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Congressional Standing to Sue: An Overview

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Summary

Standing is a threshold procedural question which turns not on the merits of the plaintiff's complaint but rather on whether he has a legal right to a judicial determination of the issues he raises. The law of standing is a blend of constitutional requirements and prudential considerations.

The constitutional component of standing is rooted in the separation of powers doctrine, and in particular on the limitation of the federal judicial power granted by Article III of the Constitution to "cases" and "controversies." To satisfy constitutional standing requirements, a plaintiff must allege a personal injury that is fairly traceable to alleged unlawful conduct by the defendant and that is likely to be redressed by the requested relief.

Raines v. Byrd, a 1997 case, was the first ruling of the Supreme Court on the issue of the standing of Members of Congress when they assert an injury to their institutional authority as legislators. The suit was filed by six Members of Congress who had voted against the Line Item Veto Act against the Secretary of the Treasury and the Director of the Office of Management and Budget, alleging that the act unconstitutionally increased the President's power by authorizing him to "cancel" certain spending and tax benefit measures after he signed them into law, without complying with the requirements of bicameral passage and presentment to the President. The Court held that the plaintiffs lacked standing, and thus the suit was dismissed.

The Court in *Raines* recognized the separation of powers problems posed by congressional plaintiff suits and addressed them as part of the constitutional standing analysis, but did not clarify the extent to which such problems may limit the ability of Members to sue in federal court.

The Court in *Raines* was prepared to recognize a Member's standing based on a personal injury to a private right but considered an injury to a legislator's voting power to be an official injury. The Court in *Raines* was willing to find an institutional injury to be sufficient if that injury amounted to nullification of a particular vote and if the plaintiffs' votes would have been sufficient to pass or defeat a particular bill. The Court in *Raines* may have insisted that congressional plaintiffs allege either a personal injury to a private right or an institutional injury amounting to nullification of a vote because it is in such cases that the injury is concrete, particularized, and thus presents a case appropriate for judicial resolution.

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Congressional Standing to Sue: An Overview

This report provides an overview of the standing of Members of Congress in light of the Supreme Court's holding in *Raines v. Byrd*[1] that individual Members lacked standing to challenge the constitutionality of a public law.[2]

What Is Standing?

Standing is a threshold procedural question which turns not on the merits of the plaintiff's complaint but rather on whether he has a legal right to a judicial determination of the issues he raises.[3] The law of standing is a mixture of constitutional requirements and prudential considerations,[4] and the cases do not always clearly distinguish between the constitutional and prudential aspects.[5]

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[1]521 U.S. 811 (1997). For a detailed analysis of *Raines*, see *The Supreme Court, 1996 Term: Leading Cases*, 111 Harv. L. Rev. 217 (1997)[hereinafter, *Leading Cases*]. See also Devins and Fitts, *The Triumph of Timing: Raines v. Byrd and the Modern Supreme Court's Attempt to Control Constitutional Confrontations*, 86 Geo. L.J. 351 (1997)(separation of powers analysis of Supreme Court's ruling in light of congressional standing decisions of the D.C. Circuit); Entin, *War Powers and Foreign Affairs: The Dog That Rarely Barks*, 47 Case W. Res. L. Rev. 1305 (1997)(application of *Raines* to disputes concerning War Powers Resolution).

[2]The focus of this report is congressional standing to challenge the constitutionality of a public law or to challenge actions of the executive branch. However, it is noted that there have been instances in which congressional plaintiffs have filed suit, in their official capacities, against other Members. See, *e.g.*, *Moore v. U.S. House of Representatives*, 733 F.2d 946 (D.C.Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985).

[3]See *Flast v. Cohen*, 392 U.S. 83, 99 (1968).

[4]See *Department of Commerce v. House of Representatives*, 525 U.S. 316, 328-29 (1999). By law, Congress can grant a right to sue to a plaintiff who would otherwise lack standing. Such a law can eliminate prudential, but not constitutional, standing requirements. *Raines v. Byrd*, 521 U.S. at 820 n.3. In the Line Item Veto Act, Congress granted standing to sue to "any Member of Congress or any individual adversely affected by" the act. P.L. 104-130, § 692(a)(1), 110 Stat. 1200 (1996). Congress also recently granted standing to challenge the use of statistical sampling methods in the census. See *Department of Commerce v. House of Representatives*, 525 U.S. at 328-29.

[5]*Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 471 (1982).

"'[T]he law of Art. III standing is built on a single basic idea--the idea of separation of powers,'"[6] and in particular on the limitation of the federal judicial power granted by article III to "cases" and "controversies."[7] To satisfy constitutional standing requirements, "'[a] plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.'"[8]

"In addition to the immutable [constitutional] requirements ..., 'the federal judiciary has also adhered to a set of prudential principles that bear on the question of standing.' Like their constitutional counterparts, these 'judicially self-imposed limits on the exercise of federal jurisdiction,' are 'founded in concern about the proper--and properly limited--role of the courts in a democratic society,' but unlike their constitutional counterparts, they can be modified or abrogated by Congress ...."[9] The prudential components of standing doctrine require that (1) a plaintiff assert his own legal rights and interests rather than those of third parties, (2) a plaintiff's complaint be encompassed by the "zone of interests" protected or regulated by the constitutional or statutory guarantee at issue, and (3) courts decline to adjudicate "'abstract questions of wide public significance' which amount to 'generalized grievances' pervasively shared and most appropriately addressed in the representative branches."[10]

Congressional Standing before *Raines v. Byrd*

The cases which have presented the issue of the standing of Members, in their official capacities as legislators, have generally been challenges to executive branch actions or to acts of Congress. Prior to *Raines v. Byrd*, the case law on congressional standing consisted almost entirely of opinions of the U.S. Court of Appeals for the D.C. Circuit. The import of these decisions following the ruling in *Raines* is uncertain.[11]

In the leading case of *Riegle v. Federal Open Market Committee*,[12] the court concluded that, if a Member had standing under the rules applied in non-congressional plaintiff cases, the separation of powers issues raised in a Member's suit against the executive should be addressed by application of the doctrine of circumscribed

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[6]*Raines v. Byrd*, 521 U.S. at 820, *quoting Allen v. Wright*, 468 U.S. 737, 752 (1984).

[7]See, *e.g.*, *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998); *Baker v. Carr*, 369 U.S. 186, 204 (1962).

[8]*Department of Commerce v. United States House of Representatives*, 525 U.S. at 329, *quoting Allen v. Wright*, 468 U.S. at 751.

[9]*Bennett v. Spear*, 520 U.S. 154, 162 (1997).

[10]*Valley Forge*, 454 U.S. at 474.

[11]A leading treatise suggests that the decisions of the D.C. Circuit "may not survive in any form." Wright, Miller, and Cooper, *Federal Practice and Procedure* § 3531.11, at p. 1 (2001 Supp.). However, in one case the D.C. Circuit indicated that its pre-*Raines* decisions had been limited but not overruled by *Raines*. See *infra* notes 46-47 and accompanying text.

[12]656 F.2d 873 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981).

equitable discretion, under which the case was to be dismissed only if the Member had a legislative remedy and if a similar action could be brought by a private plaintiff. The "legislative remedy" aspect of this doctrine reflected a judicial reluctance to provide a forum to a Member who has failed to exhaust possible legislative avenues of relief or who has done so but has been unsuccessful in persuading his colleagues of the merits of his views.[13] Members had some success in establishing their standing following adoption of the *Riegle* test, but such suits were frequently dismissed on the basis of the equitable discretion doctrine.[14] The problems presented by congressional plaintiff suits were explained by the D.C. Circuit in an important post-*Riegle* ruling, *Moore v. U.S. House of Representatives*:

> Suits against coordinate branches of government by congressional plaintiffs pose separation-of-powers concerns which may affect a complainant's standing to invoke the jurisdiction of the federal courts. To the extent that the Constitution envisions limited federal court jurisdiction out of respect for the coordinate branches of government, we have been reluctant to grant standing to members of Congress alleging generalized, amorphous injuries due to either the actions of their colleagues in Congress or the conduct of the Executive ....[W]here separation-of-powers concerns are present, the plaintiff's alleged injury must be specific and cognizable in order to give rise to standing ....Deprivation of a constitutionally mandated process of enacting law may inflict a more specific injury on a member of Congress than would be presented by a generalized complaint that a legislator's effectiveness is diminished by allegedly illegal activities taking place outside the legislative forum.[15]

The Decision in *Raines v. Byrd*

In *Raines*, six Members of Congress who had voted against the Line Item Veto Act[16] (act) brought suit against the Secretary of the Treasury and the Director of the Office of Management and Budget, alleging that the act unconstitutionally increased the President's power by authorizing him to "cancel" certain spending and tax benefit measures after he signed them into law, without complying with the requirements of bicameral passage and presentment to the President.[17]

The district court declared the act unconstitutional, but the Supreme Court vacated the judgment of the lower court and remanded with instructions to dismiss

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[13]*Riegle*, 656 F.2d at 881; *Moore v. U.S. House of Representatives*, 733 F.2d 946, 956 (D.C.Cir. 1984) ("Congressional actions pose a real danger of misuse of the courts by members of Congress whose actual dispute is with their fellow legislators"), *cert. denied*, 469 U.S. 1106 (1985).

[14]See, *e.g.*, *Moore, supra*; *Vander Jagt v. O'Neill*, 699 F.2d 1166 (D.C.Cir.), *cert. denied*, 464 U.S. 823 (1983). *But see American Federation of Government Employees v. Pierce*, 697 F.2d 303 (D.C.Cir. 1982) (after determining that Member had standing, court reached merits without reference to equitable discretion doctrine).

[15]733 F.2d at 951.

[16]P.L. 104-130, 110 Stat. 1200 (1996).

[17]521 U.S. at 815.

the complaint. The Court, in an opinion by Chief Justice Rehnquist that recognized the "restricted role for article III courts" in resolving disputes between the political branches,[18] held that plaintiffs lacked standing because their complaint did not establish that they had suffered an injury that was personal, particularized, and concrete.[19] The majority distinguished between a personal injury to a private right and an institutional or official one,[20] and was of the view that a congressional plaintiff may have standing in a suit against the executive if it is alleged that the plaintiff has suffered either a personal injury (*e.g.*, loss of a Member's seat) or an institutional one[21] that is not "abstract and widely dispersed" but amounts to vote nullification.[22]

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[18]*Id.* at 828. See also *id*. at 819-20.

[19]*Id*. at 818-20. Although the holding was based on the Court's finding that plaintiffs did not satisfy the first standing requirement (personal injury), the Court questioned whether the plaintiffs could meet the second standing requirement (that the injury be "fairly traceable" to unlawful conduct by the defendants) "since the alleged cause of ... [plaintiffs'] injury is not ... [the executive branch defendants'] exercise of legislative power but the actions of their own colleagues in Congress in passing the act." *Id.* at 830 n.11.

[20]Justice Souter, concurring, seemed to attach less importance than the majority to the distinction between personal and official injury (*id*. at 831) but agreed with the majority that plaintiffs lacked standing. Justice Breyer, dissenting, argued that there is no absolute constitutional distinction between cases involving a "personal" harm and those involving an "official" harm (*id*. at 841) and would have granted standing. *Id*. at 843. Unlike the majority, which viewed injury to a legislator's voting power as an official injury, Justice Stevens, dissenting, asserted that a legislator has a personal interest in the ability to vote, and stated that deprivation of the right to vote would be a sufficient injury to establish standing. *Id*. at 837 and 837 n.2

[21]See *Chenoweth v. Clinton*, 997 F. Supp. 36, 38-39 (D.D.C. 1998) (personal injury more likely to result in grant of standing, but institutional injury is sufficient under *Raines*), *aff'd*, 181 F.3d 112 (D.C.Cir. 1999). See also *Planned Parenthood v. Ehlmann*, 137 F.3d 573, 577-78 (8th Cir. 1998)(standing of state legislators).

[22]The Court in *Coleman v. Miller*, 307 U.S. 433 (1939), held that Kansas state legislators had standing to bring suit against state officials to recognize that the legislature had not ratified a proposed amendment to the United States Constitution. The plaintiffs in that case included twenty senators whose votes against the measure would have been sufficient to defeat it but whose votes were essentially nullified by the tie-breaking vote of the state's lieutenant governor, the presiding officer of the senate, in favor of ratification. The *Raines* Court distinguished the injury alleged by the plaintiffs in that case ("the abstract dilution of institutional legislative power") from the injury asserted in *Coleman* (vote nullification) (521 U.S. at 826), and found it unnecessary to decide whether *Coleman* might also be distinguished on other grounds. Therefore, *Raines* did not address the question of whether *Coleman* would warrant granting standing in a suit by federal legislators even though such an action raises separation of powers concerns not present in *Coleman*. 521 U.S. at 824 n.8.

Coleman, the only case in which the Court has held that legislators alleging an institutional injury have standing (*Raines*, 521 U.S. at 821) may be a "narrow exception to ... [*Raines*'] personal-capacity injury requirement based on the concreteness of the alleged injury." *Leading Cases*, *supra* note 1, at 223. Because of the considerable difference between the vote nullification in *Coleman* and the alleged dilution of legislative power in *Raines*, it was not necessary for the *Raines* Court to determine "the precise parameters" of

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In the view of the Court, the *Raines* plaintiffs alleged[23] an institutional injury which damaged all Members (a reduction of legislative and political power), rather than a personal injury to a private right, which would be more particularized and concrete.[24]

The Court in *Raines* declined to decide whether the outcome might have been different if: (a) plaintiffs had been authorized to represent the House and Senate (in fact, both Houses opposed the suit); (b) Members lacked a legislative remedy (the Court noted that Members could "repeal the act or exempt appropriations bills from its reach"); or (c) the act was not subject to constitutional challenge in a suit by other plaintiffs.[25]

Analysis: Congressional Standing after *Raines v. Byrd*

The law of congressional standing, which even prior to the Court's ruling in *Raines* was described as "both complex ... and contentious,"[26] has now been characterized as a "doctrine fraught with analytical inconsistency and uncertain boundaries."[27] *Raines*, the first ruling of the Court on the issue of the standing of Members of Congress when they assert an injury to their institutional authority as legislators, revealed the Court's reluctance to grant standing to Members because of separation of powers considerations, but the case did not fully define the circumstances in which congressional plaintiff suits may be permissible.

The Court in *Raines* recognized the separation of powers problems posed by congressional plaintiff suits[28] and addressed them as part of the constitutional standing

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[22](...continued)
vote nullification that must be alleged for Members to have standing under the *Coleman* exception to *Raines*. *Campbell v. Clinton*, 52 F. Supp. 2d 34, 42 (D.D.C. 1999), *aff'd*, 203 F.3d 19 (D.C. Cir.), *cert. denied*, 121 S.Ct. 50 (2000).

[23]Plaintiffs alleged that the act injured them "in their official capacities" by (1) altering the effect of all votes they might cast on bills containing items that could be cancelled by the President; (2) divesting them of their constitutional role with regard to the repeal of legislation; and (3) shifting the balance of power between the executive and legislative branches. 521 U.S. at 816.

[24]*Id*. at 821.

[25]*Id*. at 829-30.

[26]*Leading Cases, supra* note 1, at 218 n.1.

[27]*Id*. at 218.

[28]Problems posed for the judiciary in resolving a dispute involving the two political branches are less severe when a suit is brought by a private plaintiff because the role of the courts in hearing such cases has been recognized since *Marbury v. Madison*, 1 Cranch 137 (1803). See *Raines v. Byrd*, 521 U.S. at 833-34 (Souter, J., concurring). The vitality of this principle was demonstrated when the Court, the year after *Raines*, invalidated the Line Item Veto Act in a suit filed by several non-congressional plaintiffs. *Clinton v. City of New York*, 524 U.S. 417 (1998).

analysis,[29] but did not clarify the extent to which such problems may limit the ability of Members to sue in federal court. Prior to *Raines*, the D.C. Circuit did not address separation of powers problems as part of the standing inquiry but rather under the equitable discretion doctrine as matters that might require a court to exercise judicial self-restraint.[30]

Under both *Raines* and *Riegle*, a congressional plaintiff is more likely to succeed in establishing his standing if he alleges a particular injury rather than an injury related to a generalized grievance about the conduct of government or an injury amounting to a claim of diminished effectiveness as a legislator.[31] The Court in *Raines* was prepared to recognize a Member's standing based on a personal injury to a private right[32] but considered an injury to a legislator's voting power to be an official injury. The D.C. Circuit cases had found Members to have a personal interest in the exercise of their governmental powers.[33]

The Court in *Raines* was willing to find an institutional injury to be sufficient if that injury amounted to nullification of a particular vote[34] and if the plaintiffs' votes "would have been sufficient to pass or defeat a specific bill,"[35] whereas the D.C. Circuit also was willing to accept other types of institutional injuries related to the

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[29]Prudential limitations on standing had been removed by law. 521 U.S. at 820 n.3.

[30]See *Chenoweth v. Clinton*, 181 F.3d 112 (D.C.Cir. 1999).

[31]See *Raines*, 521 U.S. at 822-24; *Moore v. U.S. House of Representatives*, 733 F.2d 946, 951-52 (D.C.Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985).

[32]The example given by the Court was the loss of the Member's seat (and the loss of his salary) at issue in *Powell v. McCormack*, 395 U.S. 486 (1969). *Raines*, 521 U.S. at 820-21. The plaintiff in *Powell* clearly had standing to challenge the loss of his salary resulting from his exclusion by the House in the 90th Congress because such loss of salary constituted a personal injury to a private right. In a ruling of the D.C. Circuit prior to *Raines*, it was held that a Member had standing to challenge the automatic cost of living adjustment (COLA) provisions of the Ethics Reform Act of 1989, as those provisions affected congressional salaries, and that the equitable discretion doctrine did not preclude such a challenge even though the 1989 act could have been amended or repealed, because the Member sued in his capacity as a government *employee*. *Boehner v. Anderson*, 30 F.3d 156 (D.C. Cir. 1994). In a ruling of the 10th Circuit after *Raines*, it was held that a Member lacked standing to challenge two COLA's received pursuant to the 1989 act because the alleged injury was not shown to be personal (COLA's were received by all Members) and concrete (allegation that COLA's damaged Member's political position found to be more abstract than dilution of legislative power alleged in *Raines*). *Schaeffer v. Clinton*, 240 F.3d 878, 885, 886 (10th Cir. 2001). The court in *Schaeffer*, *id*. at 886, found "the cursory discussion [of standing] in *Boehner* unpersuasive and contrary to recent Supreme Court law ...."

[33]See *Synar v. United States*, 626 F. Supp. 1374, 1381and n.7(D.D.C.) (three-judge court), *aff'd sub nom. Bowsher v. Synar*, 478 U.S. 714 (1986).

[34]521 U.S. at 826.

[35]*Leading Cases*, *supra* note 1, at 220, *citing Raines*, 521 U.S. at 822-23.

constitutionally prescribed process for enacting legislation, including injuries related to dilution of legislative authority.[36]

The Court in *Raines* may have insisted that congressional plaintiffs allege either a personal injury to a private right or an institutional injury amounting to nullification of a vote because it is in such cases that the injury is concrete, particularized, and thus presents a case appropriate for judicial resolution.[37] Furthermore, the Court may have been willing to recognize an institutional injury amounting to nullification of a vote on a particular matter in a suit filed by a "controlling bloc" of legislators because in such an action plaintiffs "sue in effect as representatives of their legislative bodies ....[S]uits to protect legislative power brought by representatives of Congress, or by Congress itself, do not seek to protect a private stake in official power,"[38] a stake which the Court in *Raines* was not willing to recognize.[39] Additionally, the *Raines* Court indicated that it would not find a nullification of a vote if some means of legislative redress was available to the plaintiffs.[40]

The limits on standing established in *Raines* "may well preclude" a Member from obtaining standing in a suit to challenge an act of Congress[41] because in such a case the availability of legislative remedies (including the repeal or amendment of the act)[42] would prevent the court from finding vote nullification. *Raines* will greatly restrict "standing to challenge executive action, although there may be a better opportunity to achieve standing in this setting"[43] if the plaintiff Member can show the nullification of a vote by the executive, as in *Coleman*, and can thus establish an institutional injury.[44]

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[36]*Chenoweth v. Clinton*, 181 F.3d 112 (D.C.Cir. 1999). See, *e.g.*, *Moore v. U.S. House of Representatives*, 733 F.2d at 952 (alleged deprivation of right to debate resulting from alleged violation of constitutional requirement that revenue-raising measures originate in the House). It may be more difficult for a congressional plaintiff to establish his standing after *Raines*, but it is noted that cases in which congressional plaintiffs established standing under *Riegle* were often either dismissed under the equitable discretion doctrine or were reversed by the Supreme Court on other jurisdictional grounds. See *Chenoweth v. Clinton.*

[37]*Leading Cases*, *supra* note 1, at 222.

[38]*Id.* at 224.

[39]521 U.S. at 821. See also *Alaska Legislative Council v. Babbitt*, 181 F.3d 1333 (D.C. Cir. 1999)(denying standing, under *Raines* analysis, to committee and individual members of state legislature in suit against Secretary of federal department).

[40]521 U.S. at 824. See also *Leading Cases*, *supra* note 1, at 226 n.61 (arguing that "the *mere possibility* of a legislative remedy takes a legislator's injury out of the requisite category of nullification") (emphasis added).

[41]Wright, Miller, and Cooper, *supra* note 11, at p. 1.

[42]*Raines*, 521 U.S. at 824.

[43]Wright, Miller, and Cooper, *supra* note 11, at p. 1.

[44]Congressional plaintiffs may name executive branch officials as defendants in suits alleging vote nullification by the executive. See, *e.g.*, *Coleman v. Miller*, 307 U.S. 433 (1939), *aff'g* 146 Kan. 390, 71 P.2d 518 (1937) (among the named defendants were executive and

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Following *Raines*, decisions of the D.C. Circuit have attempted to clarify (a) the meaning of "nullification" as used in *Raines* and (b) the status of pre-*Raines* Circuit rulings. In regard to the meaning of "nullification," the D.C. Circuit concluded in *Campbell v. Clinton*[45] that the availability of a legislative remedy precludes the finding of nullification. In regard to the status of its pre-*Raines* rulings, the majority of the court of appeals in *Chenoweth v. Clinton*[46] believed that *Raines* had limited but not overruled those cases.[47]

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[44](...continued)
legislative branch officials, including William M. Lindsay, "as Lieutenant Governor and President ex officio of the Senate"); *Kennedy v. Sampson*, 511 F.2d 430 (D.C. Cir. 1974). Congressional plaintiffs may also name executive branch officials as defendants in suits challenging the constitutionality of an act of Congress (*e.g.*, *Raines*; *Riegle v. Federal Open Market Committee*, 656 F.2d 873 (D.C. Cir.), *cert. denied*, 454 U.S. 1082 (1981)). As the court explained in *Riegle*, 656 F.2d at 879 n.6: "When a plaintiff alleges injury by unconstitutional action taken pursuant to a statute, his proper defendants are those acting unconstitutionally under the law ..., and not the legislature which enacted the statute. See generally *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 175-80 (1803)."

[45]52 F. Supp. 2d 34 (D.D.C. 1999), *aff'd*, 203 F.3d 19 (D.C. Cir.), *cert. denied*, 121 S. Ct. 50 (2000). The district court held that twenty-six Members of the House lacked standing to seek a declaration that the President violated the War Powers Clause of the Constitution and the War Powers Resolution (50 U.S.C. § 1541 *et seq*.) by involving the United States in an air offensive against the Federal Republic of Yugoslavia. Plaintiffs in *Campbell* argued that they had standing because the President had "nullified" or ignored clear legislative directives from Congress. 52 F. Supp. 2d at 42. The district court found that because a series of congressional votes relating to the air offensive had sent "conflicting signals," the President had not nullified or ignored "an unambiguous directive" from Congress. *Id*. at 43. (The district court explained that, to show a complete nullification of their votes, plaintiffs were required to demonstrate that there was a "constitutional impasse" or "actual confrontation" between the legislative and executive branches. *Id*.)

In the majority opinion for the court of appeals, Judge Silberman observed that it is "not readily apparent what the Supreme Court meant" by "nullification" (203 F.3d at 22), but found that the President had relied on his constitutional powers for his actions and had not "nullified" legislative directives. *Id*. According to Silberman, "nullification" must be understood in light of the "unusual situation" in *Coleman v. Miller*, 307 U.S. 433 (1939), in which the plaintiff state legislators "had no legislative remedy," whereas the plaintiffs in *Campbell* had legislative options (including legislation barring the use of U.S. forces in the Yugoslav campaign, legislation cutting off funding for the American participation in the conflict, and impeachment of the President). 203 F.3d at 23. The majority opinion concluded that the availability of a legislative option–i.e., the right to vote in the future–is a remedy for the nullification of a prior vote (*id*. at 24). But Randolph, J., concurring, was of the view that the nullification of a prior vote is unaffected by a Member's ability to vote for other legislation in the future. *Id*. at 42.

[46]181 F.3d 112 (D.C. Cir. 1999).

[47]In *Chenoweth*, plaintiffs alleged that the President's creation of a program (the American Heritage Rivers Initiative (AHRI)) by executive order, in the absence of statutory authority, denied them their proper role in the legislative process and thus diluted their authority as legislators. *Id*. at 113, 115. This was the same harm held in *Moore v. U.S. House of*
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Conclusion

Raines v. Byrd revealed the reluctance of the Court to grant standing to Members because of separation of powers considerations, but the ruling did not fully define the circumstances in which congressional plaintiff suits may be allowed. The Court in *Raines* was of the view that a congressional plaintiff may have standing if he has suffered either a personal injury or an institutional one that amounts to vote nullification.

Raines may make it impossible for a Member to obtain standing to challenge an act of Congress and will require a Member in a suit challenging executive action to show the nullification of a vote by the executive to establish an institutional injury.

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[47](...continued)
Representatives, 733 F.2d 946 (D.C.Cir. 1984), *cert. denied*, 469 U.S. 1106 (1985) (see *supra* note 36) and in *Kennedy v. Sampson*, 511 F.2d 430 (D.C.Cir. 1974) (challenge to unlawful pocket veto) to be cognizable under Art. III. *Chenoweth*, 181 F.3d at 115. However, the court in *Chenoweth* found, *id*., that because such an injury is "widely dispersed" and "abstract," it is insufficient following *Raines*. *Chenoweth* concluded that, although *Moore* would have given the *Chenoweth* plaintiffs standing, it would have resulted in dismissal of the plaintiffs' suit under the equitable discretion doctrine because of the availability of a legislative remedy. Therefore, according to the *Chenoweth* court, "*Raines*...may not overrule *Moore*" but might require the D.C. Circuit to merge its separation of powers and standing analyses. 181 F.3d at 115-16. And, according to *dicta* in *Chenoweth*, *Kennedy* "may survive [*Raines*] as a peculiar application" of *Coleman* because the President's pocket veto arguably nullified plaintiff's vote. *Chenoweth*, 181 F.3d at 116-17.