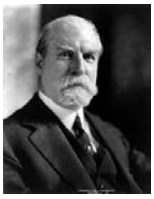
General Discussion
COLEMAN v. MILLER, 307 U.S. 443 (1939)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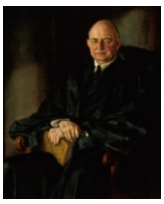
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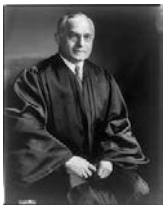
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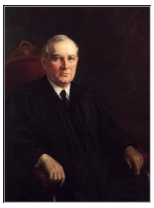

Butler


McReynolds

In what many describe as a "plurality" decision, Chief Justice Hughes delivered the "opinion of the Court" in Coleman v. Miller (hereafter Coleman). The opinion was directly supported by only three justices—the Chief Justice, Harlan Fisk Stone (U.S. Attorney General 1924-25, Associate Justice 1925-41, Chief Justice 1941-46) and Stanley Forman Reed (United States Solicitor General 1935-38, Associate Justice 1938-57). Coleman consisted of Chief Justice Hughes "opinion of the Court", one concurring opinion, one opinion by a single justice and one dissenting opinion. The first concurring opinion, authored by Hugo Lafayette Black (United States Senator 1927-37, Associate Justice 1937-71) was joined by Associate Justices Owen Roberts, Felix Frankfurter (Associate Justice 1939-62) and William Orville Douglas (Associate Justice 1939-75). The second opinion, written by Associate Justice Frankfurter, noted Associate Justices Roberts, Black and Douglas held the same "view" as his that the petitioners had no standing to sue (hereafter standing). A dissenting opinion written by Pierce Butler (Associate Justice 1922-39) joined by Associate Justice James Clark McReynolds disagreed with the "opinion of the Court" which found against the petitioners (a group of twenty-four state legislators from the state of Kansas) on all counts.

The issue before the Court by the petitioners was their opposition to a ratification vote by the Kansas state legislature in support of a proposed amendment to the Constitution known as the Child Labor Amendment. (The proposed amendment failed for lack of ratification by three-fourths of the state legislatures). Petitioners cited several grounds as the basis for asking the Court to overturn the favorable ratification vote by the Kansas state legislature.

According to a 1977 Court ruling Colman is defined as a "plurality" decision because no single opinion apparently received the support of a majority of the Court members. In such circumstance the Court said, "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds…', Gregg v Georgia, 428 U.S. 153, 428 U.S. 169 n.15 (1976) (opinion

of STEWART, POWELL, and STEVENS, JJ.)," Marks v United States, 430 U.S. at 193 (1977).

Even though enunciation by the Court defining plurality was decades in the future, Chief Justice Hughes could count and obviously understood the basics of Court procedure. Enunciated or not he understood the difference between less than five justices agreeing on an opinion and five or more justices agreeing on an opinion. Even in 1939 when five or more justices agreed on an opinion it was called the majority or "opinion of the Court." Therefore when Chief Justice Hughes labeled his opinion an "opinion of the Court" it meant at least five justices agreed as to the merits of the case and the standing of the petitioners. Yet, as will be shown, this was not the case in Coleman.

Before discussing Coleman however, an examination of the two issues addressed in the ruling, standing and political question doctrine is necessary in order to understand the complexities of the ruling which many legal scholars have labeled as "confusing" or "inconclusive." A closer examination however reveals this not to be the case.

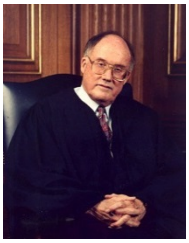
Essentially standing [standing to sue] is a Court doctrine related to the constitutional limits of Court jurisdiction. The Court created the doctrine in order to examine whether the Constitution textually extends Court jurisdiction to the petitioners in a specific case or not. If the Court finds the petitioners lack standing (meaning Court jurisdiction is not textually extended by the Constitution) then the Court has no authority to hear the case and rule on its merits. The Court then decrees the petitioners lack standing and dismisses the suit. The affect is (1) the Court renders no ruling on the merits of the case and (2) the issue remains unchanged—that which was before the case was presented to Court is exactly what remains after the Court dismisses for lack of standing to sue. Article III, §2, (1) (2) of the Constitution, generally referred to as the "cases and controversies" clauses defines "judicial power." Those clauses read:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;~~—between a State and Citizens of another State~~;[clause eliminated by passage of the 11th Amendment]—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

> In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Frothingham v Mellon, 262 U.S. 447 (1923) (hereafter Frothingham) is generally regarded as the foundation for the modern doctrine of standing. Frothingham describes numerous instances throughout Court history of refusal to rule by the Court to rule on the merits of a case for "want of jurisdiction." Rather than cite specific constitutional language granting the Court the right to determine its own jurisdiction the Court instead relied on these examples as the basis for it to conclude petitioners in Frothingham lacked standing. Therefore the Court did not address the merits of the case in Frothingham.

This point cannot be overlooked. In its doctrine of standing the Court has always substituted its own rules on what constitutes standing rather than quoting or explaining why at least one of the eight stipulations of court jurisdiction specified in Article III do not give the plaintiffs standing in the particular case at bar. In short, when it comes to standing the Court literally writes its own version of Article III. While the basic principles of standing expressed in Frothingham are still in general use today, the history of standing shows the doctrine has steadily evolved—not from decade to decade or year to year but case to case.



Rehnquist

An example of this "evolution" is Elk Grove Unified School District v. Newdow 542 U.S. 1 (2004) (hereafter Newdow). Chief Justice Rehnquist (Associate Justice 1972-86, Chief Justice 1986-2005) dissented to the Court's determination of lack of standing for the respondent based on "prudential" standing. Rehnquist said:

> "The Court correctly notes that "our standing jurisprudence contains two strands: Article III standing, which enforces the Constitution's case or controversy requirement, see *Lujan* v. *Defenders of Wildlife,* 504 U.S. 555, 559—562 (1992); and prudential standing, which embodies 'judicially self-imposed limits on the exercise of federal jurisdiction, [*Allen* v. *Wright,* 468 U.S. 737, 751 (1984)].' " *Ante,* at 7—8. To be clear, the Court does not dispute that respondent Newdow (hereinafter respondent) satisfies the requisites of Article III standing. But curiously the Court incorporates criticism of the Court of Appeals' Article III standing decision into its justification for its novel prudential standing principle. The Court concludes that respondent lacks prudential

> standing, under its new standing principle, to bring his suit in federal court. …
>
> Although the Court may have succeeded in confining this novel principle almost narrowly enough to be, like the proverbial excursion ticket–good for this day only–our doctrine of prudential standing should be governed by general principles, rather than ad hoc improvisations."

The Court applied this "novel" principle of prudential standing only in Newdow and has since abandoned it. A simple reading of Article III shows no principle of "prudential" standing exists. Indeed the language "judicial power shall extend to all cases…" precludes the Court having "self-imposed limits" on the exercise of federal jurisdiction." The reason for this is obvious. If the Constitution grants jurisdiction the judiciary cannot then decline that jurisdiction. Such an act would establish judicial supremacy over the text of the Constitution. Yet that is exactly what happened in Newdow. As described by the chief justice the Court, even though acknowledging Newdow had standing, decided for reasons other than standing, it did not want to rule on the case before them. It created a new form of standing, one not derived from the text of the Constitution, to accomplish the task.

Unlike the federal law creating the rules of evidence, civil and criminal procedure, rules of appeal and so forth [See: United States Code, Title 28 – Judiciary and Judicial Procedure] there is no equivalent standing law. The rules of evidence, court procedure and appeal satisfy the constitutional demands of due process of law and equal protection under the law. These laws describe rules under which the court operates, thus defining its jurisdiction in minute detail. They describe what evidence is admissible in court. They formulate rules whereby court decisions may be appealed. Without first there being a law there can be no due process of law and certainly no equal protection under the law as demanded in the Constitution. As standing is not created by law but instead exists only in the mind of the judge or justice hearing a case, it cannot be stated standing satisfies due process or equal protection. All other Court procedures, save standing, are found in easily referenced, universally applied, consistent law. Standing is associated with no such law. Therefore standing violates the constitutional requirements of equal protection under the law and due process of law. Standing is unconstitutional.

The "principles" of Frothingham are not direct constitutional text but rather interpretations of that text. That direct text describes classes of lawsuit (such as a citizen bringing a suit) under which the Court will consider a case. The text emphatically states judicial power shall extend to "all" cases so described. With that preclusion the direct text does not permit Court interpretation of the various legal classes described in the Constitution. With such "interpretation" as the Court has been permitted to create, the Court has transformed clear

unequivocal constitutional text into an endless set of shifting "principles" entirely dependent on Court discretion. Such discretion permits the Court to deny a petition for redress presented in the form of a federal lawsuit by a plaintiff by asserting lack of jurisdiction even though the plaintiff satisfies one of the legal classes described in the Constitution i.e., he is a citizen and can prove it, or represents a state in the union and so forth.

The lack of due process and equal protection under the law present several fundamental questions of constitutional law and Court procedure. How can standing satisfy due process and equal protection under the law when standing consists of a constantly evolving set of "principles" which the Court creates on an "ad hoc" case by case basis? The fundamental principle of equal protection and due process is that a lawful procedure applied to all cases. If the basis of procedure constantly shifts because the "principles" of standing constantly change how equal protection be equally applied if the judgment of standing is different in each case? If, for example, in one case the Court accepts that the right to vote provides standing and yet in another case states the right to vote does not provide standing, how is this equal protection under the law? How can due process of law be applied when there is no law in the first place allowing for application of the process?

There are other questions about standing. Exactly what constitutes the evidence that proves standing? Under what Court rule is this evidence of standing presented to the Court? What is the precise legal definition of the terminology used in standing? Which Court rules of procedure specified in law apply to standing? How may standing be appealed? Which version of standing applies—Frothingham, Lujan, Newdow or version X? There are no answers to these questions to be found in any legal text and certainly not in law. Instead vague, generalized statements and opinions in various legal articles abound compounding the issue but not resolving it.

In sum standing as constituted by the courts, exists only within the mind of the judge writing the opinion for that case. That judge may employ "general principles" of standing or create an "ad hoc" version of his own. Newdow is a classic example. If the Court wishes to rule on merit, it finds the plaintiff has standing, if not; he lacks standing based on whatever "principle" of standing the Court creates.

This is not to say standing does not exist. The Constitution clearly limits the jurisdiction of the courts to classes of lawsuits of specific description such as controversies to which the United States shall be a party. Within these classes the standing of any party must be established. But this is as far as the text extends: if the party proves he is a citizen or presents evidence of representation of a state standing, according to the text of the Constitution, is satisfied. Once satisfied the standing of the plaintiff is constitutionally established. The Constitution does not authorize the Court to proceed further

and create classes of suits that are not textually expressed in the Constitution. Notably the Court in its standing rulings never cites the actual text of the Constitution and compares whether or not the plaintiff satisfies that text i.e., "is the plaintiff a citizen?" Instead the Court always refers to its own interpretations of past cases and uses that as the basis of its determination only referring to the constitutional text by a generalized title of "cases and controversies." In short, the Court ignores the Constitution.

The Court itself has ruled that such action is unconstitutional. In Marbury v Madison, the issue before the Court was whether by legislative act Congress could extend the original jurisdiction of the Supreme Court beyond that described in the Constitution. The Supreme Court ruled such law was unconstitutional and struck down that portion of the law. Thus the Court ruled the terms of Court jurisdiction established in the Constitution cannot be altered by means of ordinary legislation. This principle of prohibition of use of ordinary means of authority granted a governmental body in the Constitution being employed to alter constitutional text applies equally to the Court. The Court cannot alter or extend constitutional text by ordinary judicial decree. There is neither constitutional text describing standing beyond those legal classes already referenced nor granting the Court authority to alter these classes by ordinary judicial decree. Therefore under the principle enunciated by the Court in Marbury the Court itself is prohibited from extending standing beyond that which the Constitution textually describes.

There is no avoiding the fact however that the Constitution does limit Court jurisdiction by presentation of specific textual classes which clearly define what cases or controversies the Court may address. Hence standing is a constitutional mandate limiting Court jurisdiction and therefore must be obeyed by the courts. This point cannot be overstated in light of what is to be presented: the Court cannot abandon the limitations of standing imposed upon it by constitutional text as it would shed a tattered coat wearing that coat only when the Court finds it convenient. If a Court expresses a plaintiff lacks standing, then that Court has forfeited its jurisdiction meaning it is prevented from proceeding further—it cannot determine the merits of a case as it lacks jurisdiction to do so.

Since Frothingham the courts have declared their interpretation of standing determines court jurisdiction. Article III describes classes of lawsuits as the basis of standing using specific words and no equivocations. The Court has gone beyond these terms to create exceptions to standing not supported by direct constitutional text. Thus any exception or regulation of standing has been created by the Court based on its interpretation of Article III rather than direct constitutional text. Article III however assigns Congress the authority to make "exceptions" and "regulations" to court jurisdiction, not the court under the "exceptions" clause—"In all the other Cases before mentioned, the supreme

Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

Obviously if standing defines court jurisdiction as the Court has repeatedly stated, then the terms, conditions and circumstances of standing create "exceptions" to court jurisdiction which is otherwise universally applied by the Constitution by the term "shall extend to ***all*** Cases in Law and Equity…and to Controversies…" [Emphasis added] The Constitution assigns the determination of such "exceptions" of court jurisdiction to Congress as well as granting Congress authority to regulate such "exceptions." Therefore constitutional determination of standing is a legislative rather than a judicial function.

This congressional power of exception and regulation is further extended by the "establishment" clause of Article III which states:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office."

Obviously the authority to "ordain and establish" inferior courts in combination with its "exceptions" and "regulations" authority empower Congress to set the jurisdiction of the courts—which includes, if Congress desires, defining standing. Like rules of evidence and court procedure legislation can define standing, describe its terms and conditions, describe what evidence establishes standing and so forth reducing standing from an arbitrary state of mind to a due process of law.

Congress has exercised this authority in the past. Where it has done so, the Court has stepped aside. One recent example is McConnell v Federal Election Commission, 540 U.S. 93 (2003) (hereafter McConnell). In 2002 Congress passed the Bipartisan Campaign Reform Act of 2002 (Public Law 107-155) (hereafter BCRA) designed to regulate various federal election activities. In anticipation of numerous federal lawsuits BCRA §403(a) ("Special Rules for Actions brought on Constitutional Grounds") mandated that "any action…for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act…shall be filed in the United States District Court for the District of Columbia [and]… shall be reviewable only by appeal directly to the Supreme Court of the United States."

BCRA §403(b) ("Intervention by Members of Congress") declared:

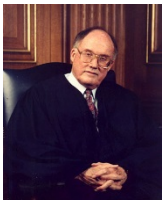
> "In any action in which the constitutionality of any provision of this Act or any amendment made by this Act is raised (including

> but not limited to an action described in subsection (a)), any member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress) or Senate shall have the right to intervene either in support of or opposition to the position of a part to the case regarding the constitutionality of the provision or amendment."

BCRA §403(c) ("Challenge by Members of Congress") extended standing to Members of Congress stating:

> "Any Member of Congress may bring an action, subject to the special rules described in subsection (a), for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act."

BCRA was challenged in court as prescribed by §403(a) meaning *Congress established "exceptions" by ordinary legislation to court jurisdiction*. First Congress established an "exception" by *removing* jurisdiction from all district courts (except the district court in the District of Columbia) to consider any aspect of the BCRA. (Congress also established a special type of district court by mandating a three judge panel hear the cases rather than usual single judge procedure.) Second, Congress made an "exception" to the jurisdiction of the appellate courts, by-passing them entirely in the appeal process. Third, Congress created a new "regulation" for BCRA mandating appeal directly from district court to Supreme Court. Fourth, Congress established "regulation" over the Supreme Court docket mandating consideration of BCRA ahead of other Court cases. Fifth, Congress made "exception" for any member of Congress desiring to intervene either in favor or against any provision of the BCRA. Sixth, Congress made an "exception" to the doctrine of standing by legislatively allowing members of Congress to "bring an action" (even though the word standing was not used in the law). The intent was clear however. Having the right to "bring an action" mandates the party has standing to do so.


Rehnquist

McConnell was a massive Court ruling encompassing hundreds of pages. The ruling was so complex that various sections of the law were assigned to different justices who then wrote opinions on the different sections. Chief Justice Rehnquist delivered the Court's ruling on Section IV which included §403(a) (b) (c). The standing of members of Congress was challenged by plaintiffs. Chief Justice Rehnquist responded: "The National Right to Life plaintiffs argue that the District Court's grant of intervention to the intervenor-defendants, pursuant to Federal Rule of Civil Procedure 24(a) and BCRA §403(b), must be reversed because the intervenor-defendants lack Article III standing. It is clear however, that the Federal Election Commission (FEC) has standing, and therefore we need not address the standing of the intervenor-defendants, whose position here is identical to the FEC's."

The Court did not object to the "exceptions" of §403(a). In fact the Court referred to them (limiting district court access, a specific type of district court, by-passing the appeals court and so forth) in McConnell. Obviously therefore the Court was aware ordinary legislation was regulating Court jurisdiction (contrary to its ruling in Marbury). Nevertheless the Court accepted the right of Congress to make "exceptions" to Court jurisdiction and therefore to standing. When these exceptions were directly challenged Chief Justice Rehnquist chose to "reserve the question for another day." Thus instead of overturning Congress' authority the Court created yet another "ad-hoc" principle of standing—piggy-backing—the transfer of the standing from one party to another in order to give both parties standing. The Court failed to cite constitutional text allowing for such transfer or granting the Court authority to make such transfer.

It is self-evident that for anything to be constitutional it must satisfy *all* the Constitution. Something cannot be constitutional in Article VI and unconstitutional in Article IV. Consequently the reverse is true: any constitutional issue is affected by all provisions of the Constitution. Therefore examination of any constitutional issue *requires* the determination of the effect of other constitutional clauses on that issue. Such is the case of the First Amendment and its effect on standing. The First Amendment states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The relevant text is "Congress shall make no law…abridging…the right of the people…to petition the Government for a redress of grievances." The meaning is clear. Congress cannot pass legislation abridging (or thwarting) the right of the people to petition the government for a redress of grievances. Exactly what does the term " petition the Government for a redress of grievances" describe? According to the Supreme Court, among other forms of petition it describes a federal lawsuit.

In California Motor Transport Co. v Trucking Unlimited, 404 U.S. 508 (1972) (Hereafter California Transport) the Supreme Court said:

> "The right of petition is one of the freedoms protected by the Bill of Rights, and we cannot, of course, lightly impute to Congress an intent to invade these freedoms. … The same philosophy governs the approach of citizens or groups of them to administrative agencies (which are both creatures of the legislature, and arms of the executive) and to courts, the third branch of Government. Certainly the right to petition extends to all departments of the

> Government. The right of access to the courts is indeed but one aspect of the right of petition."[Emphasis added].

With its ruling extending the right of petition for redress of grievances to itself the Court opened the door to affect by the First Amendment on its doctrines dealing with redress of grievances. As discussed in Gulf equal protection extends not only to *under* the law but *from* a law where the Constitution *forbids* enactment. Thus, if Congress is forbidden by the First Amendment from circumventing or abridging the right of petition by the people for redress of grievances by enactment of a law, this prohibition equally applies to the courts as the First Amendment equally affects all forms of that right of petition for redress of grievances.

If the Constitution assigns the control of standing to the legislature and Congress can make no law affect the right of petition, the courts cannot circumvent the right of the people to petition the government for redress of grievances by ordinary court decree because under the Constitution such authority is assigned to Congress rather than the courts *and then prohibited to Congress by the First Amendment*. Clearly the "ad-hoc" principles of standing relate to the court's determination of *whether* a petition (or lawsuit) is redressed by the court. Equally clear is *how* the court arrives at its conclusion on the merits of the case makes it obvious that court process is reserved not only to the "judicial power" clause of Article III but to the redress of grievances portion of the First Amendment. Hence there are *two* processes involved in a court case—first whether the court will redress a petition of grievance and second how the court redresses that grievance. While the statement of language used to present the issue may appear to answer the question satisfactorily, in fact it does not. Constitutional function demands an answer to the question of whether standing relates to the act of petition by the people or the act of redress of grievance by the court.

The "ad-hoc" principles of standing consist of terms and conditions not found in the Constitution, altered from one case to another, created entirely in the mind of a judge without any regard to the constitutional mandates of equal protection or due process of law which mandates, at the minimum, support by an actual written law. Standing is unconstitutional. Even if Congress in its wisdom could create standing in a law satisfying equal protection and due process with precise and exact definition of the terms, conditions and circumstance of standing such that standing was singular, uniform and universal in application, the First Amendment precludes its enactment by protecting the people *from* such law however well written. The same principle applies to the court: however well-reasoned, however well researched, however solemn in judicial decree, however pedigree the linage of case law presented the First Amendment still precludes the court from abridging in any manner a petition for redress of grievances by the people.

The colonists made their position on petitioning clear in 1776. The colonists cited the failure of the King to redress grievances as one of the reasons for separation in the Declaration of Independence. They wrote, "In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury." Obviously, by the language contained in their declaration the colonists believed the important issue was not that a petition by the people was submitted to the King, but that the King redress the grievance presented. Equally obvious by the text of the declaration is the fact the King believed he was under no obligation to redress any petition. The Court has sustained the King in its opinions about the right of the present government to ignore petitions from the people.

In Minnesota Board for Community Colleges v. Knight, 465 U.S. 271 (1984) for example the Court stated, "Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to communications of members of the public on public issues."

Thus, like the King, the Court held the people have the right to petition but the government controls the redress of grievances. Therefore, according to the Court, the government can ignore petitions from the people rendering their submission meaningless. Standing reflects this Court position. Like the King, the Court, with its doctrine of standing, holds it is not required to respond a petition of redress by the people.

The Court's problem is the colonists did not forget what the King did regarding their petitions. They placed text in the Constitution prohibiting such acts of power by the judiciary. The first textual prohibition actually at first appears to refute this assertion. But a closer examination reveals otherwise. The constitutional text recognizes the Court, like the King, controls the right of redress but the text grants this acknowledgment in a completely different fashion than what was at the disposal of the King. As discussed, "Judicial power shall extend to *all* cases…and controversies…"

Unlike the King who defined his own power at his own will and hence could extend or withdraw it as he pleased, the Constitution gives no such discretion to the Court. Thus the Court cannot refuse to redress a grievance *if that grievance falls under one of the several legal classes listed in Article* III. Thus the power of the judiciary to redress grievances is simultaneously limited and unlimited. Like the King, the power of redress, that is the determination of a case or controversy on its merits, is entirely within the control of the Court. Unlike the King the Constitution limits the areas in which the Court can extend this otherwise omnipotent power. But this is not the only limitation in the Constitution.

Any exception or regulation of this omnipotent power, that is, any exception to the word "all" as the Court has repeatedly stated, lies in the determination of Court jurisdiction and not in the creation of an exception to the ubiquitous judicial power of redress of grievances. Thus the judiciary rules on a case by case basis regarding standing comparing the petition to its ubiquitous power rather than the opposite. To compare otherwise, power to petition, would mean affecting the Court's power *permanently* by removing a specific subject or issue from its purview. This is unacceptable in light of constitutional text. A court ruling limiting the ubiquitous power of redress of grievances means that power is no longer ubiquitous relegating the term "all…cases and controversies" to "some…cases and controversies." The judiciary cannot be stripped of its constitutional duties in such a manner. Such an act would render a vital constitutional service meaningless.

However, by addressing the issue of standing on a case by case basis the Court, as is its practice, is free to ignore previous decisions of standing and reverse itself at will. Thus a plaintiff who before lacked standing now miraculously has suddenly gained it. The Court therefore chooses to make the power of redress of grievances inviolate and thus untouched by standing. The Court's position automatically renders standing as part of a specific petition or lawsuit whereby each suit is adjudicated as an exception to Court jurisdiction in Article III *prior to the petition being subject to any redress of grievances by the Court*. With this Court exclusion therefore standing becomes part of the right to petition portion of the First Amendment rather than the redress of grievances. But this decision carries with it a price for the Court.

The separation of powers caused by the text of the Constitution means the redress of grievances lies with the Court, but the right to petition remains with the people. In turn the constitutional text assigns the power of exceptions and regulations of court jurisdiction, including standing, to Congress. Congress is limited by the First Amendment which precludes any abridgment of the right to petition by prohibiting any enactment of law affecting that right of the people. Thus the court is also limited as its authority to determine jurisdiction is dictated not by its own declarations but those of Congress. The limitation of the First Amendment on Congress means only the expressed text of classes of lawsuit contained in Article III can determine court jurisdiction and therefore standing.

Thus, standing is limited not by any court doctrine created on a case by case basis, but on the textual statements of the Constitution which specify exact circumstances and conditions of who has standing. The First Amendment then precludes, whether by legislation or court doctrine, additional circumstances and conditions other than what is exactly stated. Thus, if someone is a citizen, he has standing. The Constitution provides no other circumstances a person need satisfy other than this stipulation and hence other circumstances, such as the type of grievance may be attached by either court or Congress so as to

prevent a petition of grievance. The court is still free in its determination of merits find against the filing party as is the case in any lawsuit. However the First Amendment precludes the court from denying a petition for redress of grievances for "ad hoc" reasons.

The judiciary is therefore left to address the merits of grievances in a lawsuit absent any determination of its jurisdiction such that the court can refuse to redress a grievance by ignoring the constitutional command, "…shall extend to all…" Thus, the text of the Constitution demands the government address the grievance of the petition but within the parameters of the overarching principle of separation of powers found throughout the Constitution. Neither party in this constitutional exercise controls all aspects of the matter. The Constitution reflects a solution to the frustration expressed by the colonists in 1776—obtaining a redress of grievances from the government while denying it the authority to refuse to do so. Given this circumstance, it is illogical to suggest the colonists would write a provision in the Constitution or ratify an amendment whereby the Court replaced the King with the power to refuse to redress grievances thus permitting "repeated injury."

The First Amendment effects both original as well as appellate jurisdiction. Unlike the provisions of Article III which give Congress "exceptions" and "regulations" authority only over the appellate process, the First Amendment extends its limitation to both original and appellate jurisdiction. Thus the Supreme Court is equally restrained in its jurisdiction. As noted earlier, that jurisdiction can only be altered by amendment as the Court noted in Marbury and the passage of the Eleventh Amendment clearly demonstrates. When the Court bound Congress in Marbury it bound itself by removing from all government departments the ability to use ordinary means usually available to it (such as a Court ruling) to alter the Constitution except by use of amendment. Therefore what the Constitution textually states is the limit of standing for both the inferior courts as well as the Supreme Court.

Second, the First Amendment reduces standing from an "ad hoc" Court procedure to a simple procedural matter administered by the court clerk to determine if a party is a citizen; the United States is party and so forth. Standing no longer dominates the Constitution, but instead is subservient to it. Instead of the Court employing standing to determine which constitutional provisions it agrees will be enforced, the First Amendment ensures all such enforcement will be determined on facts, law and merit rather than an "ad hoc" procedure. Neither the courts nor Congress may extend or reduce the minor limits of citizenship nor other terms described in the Constitution beyond the original text and scope except by amendment. Yet this reduction of standing and thus overt, self-created court power in no way diminishes the court's primary constitutional duty—determination of constitutional issues raised in the Constitution on the merits of the arguments and evidence presented. This power remains firmly with the court.

While it may be postulation that the First Amendment modifies the doctrine of standing or Congress is assigned by the Constitution the role of determination of standing, under all circumstances the Court is bound to obey its own rules of standing. According to the Court these rules are derived, not from the mental process of a judge, but the text of the Constitution. The Court has never addressed why its rules avoid the *specific* text of the Constitution.

The other major Court doctrine discussed in Coleman is the political question doctrine. Again the doctrine deals with court jurisdiction. Many government disputes are political rather than legal in nature. An example of a political dispute is two candidates vying for political office. In such cases the doctrine asserts such disputes must be resolved by the political processes of the Constitution, such as election and not by the judiciary. The doctrine mandates the judiciary limit its jurisdiction to judiciable disputes involving questions of law based on the Constitution. The doctrine further recognizes coordinate departments, such as Congress, are textually assigned constitutional duties. Under most circumstances, this textual assignment forbids the court from interference in such duties. In a typical case where the court finds a dispute non-judicable due to the political question doctrine, the issue presented before the court is either so specific the Constitution gives all power to one of the coordinate political branches, or so general the Constitution does not even consider it.

The leading Supreme Court case defining the political question doctrine is Baker v Carr, 369 U.S. 186 (1962). In that case the Court listed the six characteristics of a political question. According to Baker if a dispute falls under any of the six principles the dispute is a political question. Therefore the court cannot reach a conclusion on the merits of the dispute. While the specific rules formulated in Baker did not exist in 1939, the Court nevertheless makes general reference to these principles in Coleman which was referenced in the Baker decision.

The characteristics of a political question are: (1) A “textually demonstrable constitutional commitment of the issue to a coordinate political department”; (2) A “lack of judicially discoverable and manageable standards for resolving it”; (3) The “impossibility for a court's independent resolution without expressing a lack of respect for a coordinate branch of the government”; (4) The “impossibility of deciding the issue without an initial policy decision, which is beyond the discretion of the court”; (5) An “unusual need for unquestioning adherence to a political decision already made”; (6) The “potentiality of embarrassment from multifarious pronouncements by various departments on one question.”

In actual practice the political question doctrine determines whether the Court engages in either the establishment or modification of public policy by judicial decree rather than allowing the usual political process of elections, legislation,

public debate and so forth to set public policy. The Court has construed its doctrine narrowly. Thus it gives itself wide latitude to affect nearly all issues of public policy in this nation. Many Court accepted legal questions involving abortion, gay marriage, gun control or campaign finance to cite some examples, have resulted in massive political consequences. Fundamentally standing and political question are two sides of the same coin. In standing the Court faces the question of whether an individual party has a right to modify public policy. In political question the Court decides whether it has the right to modify public policy. Quite frequently the answer is "yes." Thus the line of demarcation between questions before the Court being legal or political is hazy at best.

Like standing, the political question doctrine is a judicial creation intended to limit jurisdiction to that which the Court wishes to rule on rather than what it is empowered to address. Again the Constitution provides no such judicial discretion as the responsibility for Court jurisdiction rests with Congress under the "exceptions" and "regulations" clause and the First Amendment. A discussion of the wisdom of empowering a decidedly a political department whose decisions inevitably are based not on legal principles, but political consequences to regulate Court jurisdiction on political subject matters is beyond the scope of this discussion. The Constitution assigns that duty to Congress and Congress *is* a political body. Hence the question of Court jurisdiction in regards to standing and political questions is a political rather than a legal question. Nevertheless the view is not as bleak as might be supposed. Congress can only make *exceptions* to judicial power, not eliminate it. Thus if Congress fails to affirmatively address a specific area of political question the judiciary retains jurisdiction and can rule on its merits.

Some might argue this view of congressional oversight would deprive the judiciary of its legendary independence. Nothing in the Constitution assigns the court "independence." The task assigned the Court by the Constitution is to interpret the Constitution—*all cases and controversies arising under this Constitution*—not the "independence" to address only those portions of the Constitution the Court wants to address. The Constitution does not grant the court authority to create unconstitutional doctrines in order to justify not doing their assigned job. The text granting Congress authority of regulation and exception has existed since the creation of the Constitution; there is little evidence proving Congress has abused that power in any legislation it has passed. Hence the "independence" of the judiciary appears secure.

The political question doctrine deals with the principle of separation of powers. The Constitution assigns its various departments distinct power and duties based on the presumption these departments will execute these powers and duties as textually expressed in the Constitution. Thus, where the political department is given discretion in its power, it may use it accordingly. If the Constitution gives no discretion in an assigned constitutional duty, the department acts accordingly. The political question doctrine expresses the

Court's "hands off" policy dealing with this fundamental constitutional principle.

But what if the political department *does not obey* the law of the Constitution? What happens if and when the Constitution entirely assigns a constitutional duty to a specific department with specific instructions to execute that duty under a textually specified set of circumstances but that department ignores the direct constitutional text and instructions of the Constitution and thus refuses to execute this constitutional duty? Is this department thus immune from judicial review of such violation because the Court created political question doctrine prevents the courts from enforcing obedience to the Constitution if the Court feels such obedience involves an area the Court feels is not the business of the Court? Is it not the duty of every American to ensure the Constitution is obeyed? How does the Court justify such action as ultimately the effect of such policy means the Court grants departmental "independence" from the Constitution? Does the Court therefore possess the ultimate power to superimpose its doctrine over that of express constitutional text becoming a "runaway" convention altering the Constitution as it pleases?

Despite the laundry list in Baker the fact is the Constitution specifies "all" cases and controversies are subject to judicial review. But even if the reasoning of the Court in its doctrines despite all the flaws noted above is sound—that forcing obedience to all provisions of the Constitution by all departments was never intended to be the domain of the courts, such assertion is irrelevant.

The Founders did not put all their constitutional eggs in one basket. The duty of mandating all departments of the Constitution obey all constitutional text is textually assigned and reserved to the president under his "preserve" power in his oath of office located in Article II of the Constitution. The president, to the best of his ability, shall preserve the Constitution. The Constitution is the Supreme Law consisting of a series of textual statements intended to create a specific form of government. The task of the president therefore is to preserve that form of government created by those textual instructions. How can a specific textual instrument be preserved if the textual instructions creating it are not obeyed? Hence, the president is tasked with enforcing all provisions of the Constitution and ensuring they are obeyed as written. There is neither "political question" doctrine nor standing in the oath of office of the president nor is the president tasked with "interpretation" of the Constitution. The oath is categorical: the president shall preserve the Constitution to the best of his ability—period.

The Constitution mandates all federal officers including judges take an oath of office to support the Constitution, meaning they obey it. But the president is given the absolute authority to enforce that obedience. He cannot create doctrines, excuses and so forth to avoid this duty. Such acts would be contrary to the provision "preserve…to the best of my ability." At the minimum this

"ability" involves using powers textually assigned the president by the Constitution to ensure obedience to the Constitution. Refusal to use such powers to preserve the Constitution clearly repudiates his oath of office as such act would not be to the best of his ability. Therefore if the Court for whatever reason refuses to address an issue of governmental constitutional disobedience to direct constitutional text, the task of enforcement falls automatically on the president. Such is the case in the matter of calling an Article V Convention.

Having discussed standing and the political question doctrine in some detail, the examination of how these doctrines were applied in Coleman can now proceed. The "opinion of the Court" was the petitioners had standing. The Court used many pages in its opinion justifying this position. The Court said in summation:

> "Our authority to issue the writ of certiorari is challenged upon the ground that petitions have no standing to seek to have the judgment of the state court reviewed, and hence it is urged that the writ of certiorari should be dismissed. We are unable to accept that view. … Whether any or all of the questions thus raised and decided are deemed to be justiciable or political, they are exclusively federal questions and not state questions. … We find the cases cited in support of the contention, that petitioners lack an adequate interest to invoke our jurisdiction to review, to be in applicable. Here, the plaintiffs include twenty senators, whose votes against ratification have been overridden and virtually held for naught although if they are right in their contentions their votes would have been sufficient to defeat ratification. We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes. … In the light of this course of decisions, we find no departure from the principle in recognizing in the instant case that at least the twenty senators whose votes, if their contention were sustained, would have been sufficient to defeat the resolution ratifying the proposed constitutional amendment, have an interest in the controversy which, treated by the state court as a basis for entertaining and deciding the federal questions, is sufficient to give the Court jurisdiction to review that decision."

It should be noted immediately that despite the Court ruling the petitions had standing, the "opinion of the Court" either found against the petitioners or did not rule on their arguments leaving the lower court opinions ruling against them intact. The petitioners requested three actions by the Court which were:

> "[1]…compel the Secretary of the Senate to erase an endorsement on the resolution to the effect that it had been adopted by the Senate and to endorse thereon the words 'was not passed', and to restrain the officers of the Senate and House of Representatives [of

> the Kansas state legislature] signing the resolution and the Secretary of State of Kansas from authenticating it and delivering it to the Governor. [2] The petition challenged the right of the Lieutenant Governor to cast the deciding vote in the Senate. [3] The petition also set forth the prior rejection of the proposed amendment and alleged that in the period from June, 1924 to March, 1927, the amendment had been rejected by both houses of the legislatures of twenty-six states, and had been ratified in only five states, and that by reason of that rejection and the failure of ratification within a reasonable time the proposed amendment had lost its vitality." [Brackets inserted].

For the Court to rule on merits required the petitioners have standing and that least a majority of the Court (five justices) supported giving petitioners standing. The "opinion of the Court" granting standing to the petitioners was *directly* supported by only three justices—Hughes, Stone and Reed. Logically, therefore the remaining two votes necessary to support standing would come from those justices concurring the Court's opinion—Black, Douglas, Roberts and Frankfurter. But these justices explicitly declared the petitioners lacked standing. The only other possible support therefore had come from the two dissenting justices McReynolds and Butler who expressed they would reverse the decision of the Kansas Supreme Court and rule in favor of the petitioners.

By implication these were the votes the Court used to grant standing. Therefore the vote determining the petitioners had standing was apparently 5-4. But there is a problem. The dissenting opinion of justices Mc Reynolds and Butler did not state the petitioners had standing. Instead the dissent dealt only with the merits of the arguments presented by the petitioners. It primarily discussed the "opinion of the Court" overturning Dillon as the ruling authority regarding the relationship between amendment proposal and ratification. Without an expressed declaration by these two justices in their dissent there is no clear cut evidence that five justices believed the petitioners had standing.

However the true position of the justices on the standing of the petitioners can be surmised by examining Black's comment at the beginning of his concurring opinion,

> "Although for reasons to be stated by Mr. Justice Frankfurter [that petitioners lacked standing], we believe this cause should be dismissed, the ruling of the Court just announced removes from the case the question of petitioners' standing to sue. Under the compulsion of that ruling, Mr. Justice Roberts, Mr. Justice Frankfurter, Mr. Justice Douglas and I have participated in the discussion of other questions considered by the Court and we concur in the result reached, but for somewhat different reasons." [Bracketed material inserted].

Justice Frankfurter's opening statement in his opinion was even more direct: "It is the view of Mr. Justice Roberts, Mr. Justice Black, Mr. Justice Douglas and myself that the petitions have no standing in this Court." As Justice Black referred to only four votes against standing it follows there had to be at least one other vote among the remaining justices who believed the petitioners lacked standing. Otherwise Black's statement makes no sense. If only four justices believed the petitioners lacked "standing to sue" that issue was moot as those justices believing petitioners laced standing *also lacked the necessary five votes required to deny petitioners standing*. Logically Justice Black would not raise the issue of standing if he believed the question was moot *unless he believed he had the votes to prevail on a question of standing*. This means at least five justices opposed standing. Justice Black's statement also makes it clear the Court determined the merits of the case *without standing being considered* despite the numerous pages of the "opinion of the Court" being devoted to that subject. The only possible conclusion based on Justice Black's statement *is there were at least five justices on the Court who believed the petitioners lacked standing*.

The dissenting justices McReynolds and Butler can be eliminated. To achieve their position of reversal of the ruling of the state court obviously meant they believed the petitioners had standing (even though they did not state this in their dissent) because this was what the petitioners requested the Supreme Court rule. This leaves the three justices comprising the "opinion of the Court" group who ruled against the petitioners on merits but declared, at least for the purposes of publication, that petitioners had standing. Nevertheless Justice Black's statement indicates the Court did not address the question of standing and if it had sufficient votes existed to deny petitioners standing. Therefore merits were placed ahead of standing meaning the Court believed it lacked jurisdiction but ruled anyway. The only logical conclusion is members of the Court granted standing not because they believed the petitioners had standing but because they, the members of the Court, wanted to present material that a denial of standing would have precluded.

The Court stated various reasons to rule against each of the petitioners' requests and arguments. Thus the Court ruled on the merits of case *but chose to ignore the fact that a majority of justices (at least five and more likely seven believed the petitioners lacked standing)*. According to Court doctrine determination of standing is obligatory on the Court because it is derived from the Constitution. As such it cannot be ignored. If a majority of the justices believed the petitioners lacked standing judicial ethics as well as their oath of office to support the Constitution demanded they to declare the petitioners lacked standing and consequently not rule on the merits of the case. To ignore standing would, by the terms of their own doctrine, violate the Constitution. Yet this appears to be exactly what the Court did.

How is this explained? The answer is obvious. The Court choose to ignore its own doctrine of standing in order to rule on the merits of the case means the Court, despite its statements of establishment of jurisdiction being necessary prior to ruling on merits, the Court proved in Coleman the "doctrine" of standing is *optional* not obligatory and therefore not a "doctrine" but a judicial contrivance.

Why was this done? If the Court bound itself to the doctrine of standing it would have had no choice but to dismiss the case for want of jurisdiction or more likely refuse certiorari in the first place and proceed no further. Obviously the Court wanted to convey a specific interpretation or position which it could only express by ruling on merits of the case. A dismissal for "want of standing" only allowed the Court to address the reasons for dismissal and therefore afforded it no opportunity to proceed further. However if the Court *ignored* standing and ruled on merits then it could put anything in that portion of the ruling it chose.

Why the Court did what it did first requires an examination of what the Court wished to convey so fervently that it ignored its own doctrine to do so. The matter is obvious. The Court was so intent on presenting matter it discussed it twice, once in the Court opinion and again in the concurring opinion. As will be shown, the Court discussed and ruled on the issue of the constitutional power of Congress, the amendment process and the political question doctrine *without the matter ever being brought up by any party to the suit.* The Court opinion stated:

> "The state court adopted the view expressed by text-writers that a state legislature which has rejected an amendment proposed by the Congress may later ratify. [The Court footnoted Jameson on Constitutional Conventions, Secs 576-581; Willoughby on the Constitution, Sec. 329a.] The argument in support of that view is that Article V says nothing of rejection but speaks only of ratification and provides that a proposed amendment shall be valid as part of the Constitution when ratified by three-fourths of the States; that the power to ratify is thus conferred upon the State by the Constitution and, as a ratifying power, persists despite a previous rejection.
>
> The opposing view proceeds on an assumption that if ratification by 'Conventions' were prescribed by the Congress, a convention could not reject and, having adjourned sine die, be reassembled and ratify. It is also premised, in accordance with views expressed by text-writers, that ratification if once given cannot afterwards be rescinded and the amendment rejected, and it is urged that the same effect in the exhaustion of the State's power to act should be ascribed to rejection; that a State can act 'but once, either by

convention or through its legislature'. [The Court footnoted James, op.cit., Secs. 582-584; Willoughby, op.cit., Sec. 329a; Ames, 'Proposed Amendments to the Constitution', House Doc. No. 353, Pt. 2, 54th Cong., 2nd Sess., pp.229, 300.]

Historic instances are cited [referring to historic references cited in Jameson, Willoughby etc. al.] In 1865, the Thirteen Amendment was rejected by the legislature of New Jersey which subsequently ratified it, but the question did not become important as ratification by the requisite number of States had already been proclaimed. The question did arise in connection with the adoption of the Fourteenth Amendment. The legislatures of Georgia, North Carolina and South Carolina had rejected the amendment in November and December, 1866. New governments were erected in those States (and in others) under the direction of Congress. The new legislatures ratified the amendment, that of North Carolina on July 4, 1868, that of South Carolina on July 9, 1868, and that of Georgia on July 21, 1868. Ohio and New Jersey first ratified and then passed resolutions withdrawing their consent. As there were then thirty-seven States, twenty-eight were needed to constitute the requisite three-fourths.

On July 9, 1868, the Congress adopted a resolution requesting the Secretary of State to communicate 'a list of States of the Union whose legislatures have ratified the fourteenth article of amendment', and in Secretary Seward's report attention was called to the action of Ohio and New Jersey. On July 20th Secretary Seward issued a proclamation reciting the ratification by twenty-eight States, including North Carolina, South Carolina, Ohio and New Jersey, and stating that it appeared that Ohio and New Jersey had since passed resolutions withdrawing their consent and that 'it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid and therefore ineffectual'. The Secretary certified that if the ratifying resolutions of Ohio and New Jersey were still in full force and effect, notwithstanding the attempted withdraw, the amendment had become a part of the Constitution.

On the following day the Congress adopted a concurrent resolution which, reciting that three-fourths of the States having ratified (the list including North Carolina, South Carolina, Ohio and New Jersey), declared the Fourteen Amendment to be a part of the Constitution and that it should be duly promulgated as such by the Secretary of State. Accordingly, Secretary Seward, on July 28th, issued his proclamation embracing the States mentioned in the

congressional resolution and adding Georgia. [Paragraphs and other notes inserted for reading clarity].

Thus the political departments of the Government dealt with the effect both of previous rejection and of attempted withdrawal and determined that both were ineffectual in the presence of an actual ratification. While there were special circumstances, because of the action of the Congress in relation to the governments of the rejecting States (North Carolina, South Carolina and Georgia), these circumstances were not recited in proclaiming ratification and the previous action taken in these States was set forth in the proclamation as actual previous rejections by the respective legislatures. This decision by the political departments of the Government as to the validity of the adoption of the Fourteenth Amendment has been accepted.

We think that in accordance with this historic precedent the question of the efficacy of ratifications by state legislatures, in the light of previous rejection or attempted withdrawal, should be regarded as a political question pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the amendment."

The concurring opinion of justices Black, Frankfurter, Douglas and Roberts went even further than the Court opinion:

"Under the compulsion of that ruling, Mr. Justice ROBERTS Mr. Justice FRANKFURTER, Mr. Justice DOUGLAS and I have participated in the discussion of other questions considered by the Court and we concur in the result reached, but for somewhat different reasons.

"The Constitution grants Congress exclusive power to control submission of constitutional amendments. Final determination by Congress that ratification by three-fourths of the States has taken place 'is conclusive upon the courts.' In the exercise of that power, Congress, of course, is governed by the Constitution. However, whether submission, intervening procedure or Congressional determination of ratification conforms to the commands of the Constitution, call for decisions by a 'political department' of questions of a type which this Court has frequently designated 'political.' And decision of a 'political question' by the 'political department' to which the Constitution has committed it 'conclusively binds the judges, as well as all other officers, citizens, and subjects of ... government.' Proclamation under authority of

Congress that an amendment has been ratified will carry with it a solemn insurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation. To the extent that the Court's opinion in the present case even impliedly assumes a power to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments, we are unable to agree.

The State court below assumed jurisdiction to determine whether the proper procedure is being followed between submission and final adoption. However, it is apparent that judicial review of or pronouncements upon a supposed limitation of a 'reasonable time' within which Congress may accept ratification; as to whether duly authorized State officials have proceeded properly in ratifying or voting for ratification; or whether a State may reverse its action once taken upon a proposed amendment; and kindred questions, are all consistent only with an ultimate control over the amending process in the courts. And this must inevitably embarrass the course of amendment by subjecting to judicial interference matters that we believe were intrusted by the Constitution solely to the political branch of government.'

The Court here treats the amending process of the Constitution in some respects as subject to judicial construction, in others as subject to the final authority of the Congress. There is no disapproval of the conclusion arrived at in Dillon v. Gloss, that the Constitution impliedly requires that a properly submitted amendment must die unless ratified within a 'reasonable time.' Nor does the Court now disapprove its prior assumption of power to make such a pronouncement. And it is not made clear that only Congress has constitutional power to determine if there is any such implication in Article V of the Constitution. On the other hand, the Court's opinion declares that Congress has the exclusive power to decide the 'political questions' of whether a State whose legislature has once acted upon a proposed amendment may subsequently reverse its position, and whether, in the circumstances of such a case as this, an amendment is dead because an 'unreasonable' time has elapsed. Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. The process itself is 'political' in its entirety, from submission until an amendment becomes part of the Constitution,

> and is not subject to judicial guidance, control or interference at any point.
>
> Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress, and insofar as Dillon v. Gloss, supra, attempts judicially to impose a limitation upon the right of Congress to determine final adoption of an amendment, it should be disapproved. If Congressional determination that an amendment has been completed and become a part of the Constitution is final and removed from examination by the courts, as the Court's present opinion recognizes, surely the steps leading to that condition must be subject to the scrutiny, control and appraisal of none save the Congress, the body having exclusive power to make that final determination.
>
> Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon that exclusive power by this Court or by the Kansas courts. Neither State nor Federal courts can review that power. Therefore, any judicial expression amounting to more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority."

The dissenting opinion of Justices Butler and McReynolds disagreed with both the court opinion and the concurring opinion. Justice Butler based his dissent on Dillon which he summed by stating,

> "We definitely held that Article V impliedly requires amendments submitted to be ratified within a reasonable time after proposals; that Congress may fix a reasonable time for ratification, and that the period of seven years fixed by the Congress was reasonable." [The justice then quoted a major portion of Dillon concluding], "Upon the reasoning of our opinion in that case, I would hold that more than a reasonable time had elapsed [Justice Butler cited the year by year chronology of the ratification of the proposed Child Labor Amendment] and that the judgment of the Kansas supreme court should be reversed."

Justice Butler concluded his dissent by noting a remarkable fact about the Court's decision to remove itself from ruling on questions involving the amendment process by use of the political question doctrine stating:

> "The point, that the questions-whether more than a reasonable time had elapsed-is not justiciable but one for Congress after attempted ratification by the requisite number of States, was not raised by the parties or by the United States appearing as amicus curiae; it was not suggested by us when ordering reargument. As the Court, in the Dillon case, did directly decide upon the reasonableness of the seven years fixed by the Congress, it ought not now, without hearing argument upon the point, hold itself to lack power to decide whether more than 13 years between proposed by Congress and attempted ratification by Kansas is reasonable." [Emphasis added].

The Court was fully aware of the requirements of litigation that a Court ruling should be based on the evidence and arguments presented before it and the Court is required to rule on that evidence and arguments, not evidence or arguments it contrives. Justice Frankfurter discussed this issue in his Coleman opinion saying,

> "In endowing this Court with 'judicial Power' the Constitution presupposed an historic content for that phrase and relied on assumption by the judiciary of authority only over issues which are appropriate for disposition by judges. ... Both by what they said and by what they implied, the framers of the Judiciary Article gave merely the outlines of what were to them the familiar operations of the English judicial system and its manifestations on this side of the ocean before the Union. Judicial power could come into play only in matters that were the traditional concern of the courts at Westminster and only if they arose in ways that to the expert feel of lawyers constituted "Cases" or "Controversies." It was not for courts to meddle with matters that require no subtlety to be identified as political issues. And even as to the kinds of questions which were the staple of judicial business, it was not for courts to pass upon them as abstract, intellectual problems but only if a concrete, living contest between adversaries called for the arbitrament of law. .... It is not our function, and it is beyond our power, to write legal essays or to give legal opinions, however solemnly requested and however great the national emergency. See the correspondence between Secretary of State Jefferson and Chief Justice Jay, 3 Johnson, Correspondence and Public Papers of John Jay, 486-89. Unlike the role allowed to judges in a few state courts and to the Supreme Court of Canada, our exclusive business is litigation. The requisites of litigation are not satisfied when questions of constitutionally though conveyed through the outward forms of a conventional court proceeding do not bear special relation to a particular litigant. The scope and consequences of our doctrine of judicial review over executive and

> legislative action should make us observe fastidiously the bounds of the litigious process within which awe are confined. No matter how seriously infringement of the Constitution may be called into questions, this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate, apart from a political concern which belongs to us all." [Emphasis added].

Frankfurter's last comment referred to Fairchild v. Hughes, 258 U.S. 126 (1922) which states, "Plaintiff has only the right, possessed by every citizen, to require that the government be administered according to law and that the public moneys be not wasted." [Emphasis added].

According to Justices Butler and McReynolds, who obviously were in a position to know, the remaining members of the Court imposed the above interpretation of the political question doctrine and the absolute control of the amendment process by Congress *without benefit of evidence or argument presented to it as no party connected with the Coleman lawsuit ever raised the issue either in evidence or argument.*

Despite Justice Frankfurter's pronouncement the Court's business was solely "litigation," the fact remains the conclusions of the Court in regards to the political question doctrine vis-à-vis the amendment process and the power of Congress was done entirely in violation of this fundamental principle of litigation. That principle is any issue presented to a court of law must either be raised as an issue in the subject of a lawsuit, contested as a matter of law or prosecuted or defended by pleadings, evidence or argument in that court of law. In short the matter must *be* litigated. The Court's ruling on the political question doctrine in Coleman *as stated by two eye witnesses was not raised by any litigant at any time by any means during the entire proceeding and therefore was never litigated.* If the Court's position that it can only deal with litigation is true then this *clearly* precludes the Court from making conclusions in its ruling not derived from litigation in form of evidence or argument.

In sum the Court's determination granted *carte-blanche* control of the amendatory process to Congress. It should be noted immediately the Court did not address the consequences of Congress exercising such control where such acts are contradicted by *direct constitutional text.* The Court did note, briefly, Congress "in the exercise of that power,… is governed by the Constitution." But the overwhelming remainder of the text (and the failure of the Court to describe what the word "governed" means) leads to the conclusion the Court intended "absolute" control by Congress. Such a position is an oxymoron. Constitutional text does not grant absolute control; Coleman states Congress possesses it.

The common factor of all amendment process cases adjudicated before the Supreme Court is the desire by the plaintiffs to thwart the amendatory process

by one means or another so as to prevent a proposed amendment becoming part of the Constitution. In all such cases the Supreme Court has refused these requests. The Court either raised the issue of political question or refuted the proposition on other constitutional grounds. In Coleman, the Court ignored its own precedents and granted Congress free reign under the political question doctrine to control the entire amendatory process *despite direct constitutional text to the contrary*.

The Court justified this decision primarily on the basis of the "special circumstances" of several southern states immediately following the Civil War. These "special circumstances" were that Congress, following the Civil War had transformed the states in military districts rather than sovereign states. The Reconstruction Act of 1867 was unequivocal, "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States [all states of the confederacy were listed earlier] shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed…"

The purpose of this discussion is neither to explore of the propriety of the Civil War nor of the events which followed. However as the "special circumstances" the Court referred to have a direct bearing on the calling of a convention, and as the purpose of this discussion is to discuss in some detail all of the relevant Supreme Court rulings relating to the amendatory process an examination of Coleman's political question doctrine as it relates to the amendment process clearly is in order. Consequently the fact that following the Civil War for a period of years several states were transformed into military districts and during this time period these districts were presented a question of ratification of a proposed amendment[s] to the Constitution is relevant to this discussion.

The following facts are irrefutable. Coleman was decided by the Supreme Court in 1939, not in 1866-1870 during the Reconstruction era. In 1939 there was no rebellion by any state in the union. Hence there was no "special circumstance" in existence. Under the terms of Article V ratification of any proposed amendment to the Constitutions is performed only by the states whether by state legislature or state convention. Military districts are not authorized under the Constitution to ratify a proposed amendment. If, as the Reconstruction Act states, the offending states were military districts instead of sovereign states, this means they were not authorized to ratify (or refuse to ratify) a proposed amendment. Under these circumstances therefore the question of ratification of a proposed amendment should never have been presented to them in the first place either legislatively or by any other means.

There is no requirement in Article V that mandates states *must* ratify a proposed amendment meaning states retain the sovereign right to refuse to ratify a proposed amendment. Under no circumstances then, even in a state of rebellion, can a ratification vote by a state against a proposed amendment be

considered an act of rebellion as the state under all circumstances retains the right to refuse to ratify a proposed amendment *unless that state is no longer sovereign in which case it ceases to have the authority to ratify an amendment in the first place*. The Reconstruction Act legislatively dictated the states subject to that act *must ratify a proposed amendment*. Thus, in Coleman without the matter even being litigated before it and without any justification of present circumstances requiring such action, the Supreme Court, sanctioned under the guise of the political question doctrine the right of Congress to legislatively dictate the ratification vote of the states and thus pre-determine the ratification outcome. As the Court *expressly assigned this power only to Congress it automatically denied such power to the convention*.

Moreover as noted by the Court decision this dictatorial legislative power was not limited just to the southern states where three states voted to reject the proposed 14th Amendment. Congress also ignored the actions of two northern states Ohio and New Jersey who had first ratified then retracted their ratification of the then proposed 14th Amendment. The governments of the southern states were then replaced under military command and the new state governments "voted" to accept the 14th Amendment. While the Reconstruction Act was vetoed by President Andrew Johnson, his veto was overridden by Congress. Therefore military authority, that is command of the military, came from Congress and not the president as commander in chief. For all intents and purposes, Congress usurped the president as command in chief and imposed a ratification vote on the states by legislative decree later sanctioned by the Supreme Court in 1939.

On its face, it would appear the Court had answered the question rescission of ratification and--some would argue--the question of convention applications completely in the hands of Congress to decide at its discretion with its Coleman ruling. The problem is Article V doesn't grant Congress any discretion and the Court emphatically stated this fact in Sprague. As with state applications for a convention, the language is absolute. Upon ratification by three-fourths of the states, a proposed amendment becomes part of the Constitution. There is no language indicating Congress "controls" the process. The historic record is clear: the Founders declared a convention call peremptory; Congress has no discretion in the calling of a convention to propose amendments.

Most importantly, is the "resolution" the Court touted as the basis for its decision in Coleman. Obviously, a decision based on an event can be no more conclusive than the event itself which in the case of Coleman was the ratification of the 14th Amendment.

In the ratification of the 14th Amendment, Congress allowed that *rescissions by two northern states that had previously voted in favor of ratification of the 14th Amendment were invalid, while simultaneously holding three southern states which voted against ratification of the 14th Amendment, then rescinded that vote*

in order to vote in favor of ratification (after their state legislatures were militarily removed by order of Congress), were valid. Thus, in the north, Congress ruled the states *could not* recess their ratifications after the state had voted, but in the south, the Congress held the states *could* recess their ratification vote after the state had voted.

The political decision of Congress therefore was the states could *and* could not recess their ratification vote. In sum, the Court sanctioned that regardless of the circumstances of how a vote favoring ratification was arrived once a state so stipulated, under no circumstances could it withdraw or change that decision. The problem is no such authority is granted Congress in the Constitution and as discussed earlier, certainly no legislative authority is granted to Congress to compel any state under any circumstance to vote a certain way regarding the proposal of an amendment. Still, Coleman states Congress is "governed" by the Constitution. Yet the Court sanctioned the act of Congress legislatively dictating the outcome of a ratification vote by the states in Coleman. The question, in light of previous Court rulings clearly contrary of the Coleman conclusion as well as the absence of constitutional text supporting Coleman together with fact the Court did not cite case law to support its conclusions lead to the question of whether the states ratified the 14th Amendment or did Congress?

As previously discussed Congress chooses the "mode" of ratification for a proposed amendment, ratification either by state legislature or state convention. The Constitution does not describe a third mode—total control by the Congress with use of military force to replace state legislatures if they disagree with a proposed amendment from Congress. The question of another "mode" of ratification clearly relates to the convention. If Congress is empowered to legislatively dictate states *shall* ratify a congressionally proposed amendment does this also mean Congress can legislatively decree states *shall not* ratify a proposed amendment originated from an Article V Convention?

As if the situation were not already muddled, the concurring opinion written by Justice Black exasperated the situation even more by extending the doctrine enunciated by Chief Justice Hughes in his "Court opinion" even further than contemplated in the "opinion of the Court." However the concurring opinion justifies the Court's heretofore inexplicable action of granting Congress powers far beyond those specified in the Constitution to the point of tyranny yet simultaneously stating Congress is "governed" by the Constitution while failing to emphatically state (with five clearly defined votes) the petitioners in the case had standing. Coleman is an advisory opinion.

The concurring opinion mutates a simple ministerial duty of counting ratification votes from the states into dictatorial control of the entire

amendment process. Proof of this assertion is in the text of the concurring opinion which states,

> "Such division between the political and judicial branches of the government is made by Article V which grants power over the amending of the Constitution to Congress alone. Undivided control of that process has been given by the Article exclusively and completely to Congress. … Since Congress has sole and complete control over the amending process, subject to no judicial review, the views of any court upon this process cannot be binding upon Congress… Congress, possessing exclusive power over the amending process, cannot be bound by and is under no duty to accept the pronouncements upon the exclusive power by this Court or by the Kansas courts. Neither State nor Federal courts can review that power. Therefore, any judicial expression amounting more than mere acknowledgment of exclusive Congressional power over the political process of amendment is a mere admonition to the Congress in the nature of an advisory opinion, given wholly without constitutional authority."

The text of the Constitution refutes the Court—"A mere reading demonstrates that this is true." Both the people in their roll of elective approbation (as the Court notes repeatedly in prior decisions) and the states play central roles in the amendment process. Hence the "control" of the process is separated, not unified to the point of tyranny.

On what basis can the Court assert "exclusive" control by Congress? Unlike the "standard" Court ruling, the Court does not rely on prior caselaw for substantiation. Instead it relies exclusively on historic record of "special circumstance." Moreover, the foundation of consenting justices permitting the "Court opinion," standing—requires obtuse inference to determine. Three "Court opinion" justices favor standing, four concurring justices do not. Hence, for the Court to support standing in order to rule on merit that support must derived from the two dissenting justices—yet no such statement is found in their opinion nor does the "Court opinion" mention their support. Thus the obtuse—presuming as the two justices favor the petitioners they naturally support their standing giving a 5-4 position on standing. But this presumption presents a problem.

In order for a "Court opinion" to exist, that is an opinion by at least five justices, the "Court opinion" and "concurring opinion" of Black must be construed as being combined into a single ruling. Hence, all reasons given in both opinions must be considered as the majority 7-2 decision of the Court. The problem is if this principle of concurrence applies then the dissenting opinion directly opposing the "Court opinion" must also be combined with the "Court opinion" *as it is required to provide the standing necessary to give the*

Court jurisdiction to rule on the merits and thus determine Congress has exclusive control of the amendment process. The problem is if the dissenting opinion is combined with the "Court opinion" the Court opinion is nullified by the dissenting opinion thus defeating the entire proposition. Simply stated *there is no way to reconcile the requirements of standing being satisfied so as to permit jurisdiction prior to a ruling on merits as the Court has countless times before and since stated given the statements of the Court justices, particularly in the Black concurring opinion and the dissenting opinion*. The only possible conclusion is Coleman, despite numerous pages describing a basis of standing, *is a ruling in which the justices* (or at least seven of them) believed standing was not required to present their opinion fiving Congress "exclusive" control of the amendment process. The Constitution disagrees. On what basis is this discrepancy reconciled?

Setting aside the quandary of standing other evidence in Coleman indicate a unique class of ruling created by the Court where everything presented simply doesn't make sense but nevertheless the Court feels comfortable in making its ruling. Proof of this premise is basic logic: if the Court believed its statements were wrong, why on earth would it then make them? For example, Chief Justice Hughes brushes aside the matter of the participation of the lieutenant governor's role in the case and states the Court cannot rule on the question. He states, without explanation, the Court is "equally divided" on the question. The justice fails to explain how a nine member Court with all members participating can be "equally divided" on anything.

There three possibilities: (1) the Court was urging overthrow of our form of government by creation of an oligarchy (2) Coleman is an unconstitutional ruling as it was arrived by unconstitutional means or (3) the Court issued a ruling in which standing was not a requirement because it believed the ruling required none.

Possibility (1) can be dispensed with immediately. While the words and phrases used by the Court such as "Undivided control of that process has been given by the Article exclusively and completely to Congress. … Since Congress has sole and complete control over the amending process, … Congress, possessing exclusive power over the amending process,…" may suggest creation of an oligarchy as opposed to our current form of government in which the people are sovereign, nowhere in Coleman does the Court affirmatively state Congress *should* or *can* assume such power as described. The Court merely cites a historical circumstance where Congress *did* assume such power under "special circumstances." In contrast to the Civil War era, such assumption of power by Congress, today, is a violation of federal criminal laws as no such "special circumstances" exist.

For example, Section 8 (a) (4) of Executive Order 10450 (dealing with oath of office by all government officials) states (in part):

> "The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following: … Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means." [Emphasis added].

Obviously if members of Congress alter the form of the government of the United States by unconstitutional means—meaning altering the form of government by any other means other than by affirmative use of the amendment process—it clearly constitutes a clear criminal violation on the part of the offending parties. Equally clear is affirmative use of the amendment process cannot be construed so as to grant "exclusive control" of the process to Congress—hence whatever the text of Article V states, Congress must do. Moreover the Court stated in Coleman, (however briefly) that Congress must obey the Constitution in the amendment process. Therefore the finding that Congress "exclusively controls" the process and the text of the Constitution clearly are at odds.

Similar criminal laws to the above cited existed at the time of Coleman which prohibited members of the government from attempting to overthrow or unconstitutionally alter our form of government. The Court makes no provision in Coleman that exempts Congress from the effect of such laws. Clearly, given the massive changes necessary to alter our form of government, it would be incumbent on the Court to provide immunity from prosecution by those opposing such an act if the Court actually intended Congress *have sole and complete control of the amendment process*. As the Court did not grant such immunity, then obviously it did not intend to establish an oligarchy in place of our republican form of government.

Possibility (2) that Coleman is an unconstitutional ruling as it was arrived at by unconstitutional means presents a quandary. Over the years the Court has assumed the role of determining what is and what is not constitutional. Within that sphere it must be assumed the Court, like the King in colonial times, can do no wrong. Otherwise the entire concept of the Court having unique constitutional determination fails as the admission of this error implies an outside party capable of (1) such determination and (2) a constitutional authority to correct such error. Thus if the Court issues a ruling, it is presumed that ruling is arrived at by constitutional means used by the Court during its deliberations.

The quandary lies in the fact Coleman does not fit this profile. Like two mismatched jigsaw pieces, the requirements of standing and merit, both defined by Court doctrine, simply don't mesh. Either the requirements of standing are not satisfied as there is no clear cut establishment of consent by the necessary five justices or the ruling on merits is compromised in order to achieve the necessary pentamerous set of justices required for standing. If the Court postulated premises of both political question and standing are absolutely true, that is to say, true in all circumstances then in the case of Coleman standing must exist *prior to assumption by the Court of jurisdiction to rule on merits*. But Coleman lacks conclusive textual proof that such circumstance is actually achieved.

Indeed there is textual evidence to the contrary. Therefore despite pages of text in Coleman devoted to *justifying standing* in "the Court opinion" consisting of three justices, the fact remains there is no textual proof where five justices actually stated the petitioners had the necessary standing to grant the Court jurisdiction to rule on merits. Indeed the opposite is true—justices went out of their way to state petitioners *didn't* have standing. This being the case, the only possible conclusion is the Court dispensed with its own supposed constitutionally mandated doctrine and ruled on the merits of the case anyway.

As a definitive statement that can be attributed to five justices in regards to the standing of the petitioners cannot be found in Coleman, logically it is not a constitutional ruling as the basis for its determination is unconstitutional. However unless actually implemented the methodology of determination is irrelevant. Violation of federal criminal law requires *an action by person or persons* not an analysis of a historic Court ruling in order to be applied. Thus unless the Court affirmatively uses Coleman to actually advance its proposition of total congressional control of the amendment process or members of Congress attempt such action by disobedience of the amendment process, Coleman cannot be considered unconstitutional. When such acts do occur then, as noted, those members of the Court (and government) would run afoul of federal criminal laws. Therefore the methodology used by the Court to arrive at the Coleman decision is immaterial. It is the effect of Coleman that matters, not whether the Court obeyed its own rules.

This leaves possibility (3)—the Court issued a ruling in which standing was not a requirement because it believed the ruling required none. If so, the Court placed the amendment process in a particular (ad hoc) class of lawsuit where standing is not required. Fortunately the text of Coleman provides the answers to possibility (3). As noted the Court is ambivalent in its ruling. The Court states Congress can use military force to achieve a ratification vote by state legislatures and can issue clearly contradictory conclusions as to ratification results, i.e., yes you can rescind to some states (the south), no you can't

rescind to other states—the north. Then there is the question of how nine justices can be "evenly divided" on a question presented to them.

The answer is found in Justice Black's concurring opinion which states an opinion of the Court in regards to the amendment process is an advisory opinion "given wholly without constitutional authority." There is no requirement of standing to sue in an advisory opinion. Unlike ordinary litigation (such as the kind Justice Frankfurter addressed in his dissent) which involves one party suing another over a legal issue, in an advisory opinion *no one is actually sued*. True, in form Coleman resembled every other Court ruling issued by the Supreme Court. However in substance it was clearly different. For the Court's opinion to be a "Court opinion" required the consent of at least five justices. Seven justices—Hughes, Stone, Reed, Black, Roberts, Frankfurter and Douglas—provided that consent. However this required that both the "opinion of the Court" *and* the concurring opinion be combined to form the "opinion of the Court" in Coleman. The concurring opinion (and therefore the morphed "opinion of the Court") clearly states any opinion by the Court is an advisory opinion given "wholly without constitutional authority."

This neatly explains why neither the Court opinion nor the concurring opinion cited a single previous Supreme Court ruling to enforce its conclusions. It also explains why the Court, in granting its "absolute control" doctrine to Congress did not feel obligated to address the obvious conflicts raised with other Court rulings such as Hollingsworth, Sprague and so forth. As previously discussed in order for Congress to legislatively control the amendment process requires the consent of the president. Yet the Court appears to simply ignore this constitutional requirement along with failing to explain how Congress can assume powers ordinarily reserved to the president as commander in chief by legislatively directing military action over the states.

As discussed, Coleman was issued by the Court in 1939, not 1865. Thus there were no "special circumstances" in existence at that time. The states were neither in a state of rebellion nor likely to be. Yet Coleman contrives that the "special circumstance" of the Civil War apply to Congress under *all circumstances at all times regardless of the present political state of the states*. This makes no sense unless the ruling is regarded as an advisory opinion as the Court was ruling on a factual state of political affairs regarding the states *that simply did not exist at the time of the ruling*.

The fact Coleman is an advisory opinion neatly explains the Court's rejection of the rules of standing and justifies the Court addressing the merits of the case when evidence suggests a majority of the justices believed the petitioners lacked standing. Such troublesome issues as jurisdiction do not plague an advisory opinion. The difference between an ordinary opinion and an advisory opinion is standing is optional in an advisory opinion as the Court is not called

upon to render an actual ruling meaning the authority to issue a ruling, the Court's jurisdiction, is not involved.

Another question is the effect of Coleman on the constitutionality of standing. Coleman allows the Court to ignore the mandates of the Constitution at its convenience meaning standing is not based on constitutional requirements but on the Court's contrivance. The only resolution of this issue which leaves standing "standing" as a constitutional doctrine is to accept Coleman placed the amendment process in a unique ad hoc class of lawsuit—the advisory opinion—where standing is not required. Thus Coleman is the greatest "ad hoc" version of standing ever contrived by the Court demonstrating the Court believes standing is not binding on the Court and can be therefore discarded as its discretion making the "doctrine" of standing meaningless.

What apparently was forgotten by the 1939 Supreme Court in its recommendation that Congress have "absolute control" of the amendment process and that such recommendation is given "wholly without constitutional authority" means the Court divorced itself not only from its authority given it by the Constitution to issue such a ruling *but from any constitutional immunity or privilege attached to the judiciary or Congress by the Constitution*. Thus Coleman was enacted by seven justices speaking as seven citizens rather than as seven federal justices. The term "wholly without constitutional authority" clearly was intended to include all the Constitution including immunity from any sanctions that might be imposed upon the Court or Congress based on laws derived from the Constitution which do not recognize the "absolute control" of Congress over the amendment process nor the authority of the Court to issue or enforce such a ruling. By its own stipulation, Coleman is an advisory opinion and therefore has neither force of law nor any constitutional effect on the amendment process meaning other Court rulings made prior to Coleman are the prevailing rule of law regarding the convention.