



# The Political Question Doctrine: Congressional Governance and Impeachment as Political Questions (Part 5)

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This Legal Sidebar is the fifth in a [six-part series](#) that discusses the Supreme Court’s political question doctrine, which instructs that federal courts should forbear from resolving questions when doing so would require the judiciary to make policy decisions, exercise discretion beyond its competency, or encroach on powers the Constitution vests in the legislative or executive branches. By limiting the range of cases federal courts can consider, the political question doctrine is intended to maintain the separation of powers and recognize the roles of the legislative and executive branches in interpreting the Constitution. Understanding the political question doctrine may assist Members of Congress in recognizing when actions of Congress or the executive branch would not be subject to judicial review. For additional background on this topic and citations to relevant sources, please see the [Constitution of the United States, Analysis and Interpretation](#).

The Supreme Court has applied the political question doctrine to cases involving the internal governance of Congress, though recent decisions have construed the doctrine narrowly in this context. In the pre-*Baker* case *Marshall Field & Co. v. Clark*, plaintiffs challenging a tariff law contended that the law was invalid because a section of the bill passed by Congress was omitted from the final version of the law signed by the President. The Court concluded that it could not adjudicate this issue. Because of the “respect due to a co-ordinate branch of the government,” the Court had to take as “conclusive” the fact that the act was attested by the signatures of the presiding officers of the houses of Congress and approved by the President. *Baker* explained that *Clark* signified the need for “respect” to coequal branches and for “finality and certainty” about statutes. A few cases since *Baker* have added color to the concept of “respect” in this context.

For example, in *Powell v. McCormack*, an individual elected to the House of Representatives challenged a House resolution excluding him from his seat in Congress. Although the Member-elect met the age and citizenship requirements in [Article I, Section 2](#), the House found that he had misrepresented travel expenses and made illegal salary payments to his wife. The defendants—Members and officers of the House—argued that the text of the Constitution, specifically [Article I, Section 5](#), gave Congress exclusive authority to judge the qualifications of its own Members, so Congress could determine that the Member

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was unqualified. The Supreme Court held that the case could go forward and that the Member-elect was entitled to relief. On the question of justiciability, the Court explained that, despite the text the defendants cited from Article I, Section 5, there was no “textually demonstrable” commitment of this constitutional question to another branch. At most, the Constitution gave Congress the power to judge the “qualifications expressly set forth in the Constitution,” not the power to set new qualifications. Nor did the Court conclude that “the respect due co-ordinate branches” barred hearing the case, even though it was interpreting the Constitution “in a manner at variance with the construction given the document by another branch.” In the view of the *Powell* Court, constitutional conflicts with other branches were inevitable under the constitutional system and were no excuse for avoiding a case where there existed “judicially manageable standards” sufficient to judge the question.

Similar principles animated the Court’s decision in *INS v. Chadha*. There, the Court considered the constitutionality of a provision of the Immigration and Nationality Act authorizing one house of Congress, by resolution, to invalidate a decision of the executive branch to suspend the deportation of an alien. The United States argued that *Chadha* presented a nonjusticiable political question, because [Article I](#) granted Congress the power to “establish a uniform Rule of Naturalization,” providing it with unreviewable authority over the regulation of aliens. As in *Powell*, the Court rejected the application of the political question doctrine. The Court, in an opinion by Chief Justice Warren Burger, observed that what was at issue was not Congress’s plenary authority over aliens but rather whether it had chosen a “constitutionally permissible means of implementing that power.” Because that latter question was squarely within the judiciary’s purview, the political question doctrine did not bar consideration of the case, regardless of the fact that judicial review limited Congress’s authority as a practical matter.

Respect for the coordinate branches also did not prevent the Court from reaching the merits of the dispute in *United States v. Munoz-Flores*, which concerned whether a federal statute violated the [Origination Clause of the Constitution](#), a provision that requires revenue-raising legislation to originate in the House of Representatives. In that case, Munoz-Flores challenged as unconstitutional a special assessment under the Victims of Crime Act of 1984 because the Act was “for raising revenue,” but it had not originated in the House of Representatives. The government objected that hearing the case expressed a “lack of respect” for the House: In the government’s view, the House made an unreviewable determination that the Act was not for the purpose of raising revenue when it passed the legislation. The Court rejected that argument, holding that Munoz-Flores’s challenge was no different than any other constitutional challenge to a law involving separation of powers, and judicial review did not evidence a “lack of respect.”

In 1993, the Court applied the political question doctrine to a judicial challenge to impeachment proceedings. In *Nixon v. United States*, a former federal judge challenged his removal by the Senate. He argued that the Senate proceedings used to convict him—which allowed a committee of Senators, rather than the whole Senate, to hear evidence against him after he was impeached by the House—violated the constitutional requirement that the Senate “try all Impeachments.” In an opinion by Chief Justice Rehnquist, the Court held that *Nixon* presented a nonjusticiable political question.

A few primary considerations motivated the Court’s conclusion. First, the Court noted that the text of the Constitution gives the Senate “sole” authority to try impeachments, which, according to the Court, amounted to a sufficient “textual commitment” of the question as to what *try* meant to a coordinate department. Second, the Court noted that the existence of a firm textual commitment was strengthened by a lack of “judicially manageable standards” in the vagueness of the word *try*. The Court contrasted that vague term with the concrete requirement that convictions require a two-thirds vote, concluding that the Senate was intended to have discretion over the precise procedures for impeachments. The Court distinguished the alleged “textual commitment” that was insufficient in *Powell v. McCormack*, maintaining that the textual commitment to the Senate of defining *try* did not undermine any other provision to the Constitution, such as the enumerated qualifications set forth in Article I, Section 5, that were at stake in *Powell*. Altogether, the Court concluded that without a judicially manageable standard to

limit the Senate's authority, such as the specific textual rules on qualifications that were present in *Powell*, it could not overturn the Senate's judgment.

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