

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.”⁶⁵⁸ Following a discussion of several areas in which the doctrine had been used, Justice Brennan continued: “It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers.”

The Justice went on to list a variety of factors to be considered, noting that “[p]rominent on the surface of any case held to involve a political question is found 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 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 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.”⁶⁵⁹

Powell v. McCormack.—Because *Baker* had apparently restricted the political question doctrine to intrafederal issues, there was no discussion of the doctrine when the Court held that it had power to review and overturn a state legislature’s refusal to seat a member-elect because of his expressed views.⁶⁶⁰ But in *Powell v. McCormack*,⁶⁶¹ the Court was confronted with a challenge to the exclusion of a member-elect by the United States House of Representatives. Its determination that the political question doctrine did

⁶⁵⁸ 369 U.S. at 211.

⁶⁵⁹ 369 U.S. at 217. It remains unclear after *Baker* whether the political question doctrine is applicable *solely* to intrafederal issues or only *primarily*, so that the existence of one or more of these factors in a case involving, say, a state, might still give rise to nonjusticiability. At one point, *id.* at 210, Justice Brennan says that nonjusticiability of a political question is “primarily” a function of separation of powers but in the immediately preceding paragraph he states that “it is” the intrafederal aspect “and not the federal judiciary’s relationship to the States” that raises political questions. But subsequently, *id.* at 226, he balances the present case, which involves a state and not a branch of the Federal Government, against each of the factors listed in the instant quotation and notes that none apply. His discussion of why Guarantee Clause cases are political presents much the same difficulty, *id.* at 222–26, because he joins the conclusion that the clause commits resolution of such issues to Congress with the assertion that the clause contains no “criteria by which a court could determine which form of government was republican,” *id.* at 222, a factor not present when the Equal Protection Clause is relied on. *Id.* at 226.

⁶⁶⁰ *Bond v. Floyd*, 385 U.S. 116 (1966).

⁶⁶¹ 395 U.S. 486 (1969).