



# The Supreme Court's Latest Word on "Legislative Standing" and Lawsuits by Congressional Plaintiffs

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On June 17, 2019, the Supreme Court decided *Virginia House of Delegates v. Bethune-Hill*. The Supreme Court originally agreed to hear *Virginia House of Delegates* to determine whether a state legislative map constituted an unconstitutional [racial gerrymander](#). Instead of deciding that issue, the Court concluded that the Virginia House of Delegates lacked standing to appeal the case to the Supreme Court, issuing an opinion that could affect the ability of individual houses of Congress to participate in federal litigation going forward.

The facts of *Virginia House of Delegates* were discussed in more detail in a previous [CRS Legal Sidebar](#). In brief, the case arose out of a lawsuit challenging the 2011 state legislative map in Virginia as an unconstitutional racial gerrymander. In 2018, a federal district court determined that race was the dominant motivating factor in drawing eleven Virginia legislative districts, deeming them unconstitutional. Despite this adverse judgment, the Virginia Attorney General [declined](#) to appeal the ruling. The Virginia House of Delegates, one of two houses of the [Virginia General Assembly](#) (the legislative body of the Commonwealth of Virginia), which had previously intervened in the case, thus sought to appeal the case to the Supreme Court in the Virginia Attorney General's absence. After the Supreme Court agreed to hear the case, plaintiffs and the Virginia Attorney General filed a [motion](#) in the Supreme Court arguing that the Virginia House of Delegates lacked standing to bring the appeal, and seeking to dismiss the case.

In a 5-4 opinion by Justice Ruth Bader Ginsburg, the Supreme Court [granted](#) the motion and dismissed the House of Delegates' appeal. According to the Court, the House of Delegates lacked the requisite standing to maintain the appeal absent the participation of the Attorney General. In its opinion, the Court addressed several principles of legislative standing that may be relevant in other contexts, including in litigation involving the federal House of Representatives or the Senate.

This Sidebar provides an overview of the "legislative standing" doctrine, as it has been explained by the Supreme Court prior to *Virginia House of Delegates*, before discussing the Court's decision in *Virginia House of Delegates* itself. The Sidebar concludes by discussing how *Virginia House of Delegates* fits into

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the Court's prior jurisprudence and how it might affect future litigation involving the House of Representatives or the Senate.

## Overview of Legislative Standing

Whenever a party seeks to invoke the power of the federal courts, it must first show that its dispute belongs there. This overarching limitation on the courts arises out of [Article III](#) of the Constitution, which limits the federal courts to exercising their judicial power in “cases” and “controversies.” As part of that limitation, a party seeking to obtain relief from a federal court must show “standing”—that is, that [he has](#) a “personal stake in the outcome of the controversy as to warrant [the] invocation of federal-court jurisdiction and to justify exercise of the court’s remedial powers on his behalf.” Standing requires showing [three elements](#): (1) a concrete and particularized and actual or imminent injury-in-fact; (2) that is traceable to the allegedly unlawful actions of the opposing party; and (3) that is redressable by a favorable judicial decision. Intervenors seeking to appeal a decision that a primary party does not challenge must independently demonstrate [standing](#).

The standing doctrine applies to legislators and legislatures no less than private parties. However, a special body of case law has been developed that addresses the question of standing when the party is a legislator or legislative body seeking relief based on an injury in an official capacity. A CRS report that predates *Virginia House of Delegates* discusses this doctrine of [legislative standing](#) in greater detail.

The Supreme Court has considered legislative standing on a handful of occasions. Three cases form the backbone of this area of law. The first significant Supreme Court case to involve legislators filing a lawsuit challenging a governmental action was the 1939 case *Coleman v. Miller*. *Coleman* involved state Senators from Kansas who claimed that the Kansas Lieutenant Governor unlawfully cast the state’s tie-breaking vote to ratify the Child Labor Amendment to the U.S. Constitution. The Court [concluded](#) that the Senators had suffered an injury because they had a “plain, direct and adequate interest in maintaining the effectiveness of their votes.” In reaching that conclusion, the Court emphasized that if not for the unlawful act of which they complained, the Senators’ votes would have been “sufficient to defeat ratification,” and as such, their votes had been “held for naught” and “overridden.” This injury was sufficient to confer standing on the Senators.

*Coleman* went largely unexplored by the Supreme Court until the 1997 case *Raines v. Byrd*. In that case, Senator Robert Byrd and other Members of Congress who had voted against the Line Item Veto Act challenged its constitutionality. Like the Kansas Senators in *Coleman*, the Members of Congress argued that they had standing because the Line Item Veto Act [threatened](#) the “effectiveness” of their votes on budget matters, by giving the President new authority to “veto” line items in federal budgets. The Court disagreed. Writing on behalf of the Court, Chief Justice Rehnquist concluded that *Coleman* was [limited](#) to the proposition that “legislators whose votes would have been sufficient to defeat . . . a specific legislative Act have standing to sue . . . on the ground that their votes have been completely nullified.” By contrast, the *Raines* Court [concluded](#) that the plaintiffs had only alleged an “abstract dilution of institutional legislative power” that they, as individual legislators, had no power to assert.

The last Supreme Court case prior to *Virginia House of Delegates* to speak directly to this question of legislative standing was the 2015 case *Arizona State Legislature v. Arizona Independent Redistricting Commission*. There, the entire legislature of the State of Arizona sued to challenge the authority of an Independent Commission vested by popular initiative with the authority to draw the redistricting maps for Arizona’s congressional districts. The Arizona Legislature argued that this authority violated the Elections Clause of the Constitution. Unlike in *Raines*, the Court found the Arizona Legislature had standing. For the Court, the [key difference](#) between the Arizona Legislature and the plaintiffs in *Raines* was that the former was “an institutional plaintiff asserting an institutional injury [that had] commenced this action after authorizing votes in both of its chambers.” Furthermore, the Arizona Legislature was not alleging a

mere “dilution” of its power; the Arizona Legislature’s injury, [according to the Court](#), was similar to the injury in *Coleman* because the Commission’s authority “completely nullif[ied]” any vote of the legislature purporting to adopt a redistricting plan.

## The Decision in *Virginia House of Delegates v. Bethune-Hill*

*Virginia House of Delegates* expanded on the principles from the previous case law, and further specified what sorts of “legislative injuries” might give rise to Article III standing. The appellees and the Virginia Attorney General [argued in \*Virginia House of Delegates\*](#) that the House of Delegates had not suffered any concrete and particular injury as a result of the district court striking down the districting plan. In response, the House of Delegates made three arguments for standing. In an opinion by Justice Ginsburg for five justices, the Court rejected all three of these arguments.

First, the House of Delegates [argued](#) that it could proceed on behalf of the Commonwealth itself, in the stead of the Virginia Attorney General. The Court examined Virginia law and [concluded that](#) certain Virginia statutory provisions granted the Virginia Attorney General exclusive “[a]uthority and responsibility for representing the State’s interests in civil litigation.” Accordingly, the Court determined that the House of Delegates could not attempt to vindicate injuries to the Commonwealth generally. Second, the House of Delegates [asserted](#) that it had a concrete and particularized interest in its own composition, and the district court’s order threatened that interest by changing the way in which its members were elected. In response, the Court [reasoned](#) that a legislative chamber “as an institution” has no cognizable interest in the identity of its members. As the Court explained, because voters—rather than the House of Delegates itself—select the House’s members, changes to membership brought about by the voting public could not inflict an “injury” on the House of Delegates.

Finally, the House of Delegates [argued](#) that *Coleman* and *Arizona State Legislature* supported its standing because the district court, in striking down the redistricting scheme, threatened its power in drawing district lines, much like the Redistricting Commission’s authority had allegedly undermined the Arizona State Legislature’s interest in defending its exclusive authority under the Elections Clause. In rejecting this argument, Justice Ginsburg’s opinion distinguished *Arizona State Legislature* because there it was the entire legislature that had brought the suit. Here, by contrast, the House of Delegates stood alone, but the authority to draw district lines rested with *both* houses of the Virginia legislature. As the Court explained, “a single House of a bicameral legislature lacks capacity to assert interests belonging to the legislature as a whole.” [This perceived](#) “mismatch between the body seeking to litigate and the body to which the relevant constitutional provision allegedly assigned exclusive . . . authority” doomed the suit.

[Justice Alito dissented](#) and was joined by three other Justices. The main thrust of that dissent was that the House of Delegates had standing because it had an interest in the identity of its members. The way in which a legislature is selected, according to the dissenters, has a powerful effect on how it goes about its business. Because the House’s redistricting plan presumably “embodies the House’s judgment regarding the method of selecting members that best enables it to serve,” discarding that plan injured the House of Delegates. Lastly, the [dissent argued](#) that the fact that the Virginia Constitution gives the redistricting authority to the Virginia legislature as a whole should not have precluded the House from also suffering a concrete injury to its institutional interests when that authority was curtailed. Rather, both the upper and lower houses, as well as the legislature itself, should, in Justice Alito’s view, have been able to assert an injury to their institutional authority.

## *Virginia House of Delegates* and the Potential Impact for Congress

*Virginia House of Delegates* does not speak directly to when a federal house of Congress would have standing. The case concerns a purely intrastate dispute and involves the authority of the Virginia House of Delegates, which is governed by a different constitution than a house of Congress and may involve

different considerations in the standing inquiry. However, it may be possible to draw some broad principles from the case that could play a role in future litigation involving the House of Representatives or the Senate.

First, the Court's conclusion that a legislature has no justiciable interest in its membership may also apply in the federal context. A "representative body composed of members chosen by the people," according to the Court, has no interest in changes to its membership brought about by the voting public. Furthermore, as the Court explained, it did not matter that the Virginia House of Delegates might produce different legislation in the future as a result of these changes. By contrast, the Court [explained](#) an injury could lie when a change threatens the *manner* in which a legislature goes about its business, such as with a law that dictated legislative procedures, or leadership decisions. However, because the House of Delegates did not explain how the redrawn districts could affect the manner of its affairs, it could not demonstrate a cognizable injury. *Virginia House of Delegates* may therefore clarify that a house of Congress could bring suit in response to an action which affected its manner of doing business.

Second, and perhaps most importantly, the Court appeared to conclude that a single house could not assert an injury belonging to an entire legislature. It is evident that this could affect future or ongoing litigation involving a house of Congress. For example, in an ongoing lawsuit, the Department of Justice has recently cited *Virginia House of Delegates* for the proposition that the House of Representatives lacks standing to intervene in a criminal case to defend the constitutionality of a statute in place of the Executive. Similarly, on June 26, the [Fifth Circuit issued an order](#) requiring that the House of Representatives brief the question of standing as intervenors, in light of *Virginia House of Delegates*, in an appeal involving the constitutionality of the Affordable Care Act. At least one [lower court case](#), along with language in *Raines v. Byrd*, had previously suggested that the House and Senate might have an "equal" interest in certain constitutional powers, such as the appropriations power, which could give rise to standing for one body without the other. However, the Court's opinion in *Virginia House of Delegates* indicates that there may be some circumstances in which both the House and the Senate must participate in the litigation in order to vindicate interests possessed by Congress as a whole. The Court's opinion did suggest in a [footnote](#) that a statute granting a house of Congress a separate, independent interest could justify a single body participating on its own behalf, but there are many cases in which no such statute will be at issue.

Which circumstances permit one house of Congress to alone assert an institutional injury may be an important question for future litigation, particularly in litigation involving a single house and the executive branch. However, as the Court noted in *Arizona State Legislature*, "a suit between Congress and the President would raise separation-of-powers concerns absent here," and in such a case, an "especially rigorous" standing analysis would apply. *Virginia House of Delegates*, like *Arizona State Legislature*, did not involve these federal separation-of-powers concerns. These issues ultimately loom over many legislative standing cases at the federal level, in addition to the principles which can be drawn from the existing case law. Future litigation may shed more light on this area, as houses of Congress continue to take their grievances to federal courts.

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