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Legal Sidebar

The Political Question Doctrine: The Doctrine in the Modern Era (Part 3)

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This Legal Sidebar is the third 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 Supreme Court began to develop its modern application of the political question doctrine in the 1939 case *Coleman v. Miller*. In *Coleman*, the Court addressed the Kansas legislature's recent approval of the proposed Child Labor Amendment to the Constitution, which had been submitted to the states for ratification 13 years prior. Members of the Kansas legislature who had voted against the amendment petitioned for a writ of mandamus, seeking to revoke the approval. They raised certain procedural challenges to the ratification and argued that the passage of time had rendered Kansas's approval of the amendment invalid. The opinion of the Court, authored by Chief Justice Charles Evans Hughes, affirmed an opinion from the Supreme Court of Kansas denying the plaintiffs' petition. Chief Justice Hughes's opinion explained that the "efficacy of ratifications by state legislature . . . should be regarded as a political question pertaining to the political departments." The Court further clarified, citing *Luther*, that it was a question solely for Congress, and not for the courts, whether an amendment had been adopted within a "reasonable time."

It was against this background that the Court decided *Colegrove v. Green* in 1946. By that time, movement of populations from rural to urban areas had led to severe "malapportionment" in state legislatures. Throughout the country, state legislative districts were drawn such that voters in rural areas had disproportionate power compared to their urban counterparts. State governments, made up of the representatives of those rural voters, were unwilling to fix this problem. As a result, voters in underrepresented districts turned to the courts and the Constitution for a remedy. In *Colegrove*, a seven-member Court was presented with a constitutional challenge to an Illinois districting arrangement where

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plaintiffs were members of districts with much larger populations than other districts. The challenge was based in part on the Guarantee Clause, as well as on the Fourteenth Amendment. A plurality of three Justices joined an opinion by Justice Frankfurter, concluding that the Court lacked jurisdiction in light of the "peculiarly political nature" of the case. The plurality noted that under Article I, Section 4, of the Constitution, "The Times, Places and Manner of holding Elections for . . . Representative, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." Citing that provision, the plurality concluded that the authority to regulate state districting rested "exclusively" with Congress and that courts had no authority to enter this political thicket. The *Colegrove* plurality's view of the political question doctrine, as the Supreme Court later recognized, "left pervasive malapportionment unchecked."

Sixteen years later, the Court confronted malapportionment again in *Baker v. Carr*. Rejecting *Colegrove*, the Baker Court set forth the modern rule on political questions and justiciability. In *Baker*, the Court addressed an equal protection challenge to malapportioned districts in Tennessee and concluded that, notwithstanding the political question doctrine, the plaintiffs' challenge to the state legislative map could proceed. The Court in *Baker* identified six criteria for political question cases, stating that a political question required at least one of the following:

1. a "textually demonstrable constitutional commitment" of the issue to one of the political branches,
2. a "lack of judicially discoverable and manageable standards" for resolving the issue,
3. the inability of a court to decide the case without "an initial policy determination of a kind clearly for nonjudicial discretion,"
4. the impossibility of deciding the case without "expressing lack of the respect due coordinate branches of government,"
5. an "unusual need for unquestioning adherence to a political decision already made," or
6. the possibility of "embarrassment" if multiple branches answer a question in different ways.

The Court also reviewed areas where the Court had previously applied the political question doctrine and concluded that past challenges brought under the Guarantee Clause had failed largely due to a lack of "judicially manageable standards." By contrast, the Court reasoned, "[j]udicial standards under the Equal Protection Clause are well developed and familiar." Shortly after *Baker*, the Supreme Court found the "judicially manageable standard" it was looking for and articulated the so-called one-person-one-vote rule to overturn malapportioned districts. Since *Baker*, courts have consistently determined that challenges to state legislative apportionment are justiciable.

The *Baker* criteria are quoted in virtually every case involving the political question doctrine. However, since *Baker*, the Court has applied the doctrine on relatively few occasions and has taken a fairly narrow view of its reach. Since *Baker*, the Supreme Court has employed the political question doctrine in cases involving some aspects of foreign policy, congressional internal regulation, impeachment, and partisan gerrymandering.

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