

KAGAN, J., concurring

SUPREME COURT OF THE UNITED STATES

HHPRINCEGEORGE *v.* CONGRESS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES GOVERNMENT

No. 05–52. Decided June 13, 2018

The petition for a writ of certiorari is denied.

JUSTICE KAGAN, with whom JUSTICE BORK joins,
concurring in the denial of certiorari.

We concur in the denial of certiorari. We write separately
to note that this case is not the end of the line for
HHPrinceGeorge.

I

In his original submission to the Court, HHPrinceGeorge
appeared to assume that his impeachment and resulting
conviction totally “restricted” his “right to be a public
servant.” ¶7. This assumption, while it is reasonable, is
not accurate. As a matter of fact, impeachment hardly re-
stricts his ability to serve the public at all.

The Constitution gives the Senate the “sole power to try
all impeachments,” art. I, §3, cl. 6, and sets out that the
available punishments for conviction thereof are “removal
from office and disqualification to hold and enjoy any office
of honor, trust or profit under the United States.” *Id.*, at
cl. 7. HHPrinceGeorge, impeached and convicted for multi-
ple instances of voter fraud, received both punishments.
Many assume that means he may not serve again in any
public office. That is not the case. He is merely disqualified
from serving in any “office of *honor, trust or profit under
the United States.*” It goes without saying that this is a
broad category of offices. But it is not all-inclusive, else the
Framers would not have carefully delineated the types of

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offices actually included. They would have, instead, perhaps just said “disqualification to hold and enjoy any office.” They did use that language, for example, in the same clause when they allowed for the punishment of “removal from office” to be imposed. It is therefore plain that the phrase “office of honor, trust or profit under the United States” encompasses only a subset of “offices.”

So which “offices,” specifically, are “of honor, trust or profit under the United States”? Other uses of similar language in the Constitution can lend a helping hand. The Constitution elsewhere uses the term “office under the United States” in what is typically known as the Ineligibility Clause, art. I, §6, cl. 2. There it provides that “no person holding *any* office under the United States, shall be a Member of either House during his continuance in office” (emphasis added). The Ineligibility Clause explicitly distinguishes “office[s] under the United States” and members of Congress. The use of the word “any” also conveys that all “offices under the United States” fall within the clause’s scope. See <https://www.merriam-webster.com/dictionary/any>. As such, if the phrase “office under the United States” were still somehow conceivably read to include members of Congress, it would produce an absurd result: members of Congress would be disallowed from being members of Congress while members of Congress. No reasonable jurist could endorse that result. This analysis tells us one thing: members of Congress, though they serve in an “office” subject to impeachment, do not fall into the narrower subcategory of “office[s] under the United States”; *a fortiori*, they do not occupy “office[s] of honor, trust or profit under the United States,” service in which can be disqualified by impeachment. A person who is disqualified as punishment in impeachment is still eligible to run and serve as a member of Congress.

In case any doubt remains, further support for this proposition is found in the Fourteenth Amendment which also

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expressly distinguishes members of Congress from offices under the United States, holding “[n]o person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any Municipality” who betrayed the United States after taking the oath of office. §2. The prohibition against being a “Senator or Representative in Congress” would be surplusage if the phrase “office . . . under the United States” included it. The Fourteenth Amendment also illustrates that municipal offices are not “offices under the United States,” so HHPrinceGeorge, despite his disqualification, may pursue those as well.

II

There are many offices which do fall within the scope of the Disqualification Clause. We would interpret the clause to include all offices which the text does not clearly distinguish (such as members of Congress and municipal offices).

That being said, we concur in the denial of certiorari because petitioner’s actual claims are meritless.