precluded standing because the plaintiff had failed to plead a sufficient "injury in fact." However, this same court later analyzed this shortcoming under the rubric of ripeness.

III. RATIONALE OF RAINES V. BYRD: A CRITICAL ANALYSIS

In reaching its result, the Supreme Court held (1) that the Congressmen-appellees had not alleged a sufficiently "particularized" injury to establish a "personal stake" in the alleged dispute; (2) that an "especially rigorous" standing requirement is needed "when reaching the merits of the dispute would force [a constitutional decision in an inter-branch dispute];" (3) that an "institutional injury," such as an alleged diminution of voting power, alone is insufficient as a basis for conferral of legislative standing; (4) that lawmakers alleging diminution of voting effectiveness must show total nullification of a previous vote on a specific piece of legislation to establish standing; and (5) that the federal judiciary should not intervene in suits involving congressional plaintiffs if other collegial remedies, such as legislative repeal or suspension, have not yet been exhausted.

The Court explained that a "bedrock requirement" of Article III mandated the issue in dispute be a "'case' or 'controversy'" within the meaning of the Constitution. Then, following the requirements of standing as defined in Allen v. Wright, the Court noted that the

94. Id. at 213.
95. Melcher, 836 F.2d at 565.
96. Harrington, 553 F.2d at 214.
97. Melcher, 836 F.2d at 565.
99. Id. (citing Lujan, 504 U.S. at 560-61).
100. Id. at 2317-18.
101. Id. at 2318.
102. See id.
103. See id. at 2318-20.
104. See id. at 2322.
105. Id. at 2317 (quoting Valley Forge, 454 U.S. at 471).
plaintiff must allege "'personal injury fairly traceable to the defendant.'"107 Establishing this "'personal stake' in the alleged dispute" necessitates that the complainant show "that the alleged injury suffered is particularized as to him"108 and "'affect[s] [him] in a personal and individual way.'"109 The Court inferred that the recurring emphasis placed on the injury's "personal" nature in prior case law drew a bright-line distinction between completely private transgressions, which were justiciable, and those injuries suffered in an official capacity, a type of harm that independently could not support legislative standing.110

Chief Justice Rehnquist continued his explanation of the proper standing inquiry by also noting that the injury must be "legally . . . cognizable"111 and not "'too abstract'"112 and that the dispute must be "'capable of resolution through the judicial process.'"113 But above all this, the Court mandated an "especially rigorous" standing analysis when "reaching the merits of the dispute would force us to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional."114 For the Court to remain in its "proper constitutional sphere,"115 Article III standing analysis commanded adherence to the "'single basic idea'" of separation of powers.116

Addressing plaintiffs' complaint, the Court characterized the underlying claim as one of an "institutional injury (the diminution of legislative power), which necessarily damages all members of Congress and both Houses of Congress equally."117 The Court found the alleged injury was one "not claimed in any private capacity but solely because they are members of Congress."118 The injury lacked concreteness because the perceived harm runs with the member's seat, not the legislator himself.119 In essence, the Representative or Senator held the harm in trust for his constituency.120 As a result, the Court concluded, if the

107. Raines, 117 S. Ct. at 2317 (quoting Allen, 468 U.S. at 751 (emphasis removed)).
108. Id.
109. Id. (quoting Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 543-44 (1986)).
110. See id.
111. Id.
112. Id. (quoting Allen, 468 U.S. at 752).
113. Id. (quoting Flast v. Cohen, 392 U.S. 83, 97 (1968)).
114. Id. at 2317-18.
115. Id. at 2318.
116. Id. (quoting Allen, 468 U.S. at 752).
117. Id.
118. Id.
119. Id.
120. Id.
lawmaker were "to retire tomorrow, he would no longer have a claim." 121

According to the majority, plaintiffs' reliance on Coleman v. Miller, 122 the only case in which standing was upheld for legislators claiming an institutional injury, was misguided. 123 The Court distinguished the present case from Coleman in that plaintiffs' votes on the Act received their full constitutional effect and were not thereafter denied or nullified. 124 Voting power was not diminished "in a discriminatory manner" relative to any other member of Congress. 125 The acknowledgement in Coleman of a legislator's valid interest in safeguarding the effectiveness of his vote was off-point when the alleged injury amounted to an "abstract dilution of institutional legislative power" and not total vote nullification. 126

The majority proceeded to detail a number of historical conflicts between the executive and legislative branches, noting that none of the given examples ever resulted in a legal challenge. 127 The Court concluded not only that plaintiffs' constitutional challenge was devoid of any legal precedent but also that historical practice contradicted their course of action. 128 Conceding that conferral of standing would not be irrational in the instant case, the Chief Justice nevertheless explained that "our regime contemplates a more restricted role for Article III courts." 129

In sum, because (1) plaintiffs failed to allege an injury to themselves as individuals; (2) the harm alleged was "wholly abstract and widely dispersed (contra Coleman)"; and (3) the "attempt to litigate this dispute at this time and in this form is contrary to historical experience," the Court dismissed the claim for failure to establish Article III standing. 130 Congress retained the power to repeal the Act entirely or temporarily suspend its effect in relation to any particular piece of

121. Id.
122. 307 U.S. 433 (1939).
124. Id. at 2320.
125. Id. at 2320 n.7.
126. Id. at 2320-21.
127. See id. at 2321-22. The Court placed particular emphasis on the absence of a legal challenge by several nineteenth century Presidents to the Tenure of Office Act. That act required Senate approval of any attempted removal by the President of an officer whose appointment originally required the consent of the Senate. The Supreme Court never did hear a direct challenge to the Tenure of Office Act, but it did later invalidate a substantially similar procedure in Myers v. United States, 272 U.S. 52 (1926). 117 S. Ct. at 2321.
128. 117 S. Ct. at 2321.
129. Id. at 2322.
130. Id.
The Court refused to prematurely arbitrate what essentially was a political dispute between co-equal branches of the federal government.

Justice Souter concurred in the judgment but took issue with the majority's reliance on a distinction between injuries suffered in a personal versus official capacity. Though some earlier cases precluded standing for legislators attempting to sue for official injuries, "our standing doctrine [has not] recognized this as a distinction with a dispositive effect." In addition, Justice Souter posited that it was at least "fairly debatable" whether plaintiffs' alleged injury of a "continuing deprivation of federal legislative power" was sufficiently concrete to give the Congressmen standing. Because that issue was in doubt, disposition of the complaint was more appropriate under general separation of powers principles. In deference to these basic tenets, Justice Souter believed the Court should avoid immersion in "a political tug-of-war," especially when a private plaintiff would certainly have proper standing to litigate the matter.

Justice Stevens, in a strong dissent, chastised the majority for its failure to address plaintiffs' primary contention that the Act has a continuous and deleterious effect on their daily functions as legislators. Not only did the Act deny the lawmakers the power to cast votes on "truncated versions of the bills presented to the President," but it also completely eliminated the essential legislative ability to negotiate and swap votes on individual provisions. As a result, plaintiffs' alleged injury was not a diminution of legislative effectiveness, but rather an outright denial of the right to vote on any bill that may become law subsequent to a presidential cancellation. Given this continuing threat, Justice Stevens believed the suit was ripe for

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131. Id.
132. See id.
133. Id. at 2323 (Souter, J., concurring in the judgment).
134. See Braxton County Court v. West Virginia ex rel. Dillon, State Tax Comm'rs, 208 U.S. 192 (1908).
135. Raines, 117 S. Ct. at 2323 (Souter, J., concurring in the judgment).
136. Id. at 2324.
137. Id.
138. Id.
139. Id. at 2325.
140. Id. at 2327 (Stevens, J., dissenting).
141. Id. at 2326.
142. Id. at 2327.
143. See id. at 2326.
adjudication even though the cancellation authority had yet to be exercised.\(^{144}\)

In dissent Justice Breyer argued that the Act's grant of jurisdiction to
the Supreme Court for an expedited appeal overcame any separation of
powers concerns that would normally arise so long as the dispute
constituted an Article III case or controversy.\(^{145}\) Finding that the
parties at issue were truly adverse\(^{146}\) and that a concrete injury
existed, resolution on the merits was proper.\(^{147}\) Justice Breyer dis-
agreed with the majority on three grounds.\(^{148}\) First, as noted, the
jurisdictional issue was rendered moot by the Act's conferral of authority
to hear the claim.\(^{149}\) Second, there was no constitutionally mandated
distinction between purely private injuries and infringements on official
duties.\(^{150}\) Finally, the majority erroneously relied on Justice Frankfur-
ter's dissent in Coleman given its lack of precedential value.\(^{151}\)
Furthermore, the injury alleged by plaintiffs in the present case had a
drastic and widespread impact on the entire legislative process unlike
the mere proscription of the recording of a non-decisive amendment
ratification vote in Coleman.\(^{152}\) Justice Breyer concluded that the
Court could not dismiss the action without overruling Coleman, a case
of binding precedent that required adjudication on the merits of the
present action.\(^{153}\)

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144. Id. at 2327. The District Court for the District of Columbia has since held that
groups adversely affected by the President's exercise of the cancellation power have
On the merits of the claim, the district court ruled the Act unconstitutionally violated the
bicameral passage and presentment requirements of Article I and "disrupted" the balance
of powers between the three branches of government. Id. at *13. On February 27, 1998,
the Supreme Court of the United States agreed to review the constitutionality of the Act.
145. 117 S. Ct. at 2327 (Breyer, J., dissenting).
146. Justice Breyer noted that similar disputes had already been litigated within the
private context. Id. Cf., e.g., Bennett v. Spear, 117 S. Ct. 1154 (1997); Northeastern Fl.
147. Raines, 117 S. Ct. at 2327 (Breyer, J., dissenting).
148. Id. at 2328-29.
149. Id. at 2328.
150. Id.
151. Id.
152. Id. at 2328-29.
153. Id. at 2329.
IV. Raines v. Byrd: Real-Life Implications

The decision in Raines merits careful analysis for two key reasons. Foremost, the opinion represents the Supreme Court's first consideration of justiciability issues, particularly standing, within the context of congressional suits since the 1979 decision in Goldwater v. Carter.154 Second, Raines was a case of first impression for the Court on the issue of whether an injury suffered solely in a Congressmember's official legislative capacity was legally cognizable.

These factors, coupled with the obvious political implications the decision entailed made Raines one of the most eagerly anticipated Supreme Court rulings of the 1996-1997 Term. The voting alignment of the Justices fell largely along expected lines. The majority opinion, authored by Chief Justice Rehnquist, was joined by Justices O'Connor, Scalia, Thomas, Kennedy, and Ginsburg.155 In extremely broad language, the majority denied standing to the six legislators,156 each of whom were members of the Democratic Party. Finding no sufficiently concrete injury to warrant standing157 and no factual basis upon which to conclude that plaintiffs had established a personal stake in the dispute,158 the Court dismissed the claim.

The Court's rationale continues the profound confusion surrounding standing analysis following Allen v. Wright.159 The Court blurs the distinction between standing and other justiciability issues by continuing to adhere to terms such as an "especially rigorous" standing inquiry when constitutional principles are at issue.160 Since the declaration in Allen that standing rested on the "single basic idea" of separation of powers, the Court has employed standing as a convenient method to dismiss politically-oriented cases it does not want to decide on the merits. This result is analytically curious because the Court has more appropriate means by which it could dismiss the suit, namely categorizing the claim as not yet ripe for adjudication.

The Court's refusal to grant standing to legislators whose injury is solely official in nature represents a profound step towards the eventual proscription of the legislative suit. In the aftermath of Raines, it
appears that only claims of an absolute denial of the constitutional right to participate in the legislative process or a total vote nullification will be recognized as sufficient injuries in fact to support congressional standing. It is clear that lawmakers who allege that the legislative body has acted in an unconstitutional manner no longer have standing to initiate this type of claim.

The persuasiveness of the opinion is weakened by the majority’s failure to address plaintiffs’ charge that the Act’s operation would require any canceled provision to be readopted by a two-thirds majority (following the likely traditional veto of the “disapproval bill”) rather than the simple majority required for an “unseverable” bill prior to the Act. Although this contention implicates the constitutional merits of the complaint, the allegation also rests squarely on the issue of whether plaintiffs have pleaded an injury in fact. The Court offers that the President would ultimately be held responsible through the normal political process for overuse of the cancellation authority. This speculative assertion avoids the central standing issue of whether a constitutionally sufficient injury fairly traceable to the defendant’s conduct has been pleaded.

What impact the Supreme Court holding in Raines will ultimately have on legislative plaintiffs remains to be seen. However, it is quite clear that the Court has continued its decades-long trend to further restrict the congressional plaintiff’s access to the federal courts. In all likelihood, the courthouse door has finally slammed shut.

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161. Id. at 2320 n.9.