AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 11: The Contemporary Era—Constitutional Authority and Judicial Power

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**Raines v. Byrd, 521 U.S. 811** (1997)

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*In 1996, Congress passed the Line Item Veto Act, which provided a procedure by which presidents could nullify specific line items in appropriations bills contingent on a possible legislative override. Granting the president the power to issue line-item vetoes had long been advocated as useful for controlling federal spending, but there were many doubts about the ability of the president to exercise such a power with a constitutional amendment. The day after the statute went into effect, four senators and two members of the House of Representatives filed suit against the director of the Office of Management and Budget, Frederick Raines, in federal district court seeking to have the law declared unconstitutional. All six legislators, led by West Virginia senator Robert Byrd, had voted against the measure in Congress. The statute itself included a provision authorizing any member of Congress "adversely affected" by the law to seek an injunction in federal court. The district court ruled the law unconstitutional. On appeal, the U.S. Supreme Court in a 7–2 vote determined that the legislators did not have standing to bring such a suit. The Court addressed the merits of the constitutional complaint and struck down the statute in* Clinton v. City of New York *(2008).*

*Why did the Court wait until the New York case to address the question of the constitutionality of the statute? Is there any advantage to waiting for that later case? Why do legislators not have standing to seek judicial review of controversies over legislative power? Are there circumstances in which a legislator would have standing to bring such a case? If legislators had standing in cases such as this, would presidents necessarily have standing to challenge statutes limiting presidential power? Is European-style constitutional review that would allow legislators to bring constitutional disputes directly to a constitutional court preferable to the common law cases-and-controversy requirement?*



CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

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Under Article III, § 2 of the Constitution, the federal courts have jurisdiction over this dispute between appellants and appellees only if it is a "case" or "controversy." This is a "bedrock requirement." . . .

One element of the case-or-controversy requirement is that appellees, based on their complaint, must establish that they have standing to sue. *Lujan v. Defenders of Wildlife* (1992). . . . The standing inquiry focuses on whether the plaintiff is the proper party to bring this suit, although that inquiry "often turns on the nature and source of the claim asserted." To meet the standing requirements of Article III, "[a] plaintiff must allege *personal injury* fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen v. Wright* (1984). . . . We have consistently stressed that a plaintiff's complaint must establish that he has a "personal stake" in the alleged dispute, and that the alleged injury suffered is particularized as to him. . . .

We have also stressed that the alleged injury must be legally and judicially cognizable. This requires, among other things, that the plaintiff have suffered "an invasion of a legally protected interest

which is . . . concrete and particularized," and that the dispute is "traditionally thought to be capable of resolution through the judicial process." . . .

We have always insisted on strict compliance with this jurisdictional standing requirement. . . . And our standing inquiry has been especially rigorous 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. . . .

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The one case in which we have upheld standing for legislators (albeit state legislators) claiming an institutional injury is *Coleman v. Miller* (1939) [reviewing a state ratification vote on a federal constitutional amendment]. . . .

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It should be equally obvious that appellees' claim does not fall within our holding in *Coleman* . . . . They have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated. In the vote on the Line Item Veto Act, their votes were given full effect. They simply lost that vote. Nor can they allege that the Act will nullify their votes in the future. . . .

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Not only do appellees lack support from precedent, but historical practice appears to cut against them as well. It is evident from several episodes in our history that in analogous confrontations between one or both Houses of Congress and the Executive Branch, no suit was brought on the basis of claimed injury to official authority or power. . . .

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There would be nothing irrational about a system which granted standing in these cases; some European constitutional courts operate under one or another variant of such a regime. . . . But it is obviously not the regime that has obtained under our Constitution to date. Our regime contemplates a more restricted role for Article III courts. . . .

In sum, appellees have alleged no injury to themselves as individuals . . . , the institutional injury they allege is wholly abstract and widely dispersed . . . , and their attempt to litigate this dispute at this time and in this form is contrary to historical experience. We attach some importance to the fact that appellees have not been authorized to represent their respective Houses of Congress in this action, and indeed both Houses actively oppose their suit. We also note that our conclusion neither deprives Members of Congress of an adequate remedy (since they may repeal the Act or exempt appropriations bills from its reach), nor forecloses the Act from constitutional challenge (by someone who suffers judicially cognizable injury as a result of the Act). Whether the case would be different if any of these circumstances were different we need not now decide.

We therefore hold that these individual members of Congress do not have a sufficient "personal stake" in this dispute and have not alleged a sufficiently concrete injury to have established Article III standing. The judgment of the District Court is vacated, and the case is remanded. . . .

JUSTICE SOUTER, with whom JUSTICE GINSBURG joins, concurring.

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Because it is fairly debatable whether appellees' injury is sufficiently personal and concrete to give them standing, it behooves us to resolve the question under more general separation-of-powers principles underlying our standing requirements. . . . [W]e have cautioned that respect for the separation of powers requires the Judicial Branch to exercise restraint in deciding constitutional issues by resolving those implicating the powers of the three branches of Government as a "last resort." The counsel of restraint in this case begins with the fact that a dispute involving only officials, and the official interests of

those, who serve in the branches of the National Government lies far from the model of the traditional common-law cause of action at the conceptual core of the case-or-controversy requirement. . . . Intervention in such a controversy would risk damaging the public confidence that is vital to the functioning of the Judicial Branch, by embroiling the federal courts in a power contest nearly at the height of its political tension.

While it is true that a suit challenging the constitutionality of this Act brought by a party from outside the Federal Government would also involve the Court in resolving the dispute over the allocation of power between the political branches, it would expose the Judicial Branch to a lesser risk. Deciding a suit to vindicate an interest outside the Government raises no specter of judicial readiness to enlist on one side of a political tug-of-war, since "the propriety of such action by a federal court has been recognized since *Marbury v. Madison* (1803)." And just as the presence of a party beyond the Government places the Judiciary at some remove from the political forces, the need to await injury to such a plaintiff allows the courts some greater separation in the time between the political resolution and the judicial review.

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The virtue of waiting for a private suit is only confirmed by the certainty that another suit can come to us. . . .

JUSTICE STEVENS, dissenting.

The Line Item Veto Act purports to establish a procedure for the creation of laws that are truncated versions of bills that have been passed by the Congress and presented to the President for signature. If the procedure were valid, it would deny every Senator and every Representative any opportunity to vote for or against the truncated measure that survives the exercise of the President's cancellation authority. Because the opportunity to cast such votes is a right guaranteed by the text of the Constitution, I think it clear that the persons who are deprived of that right by the Act have standing to challenge its constitutionality. Moreover, because the impairment of that constitutional right has an immediate impact on their official powers, in my judgment they need not wait until after the President has exercised his cancellation authority to bring suit. Finally, the same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

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JUSTICE BREYER, dissenting.

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I concede that there would be no case or controversy here were the dispute before us not truly adversary, or were it not concrete and focused. But the interests that the parties assert are genuine and opposing, and the parties are therefore truly adverse. . . .

Nonetheless, there remains a serious constitutional difficulty due to the fact that this dispute about lawmaking procedures arises between government officials and is brought by legislators. The critical question is whether or not this dispute, for that reason, is so different in form from those "matters that were the traditional concern of the courts at Westminster" that it falls outside the scope of Article III's judicial power. . . .

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. . . . The lawmakers in this case complain of a lawmaking procedure that threatens the validity of many laws (for example, all appropriations laws) that Congress regularly and frequently enacts. The systematic nature of the harm immediately affects the legislators' ability to do their jobs. The harms here are more serious, more pervasive, and more immediate than the harm at issue in *Coleman*. . . .

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In sum, I do not believe that the Court can find this case nonjusticiable without overruling *Coleman*. Since it does not do so, I need not decide whether the systematic nature, seriousness, and immediacy of the harm would make this dispute constitutionally justiciable even in *Coleman*'s absence. Rather, I can and would find this case justiciable on *Coleman*'s authority. . . .