

tatives in proportion to the population as derived from the decennial census) in a different, but factually similar case from Alabama, *Reynolds v. Sims*, 377 U.S. 533 (1964). The effects of that case were felt nationwide, because the misapportionment in Tennessee and Alabama was reproduced in almost every state.

2. *Baker v. Carr* runs for some 90 pages in the United States Reports, so it has been radically edited here. Nonetheless, there is one paragraph in the opinion that states the doctrine that has been applied subsequently. Can you find it?

3. Knowing the doctrine still leaves a lot to judgment in individual cases. The following two cases provide a sample of its application.

POWELL v. McCORMACK

United States Supreme Court, 1969.
395 U.S. 486, 89 S.Ct. 1944, 23 L.Ed.2d 491.

[Adam Clayton Powell was an African-American congressman elected from the district in New York City that included Harlem. Prior to being elected to Congress, Powell had been a charismatic pastor of a local church and a prominent civil rights leader, who went on to be the first Black person elected to the New York City Council. Later, in 1944, Powell was elected to the U.S. House of Representatives—the first Black congressman from New York. In 1961, on the basis of seniority, he became the Chair of the House Education and Labor Committee. There he championed a number of progressive bills that became law. However, by the mid-60s, his dedication to the cause, if not his popularity in his district, seemed to flag. He spent increasing amounts of time at his private villa on Bimini in the Bahamas, living a luxurious life style with various female friends, apparently sustained by funds taken from his committee's budget, even while his wife was on the committee payroll but not performing any functions. Moreover, because he was perpetually absent, his committee no longer met. Between those members who disliked him for the progressive things he had done and those who were upset with his present abandonment of his duties and misuse of committee funds, in 1967 the 90th Congress voted to exclude him from his seat despite his reelection. He sued to reclaim his seat.]

Mr. Chief Justice WARREN delivered the opinion of the Court.

In November 1966, petitioner Adam Clayton Powell, Jr., was duly elected from the 18th Congressional District of New York to serve in the United States House of Representatives for the 90th Congress. However, pursuant to a House resolution, he was not permitted to take his seat. Powell (and some of the voters of his district) then filed suit in Federal District Court, claiming that the House could exclude him only if it found he failed to meet the standing requirements of age, citizenship, and residence contained in Art. I, § 2, of the Constitution—requirements the House specifically found Powell met—and thus had excluded him unconstitutionally....

VI.

JUSTICIABILITY.

[W]e turn to the question whether the case is justiciable. [W]e must determine whether the structure of the Federal Government renders the issue presented a "political question"—that is, a question which is not justiciable in federal court because of the separation of powers provided by the Constitution.

*B. Political Question Doctrine.**1. Textually Demonstrable Constitutional Commitment.*

Respondents maintain that even if this case is otherwise justiciable, it presents only a political question. It is well established that the federal courts will not adjudicate political questions. In *Baker v. Carr* we noted that political questions are not justiciable primarily because of the separation of powers within the Federal Government. After reviewing our decisions in this area, we concluded that on the surface of any case held to involve a political question was at least one of the following formulations:

a textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial 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 co-ordinate 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.

Respondents' first contention is that this case presents a political question because under Art. I, § 5, there has been a "textually demonstrable constitutional commitment" to the House of the "adjudicatory power" to determine Powell's qualifications. Thus it is argued that the House, and the House alone, has power to determine who is qualified to be a member.

In order to determine whether there has been a textual commitment to a coordinate department of the Government, we must interpret the Constitution. In other words, we must first determine what power the Constitution confers upon the House through Art. I, § 5, before we can determine to what extent, if any, the exercise of that power is subject to judicial review. Respondents maintain that the House has broad power under § 5, and, they argue, the House may determine which are the qualifications necessary for membership. On the other hand, petitioners allege that the Constitution provides that an elected representative may be denied his seat only if the House finds he does not meet one of the

standing qualifications expressly prescribed by the Constitution.

If examination of § 5 disclosed that the Constitution gives the House judicially unreviewable power to set qualifications for membership and to judge whether prospective members meet those qualifications, further review of the House determination might well be barred by the political question doctrine. On the other hand, if the Constitution gives the House power to judge only whether elected members possess the three standing qualifications set forth in the Constitution, further consideration would be necessary to determine whether any of the other formulations of the political question doctrine are "inextricable from the case at bar."⁴¹

In other words, whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department" of government and what is the scope of such commitment are questions we must resolve for the first time in this case. For, as we pointed out in *Baker v. Carr*, "(d)eciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution."

In order to determine the scope of any "textual commitment" under Art. I, § 5, we necessarily must determine the meaning of the phrase to "be the Judge of the Qualifications of its own Members." Petitioners argue that the records of the debates during the Constitutional Convention; available commentary from the post-Convention, pre-ratification period; and early congressional applications of Art. I, § 5, support their construction of the section. Respondents insist, however, that a careful examination of the pre-Convention practices of the English Parliament and American colonial assemblies demonstrates that by 1787, a legislature's power to judge the qualifications of its members was generally understood to encompass exclusion or expulsion on the ground that an individual's character or past conduct rendered him unfit to serve. When the Constitution and the debates over its adoption are thus viewed in historical perspective, argue respondents, it becomes clear that the "qualifications" expressly set forth in the Constitution were not meant to

41. In addition to the three qualifications set forth in Art. I, § 2, Art. I, § 3, cl. 7, authorizes the disqualification of any person convicted in an impeachment proceeding from "any Office of honor, Trust or Profit under the United States"; Art. I, § 6, cl. 2, provides that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office"; and § 3 of the 14th Amendment disqualifies any person "who, having previously taken an oath * * * to support the Constitution of the United

States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." It has been argued that each of these provisions, as well as the Guarantee Clause of Article IV and the oath requirement of Art. VI, cl. 3, is no less a "qualification" within the meaning of Art. I, § 5, than those set forth in Art. I, § 2. We need not reach this question, however, since both sides agree that Powell was not ineligible under any of these provisions.

limit the long-recognized legislative power to exclude or expel at will, but merely to establish "standing incapacities," which could be altered only by a constitutional amendment. Our examination of the relevant historical materials leads us to the conclusion that petitioners are correct and that the Constitution leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution.

[The Court considered the practice in England before independence and found that, while earlier parliament had excluded members who otherwise met the qualifications for office, there had been a strong reaction against that so that by the time of independence such exclusion was discredited. The Court then considered the ratification debates and found that they solidly, if not explicitly, supported the notion that exclusion could only be based on failure to meet the specified qualifications in the Constitution.]

c. Post-Ratification.

[Respondents] suggest that far more relevant is Congress' own understanding of its power to judge qualifications as manifested in post-ratification exclusion cases. Unquestionably, both the House and the Senate have excluded members-elect for reasons other than their failure to meet the Constitution's standing qualifications. For almost the first 100 years of its existence, however, Congress strictly limited its power to judge the qualifications of its members to those enumerated in the Constitution....

Had these congressional exclusion precedents been more consistent, their precedential value still would be quite limited. That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. Particularly in view of the Congress' own doubts in those few cases where it did exclude members-elect, we are not inclined to give its precedents controlling weight. The relevancy of prior exclusion cases is limited largely to the insight they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787. And, what evidence we have of Congress' early understanding confirms our conclusion that the House is without power to exclude any member-elect who meets the Constitution's requirements for membership.

d. Conclusion.

Had the intent of the Framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them." As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agree-

ment with this basic philosophy, the Convention adopted his suggestion limiting the power to expel.... Moreover, it would effectively nullify the Convention's decision to require a two-thirds vote for expulsion. Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds. In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

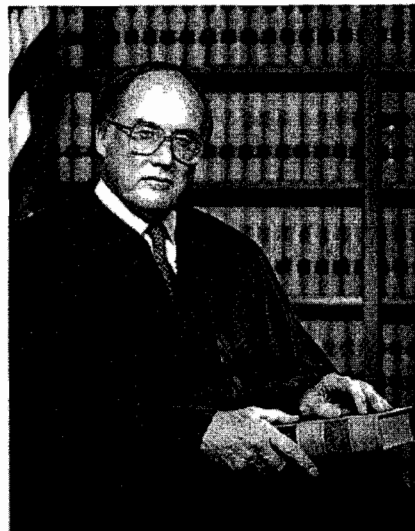
For these reasons, we have concluded that Art. I, § 5, is at most a "textually demonstrable commitment" to Congress to judge only the qualifications expressly set forth in the Constitution. Therefore, the "textual commitment" formulation of the political question doctrine does not bar federal courts from adjudicating petitioners' claims....

Mr. Justice DOUGLAS [issued a concurring opinion].

Mr. Justice STEWART, dissent[ed] on the grounds that the case was moot, because the session of Congress from which Powell was excluded had expired; he had been reelected and had been seated in the current Congress.]

NIXON v. UNITED STATES

United States Supreme Court, 1993.
506 U.S. 224, 113 S.Ct. 732, 122 L.Ed.2d 1.



William Rehnquist

Richard Nixon appointed Rehnquist an Associate Justice in 1971. In 1986, Chief Justice Burger resigned, and President Ronald Reagan appointed Rehnquist Chief Justice. Preferring to interpret the Constitution narrowly, Rehnquist penned several opinions that endorsed conservative ideals. In particular, he protected state interests relative to federal interests, authoring opinions finding federal statutes beyond Congress's power and upholding state sovereign immunity. Rehnquist also reflected conservative values by denying the existence of constitutional rights, like the right to privacy, that did not have a clear textual basis in the Constitution.

Chief Justice REHNQUIST delivered the opinion of the Court.

Petitioner Walter L. Nixon, Jr., asks this Court to decide whether Senate Rule XI, which allows a committee of Senators to hear evidence against an individual who has been impeached and to report that evi-