Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 05–33

ITS_JACOB, PETITIONER *v.* NEVADA HIGHWAY PATROL

ON CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[April 11, 2018]

PER CURIAM.

Petitioner Jacob_Kirkman brought a civil suit against the United States State Police (hereinafter the Nevada Highway Patrol) as a result of his arrest by a Nevada Highway Patrol officer at Las Vegas, Nevada. On April 7, 2018, the Federal District Court, pursuant to this Court's Rule 19, certified a question of law to us. The question inquired:

> Does the United States State Police have the authority to act as law enforcement and conduct arrests or traffic stops on citizens within the jurisdiction of the District of Columbia?

The question certified does not have a standing privy to the case that the question originates from. The originating case[1] revolves around an injury done at Las Vegas, not the District of Columbia. The "judicial power … is a power to decide not abstract questions but real, concrete Cases and Controversies." *Rager* v. *United States*, 5 U. S. ___, ___ (2018) (*per curiam*) (slip op., at 2) (internal quotation marks and citation omitted). Question certification is a constitutionally-legitimate judicial process under which a district court may "certify to this Court a question or proposition of

[1] *Kirkman* v. *United States State Police*, 3:18-2292 (USDC 2018).

law on which it seeks instruction for the proper decision of a case." But the legitimacy of that process in a given case hinges on the fact that the question certified is part and parcel to resolution of a controversy before the District Court. As explained already, the controversy in this case arises from an incident at Las Vegas. There is therefore no reason to decide the powers of the Nevada Highway Patrol at the District of Columbia.

For those reasons, the Court has dismissed the certified question.

It is so ordered.

JUSTICE SOUTER dissents from the judgment.

SUPREME COURT OF THE UNITED STATES

No. 05–33

ITS_JACOB, PETITIONER *v.* NEVADA HIGHWAY PATROL

ON CERTIFICATE FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[April 11, 2018]

JUSTICE BORK, concurring in part and concurring in the judgment.

While I concur in the judgment of the Court and in much of its opinion, I write separately because I do not think the Petitioner has adequately demonstrated that the certified question is "narrow, debatable, and important." *United States* v. *Seale*, 558 U. S. 985, 986 (2009) (Stevens, J.). I consider all three components mandatory for our Rule 19 jurisdiction and therefore would dismiss the petition.

I

The powers of the Nevada Highway Patrol in the District of Columbia are contentious and the arguments against them are several. But for the most part, those arguments are political by nature. Political debate, this Court knows, "present[s] a hotbox of emotion." *Isner* v. *Federal Elections Commission*, 3 U. S. 87, 88 (2017) (statement of Scalia, J., respecting the denial of certiorari). Though it would be "easy … for our Court to wave [its] wand and participate," better judgment counsels against entering that "political thicket." *Ibid.*; *Colegrove* v. *Green*, 328 U. S. 549, 556 (1946). So does the Constitution. As Chief Justice Marshall proclaimed two centuries ago, "[i]t is emphatically the province and duty of the judicial department to say what the law

is." *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803). Sometimes, however, "the law is that the judicial department has no business entertaining the claim of unlawfulness … because the question is entrusted to one of the political branches." *Vieth* v. *Jubelirer*, 541 U. S. 267, 277 (2004) (plurality opinion).

Six independent tests were established in *Baker* v. *Carr*, 369 U. S. 186 (1962), for determining the existence of a political question:

> "[1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.*, at 217.

The tests are "probably listed in descending order of both importance and certainty." *Vieth*, *supra*, at 278. The fourth test is implicated by the certified question now before the Court. We are instructed to consider whether it is possible for a court to independently resolve the question without failing to give one of the other two branches (or both) the respect it is due. The answer to that question in relation to that question in relation to this case is clearly "no."

The last time the question of the Nevada Highway Patrol's power in Washington, D.C. came before the Court was *Snowbleed* v. *Nevada Highway Patrol*, 4 U. S. ___ (2018). I explained in my concurring opinion in that case that due to

D.C.'s NHP Recognition Act, which empowers the agency to function as law enforcement in the city, Congress was primarily responsible for deciding whether that facially legitimate law was in another way illegitimate. *Id.*, at ___ (BORK, J., concurring) (slip op., at 1). See, *e.g.*, *Pacific States & Telegraph Co.* v. *Oregon*, 223 U. S. 118 (1912) (claims under the Guaranty Clause of Article IV are nonjusticiable).

I am confident that the specific question before us is one which falls comfortably within Congress's domain. I do not believe it is possible for this question to be answered by a court without failing to afford Congress the respect it is due.

II

Certified questions are held to an even more exacting standard than regular cases because they break from the usual hierarchy. At minimum, a certified question must be "narrow, debatable, and important." *Seale*, *supra*. Each component is mandatory of every certified question and should be applied without fail. I argue that in addition to the specific tenets of each component, they together reinforce the principles of caution underlying our political question jurisprudence.

I pursuantly conclude that the general indication that the certified question is a political question on its own requires dismissal. Part I of my opinion shows that this indication is present in the certified question before us. On that understanding, I join the Court's opinion insofar as it does not conflict with mine.