***Standing of Members of Congress.***—The lower federal courts, principally the D.C. Circuit, developed a body of law governing the standing of Members of Congress, as Members, to bring court actions, usually to challenge actions of the executive branch.[471] When the Supreme Court finally addressed the issue on the merits in 1997, however, it severely curtailed Member standing.[472] All agree that a legislator "receives no special consideration in the standing inquiry,"[473] and that he, along with every other person attempting to invoke the aid of a federal court, must show "injury in fact" as a predicate to standing. What that injury in fact may consist of, however, is the basis of the controversy.

A suit by Members for an injunction against continued prosecution of the Indochina war was held maintainable on the theory that if the court found the President's actions to be beyond his constitutional authority, the holding would have a distinct and significant bearing upon the Members' duties to vote appropriations and other supportive legislation and to consider impeachment.[474] The breadth of this rationale was disapproved in subsequent cases. The leading decision, issued by the D.C. Circuit, is *Kennedy v. Sampson*,[475] in which a Member was held to have standing to contest the alleged improper use of a pocket veto to prevent from becoming law a bill the Senator had voted for. Thus, Congressmen were held to have a

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[471] Member standing has not fared well in other Circuits. Holtzman v. Schlesinger, 484 F.2d 1307 (2d Cir. 1973), *cert. denied*, 416 U.S. 936 (1974); Harrington v. Schlesinger, 528 F.2d 455 (4th Cir. 1975).

[472] Raines v. Byrd, 521 U.S. 811 (1997). In Coleman v. Miller, 307 U.S. 433, 438 (1939), the Court had recognized that legislators can in some instances suffer an injury in respect to the effectiveness of their votes that will confer standing. In Pressler v. Blumenthal, 434 U.S. 1028 (1978), *affg*, 428 F. Supp. 302 (D.D.C. 1976) (three-judge court), the Court affirmed a decision in which the lower court had found Member standing but had then decided against the Member on the merits. The "unexplicated affirmance" could have reflected disagreement with the lower court on standing or agreement with it on the merits. Note Justice Rehnquist's appended statement. Id. In Goldwater v. Carter, 444 U.S. 996 (1979), the Court vacated a decision, in which the lower Court had found Member standing, and directed dismissal, but none of the Justices who addressed the question of standing. The opportunity to consider Member standing was strongly pressed in Burke v. Barnes, 479 U.S. 361 (1987), but the expiration of the law in issue mooted the case.

[473] Reuss v. Balles, 584 F.2d 461, 466 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 997 (1978).

[474] Mitchell v. Laird, 488 F.2d 611 (D.C. Cir. 1973).

[475] 511 F.2d 430 (D.C. Cir. 1974). In Barnes v. Kline, 759 F.2d 21 (D.C. Cir. 1985), the court again found standing by Members challenging a pocket veto, but the Supreme Court dismissed the appeal as moot. *Sub nom.* Burke v. Barnes, 479 U.S. 361 (1987). Whether the injury was the nullification of the past vote on passage only or whether it was also the nullification of an opportunity to vote to override the veto has divided the Circuit, with the majority favoring the broader interpretation. Goldwater v. Carter, 617 F.2d 697, 702 n.12 (D.C. Cir. 1979), and id. at 711–12 (Judge Wright), *vacated and remanded with instructions to dismiss*, 444 U.S. 996 (1979)