In the Supreme Court of the United States

HHPrinceGeorge, petitioner

v.

United States of America

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CONGRESS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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JURISDICTION

The judgment of the United States Senate was entered on June 10, 2018. On June 11, 2018, petitioner filed for review. The jurisdiction of this Court, therefore, is presumably invoked under Art. III, §4, of the Constitution of the United States.

STATEMENT

During his campaign for a seat in the House of Representatives, evidence was unearthed by the United States Senate that showed petitioner engaging and conspiring to bribe companies with promises of various items and assurances of federal power in return for the fraudulent insertion of illegitimate votes into the upcoming general election for President of the United States.

By the time the evidence was certified as true and valid, petitioner was elected into the House of Representatives, and his term had begun. The House, based on the findings of the Senate,* moved to impeach. On June 7, 2018, petitioner was impeached. Then, on June 10, 2018, the Senate conducted its trial and moved to vote on conviction. The unanimous vote was entered into the record and petitioner was officially convicted and barred from holding any office under the United States.

ARGUMENT

Petitioner raises several procedural claims against the impeachment. But this Court in the past has made clear that impeachments in their entirety fall out of review. See *Nixon* v. *United States*, 506 U.S. 224 (1993). Indeed, while the questions levied are political in nature, their claims are novel and meritless. Review would be inappropriate and is not warranted.

1. This Court should not wade into the impeachment process of the United States Congress.

Controversies, no matter how compelling they may be, are nonjusticiable where there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for revolving [them] . . . ." *Baker* v. *Carr*, 369 U.S. 186, 217 (1962). These are, more broadly, known as "political question[s]." *Nixon*, *supra*, at 228. In determining whether there is a political question outside the realm of the courts, a review of the text at issue is made to determine how textually committed

* The Senate found that petitioner had conspired to insert 300 fraudulent votes into the impending election for President.

the issue may be. *Ibid.* See also *Powell* v. *McCormack*, 395 U.S. 486, 519 (1969).

Art. I, §3, cl. 6 lays out the impeachment power of the Senate:

> "The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present."

The language and structure of this text "are revealing." *Nixon*, *supra*, at 229. The Court in *Nixon* explained that the usage of the word "sole" implied that the Senate, and the Senate alone, has the authority to review and decide on the validity and merits of an impeachment. *Ibid.* ("the word 'sole' indicates that this authority is reposed in the Senate and nowhere else.").

Furthermore, as written in the 18th century, "try" as used carries a meaning of "[t]o examine" or "[t]o examine as a judge." 2 S. Johnson, A Dictionary of the English Language (1785). Webster's dictionary defined it as "to examine or investigate judicially," "to conduct the trial of," or "to put to the test by experiment, investigation, or trial." Webster's Third New International Dictionary 2457 (1971). And the *Nixon* Court rightfully noted that the usage of "sole" appears elsewhere in the Constitution only once, in Art. I, §2, cl. 5, concerning the House's power to impeach: "*sole* Power of Impeachment" (emphasis added).

Thus, with commonsense and the meaning of "sole" in mind, the "Senate alone shall have authority to determine whether an individual should be acquitted or convicted."

Nixon, 506 U.S., at 231. Opening review of the impeachment process, therefore, would rob the Congress of its ability to be "functioning . . . independently and without assistance or interference." *Ibid.* (quoting Webster's Third New International Dictionary 2168 (1971)).

Moreover, this Court noted in *Nixon* that there was no evidence to suggest the Framers intended there to be any judicial review on impeachments. See *Nixon*, *supra*, at 233 ("This silence [of an allusion to judicial review] is quite meaningful in light of the several explicit references to the availability of judicial review as a check on the Legislature's power with respect to bills of attainder, *ex post facto* laws, and statutes"). This silence was not reached easily, however.

The Constitution's debaters labored over the question of impeachment. For example, James Madison proposed that the Supreme Court should have the power to determine impeachments. See 2 Farrand 551 (Madison). But the convention rejected this, opting instead for an approach where the Senate would have "the sole Power to try all impeachments." Art. I, §3, cl. 6. That was so because the Senate was the "most fit depositary of this important trust," The Federalist No. 65, p. 440 (J. Cooke ed. 1961).

We also know that the Constitution recognizes "two sets of proceedings for individuals who commit impeachable offenses—the impeachment trial and the separate criminal trial." *Nixon*, *supra*, at 234. Indeed, Art. I, §3, cl. 7, makes this clear

> "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust

> or Profit under the United States: but the Party convicted shall nevertheless be *liable and subject to Indictment, Trial, Judgment and Punishment, according to Law*." (emphasis added).

This clause was erected deliberately, for the Framers understood that there was an importance to avoiding "the specter of bias and [ensuring] independent judgments," *Nixon*, *supra*, at 234.

But above all, the preclusion of judicial review of impeachments rests on the fundamental importance of checks and balances—of the separation of powers. "In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature." *Id.*, at 235.

Thus, judicial involvement in the impeachment process would "eviscerate the 'important constitutional check' placed on the Judiciary by the Framers." *Ibid.* (quoting The Federalist No. 81, p. 545 (J. Cooke ed. 1961)).

There is also another issue. If this Court were to proceed to review an impeachment, and therefore violate the Senate's "sole" power to do so, what relief could be granted? "Could it order the reinstatement of a convicted [officer], or order Congress to create an additional [seat in the House] if the seat had been filled in the interim?" *Nixon*, 506 U.S., at 236.

But anytime review muddies the water; upon further review, however, things become much clearer. This Court is granted the power to "overturn any Law, executive Order, or other action if it finds it to be unconstitutional or unlawful." Art. III, §4. But this section must be read in tandem with the Judiciary's wider power of review. We contend that the anytime-review power is one that

enables the Court to review on its own motion those issues which would customarily develop in the lower courts. It is, therefore, a process by which this Court can act decisively and quickly in the face of a slow-moving Judiciary.

This reading can be reconciled, too, with the Court's attachment of standing and mootness to anytime-review cases, see *George* v. *United States*, 5 U.S. ___ (2018) (plurality opinion). The anytime-review power is not a power to exercise review of actions falling outside the scope of the standard judicial review; it is, rather, the power to exercise that standard review in situations where exigency requires the bypass of the "normal" process. That is why the Court has said where significant circumstances arise, the release of these prudential requirements can be warranted. See, *e.g.*, *ChristianFeliz* v. *InfernoByteII*, 2 U.S. 81 (2017) (KOTWARRIOR, C.J., statement respecting the denial of certiorari). But never has that suggested that the *scope* of the power is beyond that of normal review. To do so would, again, "eviscerate" the separation of powers imbued throughout the Constitution.

2. Petitioner's claim that he was not a Member of the House at the time of impeachment is untrue.

The Constitution's text forecloses this matter. At the time of impeachment, petitioner *was* a member of the House; he simply *could not exercise* his powers. The twenty-third Amendment to the Constitution is clear: "Before a Senator or Representative is able to *exercise his Office*, he must take the following Oath or Affirmation in-game" (emphasis added). This does not mean, as petitioner contends, that an individual must take his oath to *enter* into office; it means before he may *exercise* his office's powers, he must take the oath.

Furthermore, petitioner cites 1 U.S.C. §1 to argue that *his* definition of the Amendment controls. But petitioner leaves out that this section is for "determining the meaning of *any Act of Congress*," *ibid.*, not the Constitution. The Constitution, on this matter, is explicit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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