Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

The Political Question Doctrine: An Introduction (Part 1)

June 14, 2022

This Legal Sidebar is the first in a six-part series that discusses the Supreme Court's political question doctrine, which instructs that federal courts should forbear from resolving questions when doing so would require the judiciary to make policy decisions, exercise discretion beyond its competency, or encroach on powers the Constitution vests in the legislative or executive branches. By limiting the range of cases federal courts can consider, the political question doctrine is intended to maintain the separation of powers and recognize the roles of the legislative and executive branches in interpreting the Constitution. Understanding the political question doctrine may assist Members of Congress in recognizing when actions of Congress or the executive branch would not be subject to judicial review. For additional background on this topic and citations to relevant sources, please see the Constitution of the United States, Analysis and Interpretation.

The political question doctrine limits the ability of the federal courts to hear constitutional questions even where other justiciability requirements—such as standing, ripeness, and mootness—are met. The Supreme Court has stated that, for purposes of Article III of the Constitution, "no justiciable 'controversy' exists when parties seek adjudication of a political question." The term *political question* is a legal term of art that on its face gives little indication of what sorts of cases the doctrine bars federal courts from deciding. The phrase, which has its origins in Chief Justice Marshall's landmark opinion in *Marbury v. Madison*, is potentially misleading, as federal courts deal with political issues, in the sense of controversial and government-related issues, all the time. Rather than referring generally to any such political issue, the term *political question* expresses the principle that some issues are either entrusted solely to another branch of government or beyond the competence of the judiciary to review. A finding that a matter qualifies as a political question divests federal courts of jurisdiction, meaning they lack the power to rule on the matter.

The Supreme Court identified six factors relevant to the political question doctrine in the 1962 case *Baker v. Carr*:

> Prominent on the surface of any case held to involve a political question is found [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

Congressional Research Service
https://crsreports.congress.gov
LSB10756

> respect due coordinate branches of 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.

The variation among the criteria emphasizes the diverse purposes that the doctrine may serve, embodying both separation-of-powers principles and prudential concerns such as the competency of courts. These six criteria appear in recent Supreme Court opinions applying the political question doctrine. However, Justices of the Supreme Court have recognized confusion around the political question doctrine, both when *Baker* was decided and subsequently. Among other things, judges have disagreed on how to identify a political question, as well as on fundamental matters such as whether the political question doctrine originates in constitutional or prudential principles and what purpose the doctrine allegedly serves.

So far, the Supreme Court has elected not to resolve these disputes in a comprehensive fashion. Instead, the Court has applied the political question doctrine in some areas of foreign policy, Congress's internal governance, and impeachment and in cases involving partisan gerrymandering.

This series of Legal Sidebars traces the development of the political question doctrine from its foundations in *Marbury* to its refinement in *Baker* to its modern applications. The series covers the historical background of the political question doctrine; the doctrine in the modern era; foreign affairs as a political question; congressional governance and impeachment as political questions; and the political process, elections, and gerrymandering.

Author Information

Joanna R. Lampe
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.