

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

not bar its review of the challenge indicates the narrowness of application of the doctrine in its present state. Taking Justice Brennan's formulation in *Baker* of the factors that go to make up a political question,⁶⁶² Chief Justice Warren determined that the only critical one in this case was whether there was a "textually demonstrable constitutional commitment" to the House to determine in its sole discretion the qualifications of members.⁶⁶³

In order to determine whether there was a textual commitment, the Court reviewed the Constitution, the Convention proceedings, and English and United States legislative practice to ascertain what power had been conferred on the House to judge the qualifications of its members; finding that the Constitution vested the House with power only to look at the qualifications of age, residency, and citizenship, the Court thus decided that in passing on Powell's conduct and character the House had exceeded the powers committed to it and thus judicial review was not barred by this factor of the political question doctrine.⁶⁶⁴ Although this approach accords with the "classicist" theory of judicial review,⁶⁶⁵ it circumscribes the political question doctrine severely, inasmuch as all constitutional questions turn on whether a governmental body has exceeded its specified powers, a determination the Court traditionally makes, whereas traditionally the doctrine precluded the Court from inquiring whether the governmental body had exceeded its powers. In short, the political question consideration may now be one on the merits rather than a decision not to decide.

Chief Justice Warren disposed of the other factors present in political question cases in slightly more than a page. Because resolution of the question turned on an interpretation of the Constitution, a judicial function which must sometimes be exercised "at variance with the construction given the document by another branch," there was no lack of respect shown another branch. Nor, because the Court is the "ultimate interpreter of the Constitution," will there be "multifarious pronouncements by various departments on one ques-

⁶⁶² *Baker v. Carr*, 369 U.S. 186, 217 (1962).

⁶⁶³ 395 U.S. at 319.

⁶⁶⁴ 395 U.S. at 519–47. The Court noted, however, that even if this conclusion had not been reached from unambiguous evidence, the result would have followed from other considerations. *Id.* at 547–48.

⁶⁶⁵ See H. Wechsler, *supra* at 11–12. Professor Wechsler believed that congressional decisions about seating members were immune to review. *Id.* Chief Justice Warren noted that "federal courts might still be barred by the political question doctrine from reviewing the House's factual determination that a member did not meet one of the standing qualifications. This is an issue not presented in this case and we express no view as to its resolution." *Powell v. McCormack*, 395 U.S. 486, 521 n.42 (1969). See also *id.* at 507 n.27 (reservation on limitations that might exist on Congress's power to expel or otherwise punish a sitting member).