IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES HOUSE OF REPRESENTATIVES, Plaintiff, v. SYLVIA MATHEWS BURWELL, in her official capacity as Secretary of the United States Department of Health and Human Services, et al., Defendants.	Case No. 14-cv-01967-RMC

PLAINTIFF'S NOTICE OF NEW AUTHORITY

Plaintiff United States House of Representatives respectfully advises that the Supreme Court yesterday issued an opinion in *Arizona State Legislature v. Arizona Independent Redistricting Commission*, 576 U.S. ____ (June 29, 2015), *available at* http://www.supremecourt.gov/opinions/14pdf/13-1314_kjfl.pdf, and copy attached. That case concerned the Arizona State Legislature's challenge to the constitutionality of a state redistricting commission established by ballot initiative. The opinion is relevant here because the Court determined that the State Legislature had Article III standing. *See* Slip Op. at 9-14.

The State Legislature asserted that it was injured because the redistricting commission "strip[ped] the Legislature of its alleged [constitutional] prerogative to initiate redistricting" under the Elections Clause, U.S. Const. art. I, § 4, cl. 1, and "completely nullif[ied]" its votes, Slip. Op. at 10, 14. The Court agreed that those allegations were sufficient to confer Article III standing on the State Legislature, *see id.* at 9-14, even though the Court concluded, on the merits, that the State Legislature did "not have the exclusive, constitutionally guarded role it assert[ed]," *id.* at 10.

In holding that the State Legislature had standing, the Court affirmatively relied on *Coleman v. Miller*, 307 U.S. 433 (1939):

> *Coleman*, as we later explained in *Raines*, stood "for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." 521 U.S. at 823. Our conclusion that the Arizona Legislature has standing fits that bill. Proposition 106, together with the Arizona Constitution's ban on efforts to undermine the purposes of an initiative, see *supra*, at 11, would "completely nullif[y]" any vote by the Legislature, now or "in the future," purporting to adopt a redistricting plan. *Raines*, 521 U. S., at 823–824.

Id. at 14 (footnotes omitted).

The Court rejected defendants' arguments – and the arguments of the Administration as amicus[1] – that the State Legislature suffered no cognizable injury and that any institutional claim of injury was too "speculative," "premature," "hypothetical," and "conjectural" to confer standing. *Id.* at 11. The Court particularly rejected defendants' and the Administration's reliance on *Raines v. Byrd*, 521 U.S. 811 (1997). *See* Slip Op. at 12-13 (emphasizing that State Legislature was an "institutional plaintiff asserting an institutional injury," and thus presented a "'different circumstanc[e]' . . . [that] was not *sub judice* in *Raines*," where "six *individual Members* of Congress," "[h]aving failed to prevail in their own Houses . . . could not repair to the Judiciary to complain" (emphasis in original)).

Finally, in dicta in a footnote to the nullification line of cases, the Court noted that the underlying controversy, which involved a state ballot initiative, "does not touch or concern the question whether Congress has standing to bring a suit against the President. There is no federal analogue to Arizona's initiative power, and a suit between Congress and the President would

[1] *See* Br. for the United States as Amicus Curiae . . ., *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, No. 13-1314, 2015 WL 309078 (S. Ct. Jan. 2015) ("Administration Amicus").

raise separation-of-powers concerns absent here." *Id.* at 14 n.12. The Court then repeated its long-standing position that its "standing analysis . . . has been 'especially rigorous when reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional'" *id.* (quoting *Raines*, 521 U.S. at 819-20), thereby rejecting the Administration's amicus position that Congress never can sue the Executive, *see* Administration Amicus at 9.

Please note that the House, on July 1, 2015, will file its Supplemental Memorandum in accordance with Court's June 16, 2015 Minute Order.

Respectfully submitted,

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June 30, 2015

CERTIFICATE OF SERVICE

I certify that on June 30, 2015, I electronically filed the foregoing Plaintiff's Notice of New Authority via the CM/ECF system for the United States District Court for the District of Columbia which, I understand, caused all registered parties to be served.

/s/ Sarah Clouse
Sarah Clouse