Nova Law Review

Volume 2, *Issue* 1 1978 *Article* 2

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Abstract

The power of judicial review of federal statutes in American constitutional history has the mystique of the Hammer of Thor. Striking a congressional act down as violative of the United States Constitution has attracted the interest of several generations of constitutional scholars.

KEYWORDS: supreme court, accelerating, curve

Judicial Review and the Supreme Court: An Accelerating Curve

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The power of judicial review of federal statutes in American constitutional history has the mystique of the Hammer of Thor. Striking a congressional act down as violative of the United States Constitution has attracted the interest of several generations of constitutional scholars. The Court, depending upon one's substantive views on the particular case at hand, is either seen as exercising a great power in defense of liberty—political or economic—or is perceived as a usurper of the powers of the political branches of government. Whatever the substantive events, great controversy and attention have been focused upon this relatively rarely exercised Court power.[1] The data presented here indicate that the United States Supreme Court and the present justices on that Court operate on the assumption that judicial review is not politically provocative nor in fact an extreme power. This view is one founded not upon the syllogisms of the justices, but upon their behavior patterns over the last 175 years (1801-1976). The discussion here is premised upon a literature (both in the legal and social science disciplines) that has been greatly concerned with the role of the Supreme Court in protecting oppressed minorities. Majorities have been identified as coterminous with the dominant groupings in the legislative and executive branches of government. Given the increased sense of alienation and distrust about the federal government present in the populace, one could legitimately question the accuracy of such an identification.[2] As a shorthand notation, legislative majorities can be equated with the popular majorities, but the fit is not always exact.

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1. Examples of such discussions include: L. LUSKY, BY WHAT RIGHT? (1975); A. BICKEL, THE LEAST DANGEROUS BRANCH (1962); P. KURLAND, POLITICS, THE CONSTITUTION, AND THE WARREN COURT (1970); and L. LEVY, JUDICIAL REVIEW AND THE SUPREME COURT (1967).

2. Abramson, *Generational Change and the Decline of Party Identification in America: 1952-1974*, 70 AM. POL. SCI. REV. 469 (1976).

Richard Funston's article, "*The Supreme Court and Critical Elections,*"[3] developed an elaborate argument about the Court's activities whenever it acted in what was termed an "antimajoritarian" context: *i.e.*, striking down a congressional statute. The issue examined was whether "[d]uring realignment phases or, as they might be called, critical periods . . . the tendency of the Court to declare federal legislation unconstitutional [was] significantly greater than during non-critical periods of stable party competition."[4] The realignments referred to by Funston and in this paper are the periods where significant and enduring shifts in party allegiance occurred in the political electorate. The results of these realignments could be either the destruction of an old political party, use of a new political party, or a change in the party's bases of support. For example, the present party era typified by Democratic Party dominance grew out of shifts in the late 1920's to early 1930's of the working-class votes from the Republican to the Democratic Party. The dramatic shift was best seen in the unionized ethnic Catholic segments of the electorate.[5] A period of transition occurred during each realignment when the old forces still controlled parts of the federal government. Therefore, the newly dominant political coalition might take between four and eight years to come to power. The analysis by Funston was an attempt to refute or to modify Robert Dahl's famous article which had strongly questioned the Supreme Court's willingness to defend minorities (oppressed or otherwise).[6]

In Funston's analysis, the Court was found to behave in a pattern suggestive of what might be termed a disequilibrium or lag model. That is: the Court as a whole and the individual justices active during a particular period of transition hold views that are out of touch with the new national political majority.[7] Through an inevitable process of attrition (retirements and death), the "old" justices are replaced by the new judicial incumbents whose views are more consonant with the power-holders in the executive and legislative branches. By the end of a four to eight year period, the Court (in effect) through membership change rejoins the dominant political coalition. Exceptions to this pattern occur

3. Funston, *The Supreme Court and Critical Elections,* 69 AM. POL. SCI. REV. 795 (1975).

4. *Id.* at 804.

5. H. ASHER, PRESIDENTIAL ELECTIONS AND AMERICAN POLITICS (1976).

6. Dahl, *Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,* 6 J. PUB. L. 279 (1957).

7. Funston, *supra* note 3.

when justices fail to leave the bench in the normal cycle. A president makes new appointments on the average of one every twenty-two months. In the 1930's, the new political coalition was unable to make an appointment for over four years. In that situation, however, once the logjam was broken, enough new appointments were made in three years to constitute a "new" Court.[8] Professors Canon and Ulmer in a reanalysis of the Funston data (with several corrections) concluded that the null hypothesis of "no difference" between the critical and noncritical historical periods could not be rejected. Their argument in part was premised upon the skewness of the data, especially in the critical periods of electoral realignment.[9] The data relied upon are all instances where the power of judicial review was exercised. Ultimately, Funston's and Dahl's analyses hinge upon interpretations of the 1930's crisis rather than upon the broader spectrum of Court activity over the past 180 or so years.

Whatever the results of that particular dispute, both sides premise their analyses upon the fundamental assumption that the exercise of the power of judicial review over federal legislative acts is both an unusual and potentially provocative action by the Court. The action is unusual in that the power of judicial review is used relatively infrequently, and provocative in that the action taken is à direct affront to the "political" branches.[10] This scenario is based upon a perception of the Court's activities which developed in the early years of the Republic. Imagewise, the Court is seen as timidly and craftily striking down an act of Congress and then in effect taking shelter against a possible majoritarian counter-attack. This particular image draws heavily upon the early nineteenth-century cases, notably *Marbury v. Madison*[11] and *Dred Scott v. Sanford.*[12] Implicit in this scenario are two considerations: first, how often should the power of judicial review be exercised; and, second, should the Court speak with a unified voice, *i.e.*, with minimal or no dissent.

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8. C. PRITCHETT, THE ROOSEVELT COURT (1948).

9. Canon & Ulmer, *The Supreme Court and Critical Elections: A Dissent,* 70 AM. POL. SCI. REV. 1215, 1216 (1976).

10. H. ABRAHAM, THE JUDICIAL PROCESS ch. 8 (3d ed. 1975).

11. 5 U.S. (1 Cranch) 137 (1803) (establishing the Supreme Court's power to review legislative acts of Congress).

12. 60 U.S. (19 How.) 393 (1857) (holding that Negroes were not "citizens" as provided in the United States Constitution and therefore not entitled to sue in the courts of the United States).

Chief Justice Marshall led the Court to exercise the power of judicial review only once during his long tenure in office. Clearly, this reluctance to move more precipitously was based upon the threat posed to the Court and especially to Marshall by the Jeffersonian Republicans. Broad areas of public policy were staked out by the Federalist-dominated Supreme Court, but paths of tactical retreat were always left open. The traditions established in these early days of the Court were such that the power of judicial review was relatively rarely exercised.

The second consideration, that of a unified Court, is important in minimizing the target presented to outside critics. When the Court speaks as one, the outsider has increased difficulty in focusing his attacks upon the particular policy. An inside critic (in this instance a dissenting justice) is important because that individual makes criticism of the decision legitimate.[13] This is also illustrated by the *Dred Scott* case,[14] where the Court, badly factionalized, undermined the credibility of its own opinion on what was obviously a sensitive political issue.[15] As a result of that debacle, the Court's prestige sank to political insignificance until after the Civil War. This concern with unanimity was not restricted just to questions of judicial review, but also included all appearances of uncertainty or ambiguity in the law. Chief Justice Taft probably carried this concern to an extreme, but he was not alone in his concern with the monolithic image of the law.[16]

Table 1 attempts to consolidate the Court's history into five time periods based upon Professor Funston's analysis.[17] These time periods reflect major shifts in the American political party system. For example, period one (1800-1828) saw the collapse of the Federalist Party. The end of period two (1829-1860) saw the rise of the Republican Party to power, while in period four (1897-1936) a reconstituted Republican

13. An example of the effectiveness of the inside critic was demonstrated by Justices Burton, Harlan, and Clark's role in Jencks v. United States, 353 U.S. 657 (1957)(Burton, Harlan, JJ., concurring; Clark, J., dissenting). Their opinions, criticizing the Court's holding that a defendant is entitled to production of relevant documents which are to be used against him at trial, contributed to the enactment of 18 U.S.C. § 3500, which delineated the procedure to be used in the production of such documents. Act of September 2, 1957, 18 U.S.C. § 3500 (1976). *See generally* W. MURPHY, CONGRESS AND THE COURT ch. 6 (1962).

14. 60 U.S. (19 How.) 393 (1857).

15. Schmidhauser, *Judicial Behavior and the Sectional Crisis of 1837-1860*, 23 J. OF POL. 615 (1961).

16. *See* A. MASON, HARLAN FISKE STONE: PILLAR OF THE LAW (1956).

17. Funston, *supra* note 3.

Table 1. PERIODS OF JUDICIAL ACTIVITY

	Cases	*Total Votes to Strike Down*	*Average per Decision*	*Total Votes to Uphold*	*Average per Decision*
1800–1828	1	6		0	
1829–1860	1	7		2	
1861–1896	21	156	(7.4)	25	(1.2)
1897–1936	51	361	(7.1)	88	(1.7)
1937–1976	39*	238	(6.1)	65	(1.67)

Source: H. ABRAHAM, THE JUDICIAL PROCESS (3d ed. 1975); Canon & Ulmer, *The Supreme Court and Critical Elections: A Dissent*, 70 AM. POL. SCI. REV. 1215 (1976); and cases cited in the *United States Reports*. The historical periods are based upon Funston's earlier analysis comparing electoral realignment and judicial realignment.

*The Federal Election Commission case, *Buckley v. Valeo*, 96 S. Ct. 612 (1976), was recorded 7 to 1 even though the vote varied on the four provisions struck down. They key provision in terms of being an affront to a co-ordinate political branch dealt with appointment of the FEC's membership: Congress was told not to encroach on the presidential power of appointment.

Party continued in power until the Great Depression.[18] The realignment periods are consolidated with the previous period of electoral stability, since the realignment period (for the Court at least) is a continuation of the past. Otherwise, Professor Funston's original thesis has no merit since realignment would be coterminous for both the electoral and judicial institutions. Professors Canon and Ulmer have adjusted Professor Funston's time periods to conform more fully to what they see as the more accurate periods of realignment.[19]

In Table 1, the number of cases in which a federal law was nullified during a particular time period (adjusted to the Canon-Ulmer criteria) is presented along with the total vote in favor of nullification or support of the laws and the average number of votes in the majority and dissent. Data for this analysis are drawn from Professor Abraham's compilation in *The Judicial Process*[20] and from cases cited in the *United States Reports*. One difference that occurs between this analysis and the earlier studies is that *Pollock v. Farmers' Loan and Trust Co.*[21] is counted twice

18. *See* W. CHAMBERS & W. BURNHAM, THE AMERICAN PARTY SYSTEMS: STATES OF POLITICAL DEVELOPMENT (1967).

19. Canon & Ulmer, *supra* note 9, Tables 2 and 3, at 1217.

20. H. ABRAHAM, *supra* note 10, Table 9, at 288-93.

21. 157 U.S. 429 (1895) (White, Harlan, JJ., dissenting), *vacated on rehearing*, 158 U.S. 601 (1895) (Harlan, Brown, White, and Jackson, JJ., dissenting). While the Court vacated its original decision on rehearing, the result was the same. However, on rehearing the Court extended its prior decision by holding that the provisions of the Act

because the first reported decision was 6-2 in favor of nullification while the second was 5-4 to strike down the Income Tax Act of 1894.[22]

A power of this reported magnitude should be unleashed relatively infrequently. This maxim of judicial power is used to explain the relative rarity of such decisions by the Court. What has been pointed out as a probably more relevant explanation is that the Court's most important political-legal function is that of a legitimator or "yea sayer" rather than as a negative force or "nay sayer."[23] More importantly, the role of legitimator is supposedly ingrained at least partially into the Court's traditions as, for example, in *Ashwander v. Tennessee Valley Authority*.[24] The *Ashwander* rules presuppose or presume the constitutionality of challenged statutes or governmental actions. The burden of proof is placed upon the challenger. Clearly, in certain substantive areas of law, this presumption does not hold, especially in civil liberties cases, notably free speech. Not all justices have accepted this new presumption of unconstitutionality, but the earlier tradition has clearly been broken.[25]

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which taxed a person's income, whether from real or personal property, were unconstitutional as direct taxes.

22. Ch. 349, 28 Stat. 509 (1894).

23. Adamany, *Legitimacy, Realigning Elections, and the Supreme Court*, 1973 WIS. L. REV. 790.

24. 297 U.S. 288, 346-48 (1936) (Brandeis, J., concurring). Justice Brandeis set forth seven rules which have been used and developed by the Court to avoid passing upon constitutional questions. Those rules are:

> 1. The Court will not pass upon the constitutionality of legislation in a friendly, non-adversary, proceeding, declining because to decide such questions "is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy between individuals. . . ."
>
> 2. The Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it."
>
> 3. The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."
>
> 4. The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.
>
> 5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation.
>
> 6. The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.
>
> 7. "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

25. *See* L. LUSKY, *supra* note 1, for a discussion of United States v. Carolene

This break in tradition is reflected in the time comparison presented in Table 1. After the initial period for the establishment of judicial review, the Court has increasingly been willing to accept challenges to the constitutionality of federal statues and to act favorably upon those challenges. Such challenges are obviously motivated by different values, as shown by the earlier laissez-faire capitalism of the pre-1937 Court[26] and the civil libertarian values of the post-1937 Court.[27] Whatever the value orientation, the Court has moved to the position of exercising the power relatively frequently (at least in historical terms). This activism has persisted even into periods of relative controversy about the Court's work. For instance, some members of the "old" Court were willing to push the issue of activism to the point of a constitutional crisis. During the Warren Court, there were adjustments to the political winds in terms of activity level, but the overall trend was toward increasing activism. Over the last decade, the Supreme Court has been averaging nearly two such actions per term. More impressively, this trend has held up throughout both the Warren and Burger Courts. The Burger Court period (1969-1976) has been summarized as one of increased activity on the part of the Court. In a short seven-year time period, the Court has"voided provisions in twenty seven federal laws, established a distinctive record in the areas of First Amendment freedoms and equal protection and by unanimous decisions delivered some of the severest blows to presidential power ever recorded in American history."[28] Professor Dionisopoulos' analysis, based upon a limited segment of Court cases, is accurate, although generally these two periods in Court history

Products Co., 304 U.S. 144 (1938), in which the Court stated that the presumption of constitutionality may not be as far reaching when legislation is within a specific prohibition of the Constitution. *Id.* at 152-53 n.4.

26. *See, e.g.,* Hammer v. Dagenhardt, 247 U.S. 251 (1918) (holding that the prohibition of the use of child labor to make products traveling in interstate commerce was an unconstitutional restraint on commerce and was beyond the authority of Congress). *See also* Carter v. Carter Coal Co., 298 U.S. 238 (1936) (holding that the provision of the right of coal workers to organize and the allowance of collective bargaining to set wage and hour agreements in the Guffey Coal Act were beyond the powers of Congress under the commerce clause).

27. *See, e.g.,* Aptheker v. Secretary of State, 378 U.S. 500 (1964) (declaring § 6 of the Subversive Activities Control Act of 1950, c.1024, 64 Stat. 993 (codified at 50 U.S.C. § 785 (1970)), holding that prohibiting a member of a registered Communist organization from obtaining a passport was unconstitutional as a violation of the fifth amendment, and of the right to travel).

28. Dionisopoulos, *Judicial Review in the Textbooks,* DIV. OF EDUC. AFFAIRS (D.E.A.) NEWS 1, 20 (1976).

have presented images much different in terms of substantive policy.[29] The Warren Court was seen as the most consistently liberal activist period in Court history, while the Burger Court has moved in a more conservative direction. In any case, the trend identified in Table 1 has apparently accelerated despite the addition of what have been termed "judicial restraint" advocates to the Court.[30] This activism is accentuated when one considers that the Court deals formally with fewer cases now than before.[31] Apparently, restraint is a sometime thing.

A further concern is most succinctly identified as that of "massing the Court."[32] Basically, the Chief Justice or other dominant individuals on the Court are involved in an active effort to maximize support for the decisions. Game theory could be applied easily in this context, given the tradeoffs necessary to gain maximum voting support while maintaining some coherence in the content of the decision. The optimal strategy is to generate a unanimous Court with no concurring opinions. In an analogous situation, Professor Ulmer has described the massive personal effort by Chief Justice Warren required to produce such apparent consensus in one very controversial case.[33] Support maximization or dissent suppression is necessary in order to minimize the vulnerability of the Court to political or legal counter-attack.[34]

Dissenters in a case of the presumed magnitude of one striking down legislation are to be discouraged or co-opted. Recent examples (in several policy areas) of this apparent concern about dissent have included school desegregation cases until the 1970's and *United States v. Nixon*[35] in 1974. In these cases, no federal statute stood in jeopardy, but the Court operated in such a fashion as to maintain a united front. In contrast, as is readily apparent in Table 1, the Court has apparently become increasingly less concerned with controlling or minimizing dissent when it strikes down congressional legislation. Rather, the norms

29. *See* W. THOMAS, THE BURGER COURT AND CIVIL LIBERTIES (1976).

30. S. WASBY, CONTINUITY AND CHANGE (1976).

31. Canon & Ulmer, *supra* note 9, at 1216; F. FRANKFURTER & J. LANDIS, THE BUSINESS OF THE SUPREME COURT at 60, 297 (1928).

32. *See* D. DANELSKI, THE INFLUENCE OF THE CHIEF JUSTICE IN THE DECISIONAL PROCESS: W. MURPHY & C. PRITCHETT, COURTS, JUDGES AND POLITICS (1961); and W. MURPHY, ELEMENTS OF JUDICIAL STRATEGY (1964).

33. *See* Ulmer, *Earl Warren and the Brown Decision,* 33 J. OF POL. 689 (1971), for a discussion of Chief Justice Warren's efforts to bring about a united court in Brown v. Bd. of Educ., 347 U.S. 483 (1954).

34. *See* S. WASBY, THE IMPACT OF THE UNITED STATES SUPREME COURT (1970).

35. 418 U.S. 683 (1974).

on the Court are now such that dissenting behavior in these cases follows the general patterns of dissent on the Court as a whole—a pattern which was established in the aftermath of the 1925 Judges' Bill and which was strengthened during the Roosevelt Court.[36]

Table 2. DISSENT PATTERN

	Unanimous Votes	*3 or 4 Dissenting Votes**	*Total Cases During Time Period*
1861–1896	42.9% (9)	19.0% (4)	(21)
1897–1936	37.3% (19)	35.2% (18)	(51)
1937–1976	25.6% (10)	43.6% (17)	(39)
Total	34.2% (38)	35.1% (39)	(111)†

Source: H. ABRAHAM, THE JUDICIAL PROCESS (3d ed. 1975); Canon & Ulmer, *The Supreme Court and Critical Elections: A Dissent*, 70 AM. POL. SCI. REV. 1215 (1976); and cases cited in the *United States Reports*.

*Where only eight or fewer justices participated, two dissenting votes are recorded as equivalent to the three- or four-vote situation in a nine-person court.

†The two earlier cases have been excluded from this stage of the analysis.

Table 2 further isolates this trend by focusing upon the declining percentage of unanimous decisions that occur when a congressional statute is struck down. Arguments which rely upon the fact that dissent on the Court is more prevalent than ever before miss the point that striking down federal statutes is not considered business as usual, at least according to the conventional analyses of constitutional law and history. The point made here is that, in fact, the behavior pattern is similar to the Court's general behavior pattern.[37] In Table 2, the percentage of unanimous votes is given along with the percentage of decisions with three or four dissents. Clearly, the Court is moving to a situation of relative disunity when it moves to strike down the statutes, either state or federal. This is best illustrated by the discordant note struck in two recent instances of judicial review. In *Buckley v. Valeo*[38]

36. S. HALPERN & K. VINES, DISSENT, THE JUDGES' BILL AND THE ROLE OF THE U.S. SUPREME COURT (1974). *See also* PRITCHETT, *supra* note 8.

37. R. HANDBERG, JUDICIAL IDEOLOGY ON THE SUPREME COURT 1916-1969 (1977), Table 1; G. SCHUBERT, JUDICIAL MIND REVISITED (1974).

38. 424 U.S. 1 (1976) (Burger, C.J., White, Marshall, Rehnquist, and Blackmun, JJ., all filed separate opinions) (holding that provisions of the Federal Election Campaign Act of 1971 limiting individual contributions to campaigns were constitutional despite first amendment objections; but that provisions limiting expenditures by candidates on their behalf, provisions limiting total expenditures in various campaigns, and provisions limiting the amount which an individual could spend independently of a

the opinion was a *per curiam* one, with five additional opinions by individual justices; in *National League of Cities v. Usery*[39] the vote was 5-4, with one concurring and two dissenting opinions. None of the justices appears bashful about either voting against the political branches or explaining why he did so. In fact, the plethora of opinions makes it increasingly difficult for the political branches to know what exactly was decided and why.

What is apparent, however, is that the Court no longer holds to the view that judicial review is such a terrible power that it should never be used, and if used, only under certain controlled conditions. Rather, it appears that elite (both judicial and elected) perceptions of the rules of the game now accept the probability of such Court action. Disagreement may occur between the "political" and judicial branches, but the issue is one of substantive policy rather than of the judiciary's power to act. This is most graphically illustrated by the Court's decision striking down the campaign practice reforms which were passed in the aftermath of Watergate.[40] Congressional reaction was relatively muted and directed primarily at the substantive question of how the reforms should be revised in order to meet the Court's mandate and what the Congress saw as political reality. One could argue that the debate over the Court's power to act goes on, but the real issues are those of its power of statutory construction and interpretation rather than of constitutionality.[41]

From this perspective, a strong argument can be made that Justice Brandeis' concurring opinion in *Ashwander*[42] was clearly a temporary avowal of judicial restraint. This view of the judicial function had strong policy implications in the 1930's, but those policy overtones no longer hold. Rather, the Court's more recent activities in *Baker v. Carr*[43] and

candidate, but relative to a candidate, were all invalid as impermissible abridgements of the freedom of speech).

39. 426 U.S. 833 (1976) (Blackmun, J., concurring; Brennan, White, Marshall, and Stevens, JJ., dissenting).

40. *See* Buckley v. Valeo, 424 U.S. 1 (1976).

41. Casper, *The Supreme Court and National Policy Making*, 70 AM. POL. SCI. REV. 50, 56-57 (1976).

42. 297 U.S. 288 (1936).

43. 369 U.S. 186 (1962). The Court set forth the following elements describing a political question:

> [A] textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or for the impossibility of deciding without an initial

Flast v. Cohen[44] indicate clearly the Court's willingness, if not eagerness, to be policy relevant. The reinterpretation of the political-question doctrine in *Baker* opened up new vistas for Supreme Court activity. More recently, the Court has backed away from some of the opportunities that were opened by those cases, *but* the precedents have only been partially distinguished, not extinguished.[45] In a sense, the *Ashwander* rules are a dinosaur of the past, although certain aspects are still maintained as convenient. In fact, it appears that Chief Justice Hughes in 1937 won the war but lost the battle, since the institution's ultimate power of judicial review continues uncontrolled and is increasingly being used. The only viable controls presently imposed on the exercise of the power of judicial review are the individual justice's sense of discretion and the possibility (though remote) of congressional retaliation. Either the Supreme Court has acquired such sanctity as to be almost beyond control or it has fallen to such levels as to be the subject only of indifference. Given the relatively high prestige of the institution, one could presume the former more than the latter. As a symbol, the Court may stand somewhat removed from the political battle, but its actions make clear that it is an active participant despite the protestations of its members.

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policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. at 217.

44. 392 U.S. 83 (1968) (holding that taxpayers have standing to challenge expenditures of tax money which are in violation of the establishment of religion clause of the first amendment).

45. The Court has not followed through on the potential inherent in *Flast*. *See* United States v. Richardson, 418 U.S. 166 (1974). In *Richardson*, the Court denied standing to a taxpayer seeking to compel the Central Intelligence Agency to disclose a detailed account of its expenditures. The Court distinguished the facts of the present case from *Flast*, stating that the respondent did not claim a violation of a constitutional limitation upon the taxing and spending power, but rather sought to obtain information about how those funds were spent. Therefore, the Court concluded, there was no "logical nexus" between the respondent's status of taxpayer and the failure of Congress to require the detailed report of expenditures. *Id.* at 175.