several states was conclusive upon the courts,[73] it had treated these questions as justiciable, although it had uniformly rejected them on the merits. In that year, however, the whole subject was thrown into confusion by the inconclusive decision in *Coleman v. Miller*.[74] This case came up on a writ of *certiorari* to the Supreme Court of Kansas to review the denial of a writ of mandamus to compel the Secretary of the Kansas Senate to erase an endorsement on a resolution ratifying the proposed child labor amendment to the Constitution to the effect that it had been adopted by the Kansas Senate. The attempted ratification was assailed on three grounds: (1) that the amendment had been previously rejected by the state legislature; (2) that it was no longer open to ratification because an unreasonable period of time, thirteen years, had elapsed since its submission to the states, and (3) that the lieutenant governor had no right to cast the deciding vote in the Kansas Senate in favor of ratification.

Four opinions were written in the Supreme Court, no one of which commanded the support of more than four members of the Court. The majority ruled that the plaintiffs, members of the Kansas State Senate, had a sufficient interest in the controversy to give the federal courts jurisdiction to review the case. Without agreement on the grounds for their decision, a different majority affirmed the judgment of the Kansas court denying the relief sought. Four members who concurred in the result had voted to dismiss the writ on the ground that the amending process "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."[75] In an opinion reported as "the opinion of the Court," but in which it appears that only two Justices joined Chief Justice Hughes who wrote it, it was declared that the writ of mandamus was properly denied, because the question whether a reasonable time had elapsed since submission of the proposal was a nonjusticiable political question, the kinds of considerations enter-

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[73] Leser v. Garnett, 258 U.S. 130 (1922).

[74] 307 U.S. 433 (1939). *Cf.* Fairchild v. Hughes, 258 U.S. 126 (1922), in which the Court held that a private citizen could not sue in the federal courts to secure an indirect determination of the validity of a constitutional amendment about to be adopted.

[75] Coleman v. Miller, 307 U.S. 433, 456, 459 (1939) (Justices Black, Roberts, Frankfurter, and Douglas concurring). Because the four believed that the parties lacked standing to bring the action, id. at 456, 460 (Justice Frankfurter dissenting on this point, joined by the other three Justices), the further discussion of the applicability of the political question doctrine is, strictly speaking, dicta. Justice Stevens, then a circuit judge, also felt free to disregard the opinion because a majority of the Court in Coleman "refused to accept that position." Dyer v. Blair, 390 F. Supp. 1291, 1299–1300 (N.D.Ill. 1975) (three-judge court). *See also* Idaho v. Freeman, 529 F. Supp. 1107, 1125–26 (D. Idaho, 1981), vacated and remanded to dismiss, 459 U.S. 809 (1982).