SUPREME COURT OF THE UNITED STATES

No. 91–740

WALTER L. NIXON, PETITIONER *v.* UNITED STATES ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[January 13, 1993]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Walter L. Nixon, Jr., asks this court to decide whether Senate Rule XI, which allows a committee of Senators to hear evidence against an individual who has been impeached and to report that evidence to the full Senate, violates the Impeachment Trial Clause, Art. I, §3, cl. 6. That Clause provides that the "Senate shall have the sole Power to try all Impeachments." But before we reach the merits of such a claim, we must decide whether it is "justiciable," that is, whether it is a claim that may be resolved by the courts. We conclude that it is not.

Nixon, a former Chief Judge of the United States District Court for the Southern District of Mississippi, was convicted by a jury of two counts of making false statements before a federal grand jury and sentenced to prison. See *United States* v. *Nixon*, 816 F. 2d 1022 (CA5 1987). The grand jury investigation stemmed from reports that Nixon had accepted a gratuity from a Mississippi businessman in exchange for asking a local district attorney to halt the prosecution of the businessman's son. Because Nixon refused to resign from his office as a United States District Judge, he continued to collect his judicial salary while serving out his prison sentence. See H. R. Rep. No. 101–36, p. 13 (1989).

On May 10, 1989, the House of Representatives

adopted three articles of impeachment for high crimes and misdemeanors. The first two articles charged Nixon with giving false testimony before the grand jury and the third article charged him with bringing disrepute on the Federal Judiciary. See 135 Cong. Rec. H1811.

After the House presented the articles to the Senate, the Senate voted to invoke its own Impeachment Rule XI, under which the presiding officer appoints a committee of Senators to "receive evidence and take testimony." Senate Impeachment Rule XI, reprinted in Senate Manual, S. Doc. No. 101–1, 101st Cong., 1st Sess., 186 (1989).[1] The Senate

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[1]Specifically, Rule XI provides:

"[I]n the trial of any impeachment the Presiding Officer of the Senate, if the Senate so orders, shall appoint a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine, and for such purpose the committee so appointed and the chairman thereof, to be elected by the committee, shall (unless otherwise ordered by the Senate) exercise all the powers and functions conferred upon the Senate and the Presiding Officer of the Senate, respectively, under the rules of procedure and practice in the Senate when sitting on impeachment trials.

"Unless otherwise ordered by the Senate, the rules of procedure and practice in the Senate when sitting on impeachment trials shall govern the procedure and practice of the committee so appointed. The committee so appointed shall report to the Senate in writing a certified copy of the transcript of the proceedings and testimony had and given before such committee, and such report shall be received by the Senate and the evidence so received and the testimony so taken shall be considered to all intents and purposes, subject to the right of the Senate to determine competency, relevancy, and materiality, as having been received and taken before the Senate, but nothing herein shall prevent the Senate from

committee held four days of hearings, during which 10 witnesses, including Nixon, testified. S. Rep. No. 101–164, p. 4 (1989). Pursuant to Rule XI, the committee presented the full Senate with a complete transcript of the proceeding and a report stating the uncontested facts and summarizing the evidence on the contested facts. See *id.*, at 3–4. Nixon and the House impeachment managers submitted extensive final briefs to the full Senate and delivered arguments from the Senate floor during the three hours set aside for oral argument in front of that body. Nixon himself gave a personal appeal, and several Senators posed questions directly to both parties. 135 Cong. Rec. S14493–14517 (Nov. 1, 1989). The Senate voted by more than the constitutionally required two-thirds majority to convict Nixon on the first two articles. *Id.*, at S14635 (Nov. 3, 1989). The presiding officer then entered judgment removing Nixon from his office as United States District Judge.

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sending for any witness and hearing his testimony in open Senate, or by order of the Senate having the entire trial in open Senate."

Nixon thereafter commenced the present suit, arguing that Senate Rule XI violates the constitutional grant of authority to the Senate to "try" all impeachments because it prohibits the whole Senate from taking part in the evidentiary hearings. See Art. I, §3, cl. 6. Nixon sought a declaratory judgment that his impeachment conviction was void and that his judicial salary and privileges should be reinstated. The District Court held that his claim was nonjusticiable, 744 F. Supp. 9 (D.C. 1990), and the Court of Appeals for the District of Columbia Circuit agreed. 290 U. S. App. D.C. 420, 938 F. 2d 239 (1991).

A controversy is nonjusticiable—*i.e.,* involves a political question—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 resolving it . . . ." *Baker* v. *Carr*, 369 U. S. 186, 217 (1962). But the courts must, in the first instance, interpret the text in question and determine whether and to what extent the issue is textually committed. See *ibid.; Powell* v. *McCormack*, 395 U. S. 486, 519 (1969). As the discussion that follows makes clear, the concept of a textual commitment to a coordinate political department is not completely separate from the concept of a lack of judicially discoverable and manageable standards for resolving it; the lack of judicially manageable standards may strengthen the conclusion that there is a textually demonstrable commitment to a coordinate branch.

In this case, we must examine Art. I, §3, cl. 6, to determine the scope of authority conferred upon the Senate by the Framers regarding impeachment. It provides:

> "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 Clause are revealing. The first sentence is a grant of authority to the Senate, and the word "sole" indicates that this authority is reposed in the Senate and nowhere else. The next two sentences specify requirements to which the Senate proceedings shall conform: the Senate shall be on oath or affirmation, a two-thirds vote is required to convict, and when the President is tried the Chief Justice shall preside.

Petitioner argues that the word "try" in the first sentence imposes by implication an additional requirement on the Senate in that the proceedings must be in the nature of a judicial trial. From there petitioner goes on to argue that this limitation precludes the Senate from delegating to a select committee the task of hearing the testimony of witnesses, as was done pursuant to Senate Rule XI. "`[T]ry' means more than simply `vote on' or `review' or `judge.' In 1787 and today, trying a case means hearing the evidence, not scanning a cold record." Brief for Petitioner 25. Petitioner concludes from this that courts may review whether or not the Senate "tried" him before convicting him.

There are several difficulties with this position which lead us ultimately to reject it. The word "try," both in 1787 and later, has considerably broader meanings than those to which petitioner would limit it. Older dictionaries define try as "[t]o examine" or "[t]o examine as a judge." See 2 S. Johnson, A Dictionary of the English Language (1785). In more modern usage the term has various meanings. For example, try can mean "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). Petitioner submits that "try," as contained in T.

Sheridan, Dictionary of the English Language (1796), means "to examine as a judge; to bring before a judicial tribunal." Based on the variety of definitions, however, we cannot say that the Framers used the word "try" as an implied limitation on the method by which the Senate might proceed in trying impeachments. "As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require . . . ." *Dillon* v. *Gloss*, 256 U. S. 368, 376 (1921).

The conclusion that the use of the word "try" in the first sentence of the Impeachment Trial Clause lacks sufficient precision to afford any judicially manageable standard of review of the Senate's actions is fortified by the existence of the three very specific requirements that the Constitution does impose on the Senate when trying impeachments: the members must be under oath, a two-thirds vote is required to convict, and the Chief Justice presides when the President is tried. These limitations are quite precise, and their nature suggests that the Framers did not intend to impose additional limitations on the form of the Senate proceedings by the use of the word "try" in the first sentence.

Petitioner devotes only two pages in his brief to negating the significance of the word "sole" in the first sentence of Clause 6. As noted above, that sentence provides that "[t]he Senate shall have the sole Power to try all Impeachments." We think that the word "sole" is of considerable significance. Indeed, the word "sole" appears only one other time in the Constitution—with respect to the House of Representatives' "*sole* Power of Impeachment." Art. I, §2, cl. 5 (emphasis added). The common sense meaning of the word "sole" is that the Senate alone shall have authority to determine whether an individual should be acquitted or convicted. The dictionary definition bears this out. "Sole" is defined

as "having no companion," "solitary," "being the only one," and "functioning . . . independently and without assistance or interference." Webster's Third New International Dictionary 2168 (1971). If the courts may review the actions of the Senate in order to determine whether that body "tried" an impeached official, it is difficult to see how the Senate would be "functioning . . . independently and without assistance or interference."

Nixon asserts that the word "sole" has no substantive meaning. To support this contention, he argues that the word is nothing more than a mere "cosmetic edit" added by the Committee of Style after the delegates had approved the substance of the Impeachment Trial Clause. There are two difficulties with this argument. First, accepting as we must the proposition that the Committee of Style had no authority from the Convention to alter the meaning of the Clause, see 2 Records of the Federal Convention of 1787, p. 553 (M. Farrand ed. 1966) (hereinafter Farrand), we must presume that the Committee's reorganization or rephrasing accurately captured what the Framers meant in their unadorned language. See *Powell* v. *McCormack*, 395 U. S., at 538–539. That is, we must presume that the Committee did its job. This presumption is buttressed by the fact that the Constitutional Convention voted on, and accepted, the Committee of Style's linguistic version. See 2 Farrand 663–667. We agree with the Government that "the word `sole' is entitled to no less weight than any other word of the text, because the Committee revision perfected what `had been agreed to.'" Brief for Respondents 25. Second, carrying Nixon's argument to its logical conclusion would constrain us to say that the *second to last draft* would govern in every instance where the Committee of Style added an arguably substantive word. Such a result is at odds with the fact that the Convention passed the Committee's version, and with

the well established rule that the plain language of the enacted text is the best indicator of intent.

Petitioner also contends that the word "sole" should not bear on the question of justiciability because Art. II, §2, cl. 1, of the Constitution grants the President pardon authority "except in Cases of Impeachment." He argues that such a limitation on the President's pardon power would not have been necessary if the Framers thought that the Senate alone had authority to deal with such questions. But the granting of a pardon is in no sense an overturning of a judgment of conviction by some other tribunal; it is "[a]n executive action that mitigates or sets aside *punishment* for a crime." Black's Law Dictionary 1113 (6th ed. 1990) (emphasis added). Authority in the Senate to determine procedures for trying an impeached official, unreviewable by the courts, is therefore not at all inconsistent with authority in the President to grant a pardon to the convicted official. The exception from the President's pardon authority of cases of impeachment was a separate determination by the Framers that executive clemency should not be available in such cases.

Petitioner finally argues that even if significance be attributed to the word "sole" in the first sentence of the clause, the authority granted is to the Senate, and this means that "the Senate—not the courts, not a lay jury, not a Senate Committee—shall try impeachments." Brief for Petitioner 42. It would be possible to read the first sentence of the Clause this way, but it is not a natural reading. Petitioner's interpretation would bring into judicial purview not merely the sort of claim made by petitioner, but other similar claims based on the conclusion that the word "Senate" has imposed by implication limitations on procedures which the Senate might adopt. Such limitations would be inconsistent with the construction of the Clause as a whole, which, as we have noted, sets out three express limitations in separate

sentences.

The history and contemporary understanding of the impeachment provisions support our reading of the constitutional language. The parties do not offer evidence of a single word in the history of the Constitutional Convention or in contemporary commentary that even alludes to the possibility of judicial review in the context of the impeachment powers. See 290 U. S. App. D.C., at 424, 938 F. 2d, at 243; R. Berger, Impeachment: The Constitutional Problems 116 (1973). This silence 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. See The Federalist No. 78, p. 524 (J. Cooke ed. 1961) ("Limitations . . . can be preserved in practice no other way than through the medium of the courts of justice").

The Framers labored over the question of where the impeachment power should lie. Significantly, in at least two considered scenarios the power was placed with the Federal Judiciary. See 1 Farrand 21–22 (Virginia Plan); *id.*, at 244 (New Jersey Plan). Indeed, Madison and the Committee of Detail proposed that the Supreme Court should have the power to determine impeachments. See 2 *id.*, at 551 (Madison); *id.*, at 178–179, 186 (Committee of Detail). Despite these proposals, the Convention ultimately decided that the Senate would have "the sole Power to Try all Impeachments." Art. I, §3, cl. 6. According to Alexander Hamilton, the Senate was the "most fit depositary of this important trust" because its members are representatives of the people. See The Federalist No. 65, p. 440 (J. Cooke ed. 1961). The Supreme Court was not the proper body because the Framers "doubted whether the members of that tribunal would, at all times, be endowed with so eminent a portion of fortitude as would be called for in the execution of so difficult a task" or whether the

Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with the accusation brought by the Legislature—the people's representative. See *id.*, at 441. In addition, the Framers believed the Court was too small in number: "The awful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons." *Id.*, at 441–442.

There are two additional reasons why the Judiciary, and the Supreme Court in particular, were not chosen to have any role in impeachments. First, the Framers recognized that most likely there would be two sets of proceedings for individuals who commit impeachable offenses—the impeachment trial and a separate criminal trial. In fact, the Constitution explicitly provides for two separate proceedings. See Art. I, §3, cl. 7. The Framers deliberately separated the two forums to avoid raising the specter of bias and to ensure independent judgments:

> "Would it be proper that the persons, who had disposed of his fame and his most valuable rights as a citizen in one trial, should in another trial, for the same offence, be also the disposers of his life and his fortune? Would there not be the greatest reason to apprehend, that error in the first sentence would be the parent of error in the second sentence? That the strong bias of one decision would be apt to overrule the influence of any new lights, which might be brought to vary the complexion of another decision?" The Federalist No. 65, p. 442 (J. Cooke ed. 1961).

Certainly judicial review of the Senate's "trial" would introduce the same risk of bias as would participation in the trial itself.

Second, judicial review would be inconsistent with the Framers' insistence that our system be one of

checks and balances. In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature. On the topic of judicial accountability, Hamilton wrote:

> "The precautions for their responsibility are comprised in the article respecting impeachments. They are liable to be impeached for mal-conduct by the house of representatives, and tried by the senate, and if convicted, may be dismissed from office and disqualified for holding any other. *This is the only provision on the point, which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own constitution in respect to our own judges*." *Id.,* No. 79, pp. 532–533 (emphasis added).

Judicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the "important constitutional check" placed on the Judiciary by the Framers. See *id.,* No. 81, p. 545. Nixon's argument would place final reviewing authority with respect to impeachments in the hands of the same body that the impeachment process is meant to regulate.[2]

Nevertheless, Nixon argues that judicial review is necessary in order to place a check on the

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[2]Nixon contends that justiciability should not hang on the mere fact that the Judiciary's interest may be implicated or affected by the legislative action in question. In support, he cites our decisions in *Mistretta* v. *United States*, 488 U. S. 361 (1989) and *Morrison* v. *Olson*, 487 U. S. 654 (1988). These cases do not advance his argument, however, since neither addressed the issue of justiciability. More importantly, neither case involved a situation in which judicial review would remove the only check placed on the Judicial Branch by the Framers.

Legislature. Nixon fears that if the Senate is given unreviewable authority to interpret the Impeachment Trial Clause, there is a grave risk that the Senate will usurp judicial power. The Framers anticipated this objection and created two constitutional safeguards to keep the Senate in check. The first safeguard is that the whole of the impeachment power is divided between the two legislative bodies, with the House given the right to accuse and the Senate given the right to judge. *Id.,* No. 66, p. 446. This split of authority "avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution from the prevalency of a factious spirit in either of those branches." The second safeguard is the two-thirds supermajority vote requirement. Hamilton explained that "[a]s the concurrence of two-thirds of the senate will be requisite to a condemnation, the security to innocence, from this additional circumstance, will be as complete as itself can desire." *Ibid.*

In addition to the textual commitment argument, we are persuaded that the lack of finality and the difficulty of fashioning relief counsel against justiciability. See *Baker* v. *Carr*, 369 U. S., at 210. We agree with the Court of Appeals that opening the door of judicial review to the procedures used by the Senate in trying impeachments would "expose the political life of the country to months, or perhaps years, of chaos." 290 U. S. App. D.C., at 427, 938 F. 2d, at 246. This lack of finality would manifest itself most dramatically if the President were impeached. The legitimacy of any successor, and hence his effectiveness, would be impaired severely, not merely while the judicial process was running its course, but during any retrial that a differently constituted Senate might conduct if its first judgment of conviction were invalidated. Equally uncertain is the question of what relief a court may give other than simply setting aside the judgment of conviction. Could it order the

reinstatement of a convicted federal judge, or order Congress to create an additional judgeship if the seat had been filled in the interim?

Petitioner finally contends that a holding of non-justiciability cannot be reconciled with our opinion in *Powell* v. *McCormack*, 395 U. S. 486 (1969). The relevant issue in *Powell* was whether courts could review the House of Representatives' conclusion that Powell was "unqualified" to sit as a Member because he had been accused of misappropriating public funds and abusing the process of the New York courts. We stated that the question of justiciability turned on whether the Constitution committed authority to the House to judge its members' qualifications, and if so, the extent of that commitment. *Id.*, at 519, 521. Article I, §5 provides that "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." In turn, Art. I, §2 specifies three requirements for membership in the House: The candidate must be at least 25 years of age, a citizen of the United States for no less than seven years, and an inhabitant of the State he is chosen to represent. We held that, in light of the three requirements specified in the Constitution, the word "qualifications"—of which the House was to be the Judge—was of a precise, limited nature. *Id.*, at 522; see also The Federalist No. 60, p. 409 (J. Cooke ed. 1961) ("The qualifications of the persons who may choose or be chosen, as has been remarked upon another occasion, are defined and fixed in the constitution; and are *unalterable by the legislature.*") (emphasis added) (quoted in *Powell*, *supra*, at 539).

Our conclusion in *Powell* was based on the fixed meaning of "[q]ualifications" set forth in Art. I, §2. The claim by the House that its power to "be the Judge of the Elections, Returns and Qualifications of its own Members" was a textual commitment of unreviewable authority was defeated by the existence of this separate provision specifying the

only qualifications which might be imposed for House membership. The decision as to whether a member satisfied these qualifications *was* placed with the House, but the decision as to what these qualifications consisted of was not.

In the case before us, there is no separate provision of the Constitution which could be defeated by allowing the Senate final authority to determine the meaning of the word "try" in the Impeachment Trial Clause. We agree with Nixon that courts possess power to review either legislative or executive action that transgresses identifiable textual limits. As we have made clear, "whether the action of [either the Legislative or Executive Branch] exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution." *Baker* v. *Carr, supra,* at 211; accord, *Powell*, *supra*, at 521. But we conclude, after exercising that delicate responsibility, that the word "try" in the Impeachment Clause does not provide an identifiable textual limit on the authority which is committed to the Senate.

For the foregoing reasons, the judgment of the Court of Appeals is

Affirmed.