

No. 21-1294

**In The
Supreme Court of the United States**

— ♦ —
DAVID H. PENNY,

Petitioner,

v.

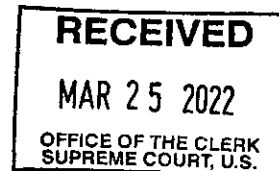
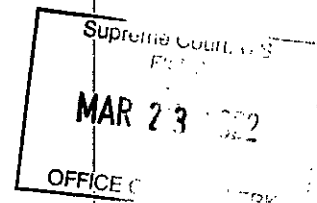
NANCY PELOSI et al.,

Respondents.

— ♦ —
**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

— ♦ —
PETITION FOR WRIT OF CERTIORARI

— ♦ —
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QUESTIONS PRESENTED

In 1868 (U.S. Congressional Globe), the 40th Congress set its precedent to adhere to textual commitment for the criteria to impeach a President. The Court, in *Powell v. MacCormack* (1969), *United States v. Brewster* (1972) *Citizens United v. Federal Election Com'n* (2010), and *United States v. Mendez* (2016) set precedents pertaining to this petition: that political speech, voting, and financial campaign contributions are part of 1st Amendment free speech supporting standing, that the Speech or Debate Clause and the Political Question Doctrine do not prohibit the ability to inquire whether or not a legislative act is legitimate, that legislative activity if determined to be illegitimate also is not protected, that the usage criteria or limits to the authority of Congress's powers is tied to a textual commitment to the U.S. Constitution, that Congress cannot add to or exceed specifically enumerated powers without an amendment to the U.S. Constitution, and illegitimate legislative acts of any kind are of national significance, unlawful, and justiciable.

The question presented is:

Does a citizen constituent of a duly elected President have the possibility of filing a complaint with standing, subject matter jurisdiction, and justiciability, to sue members of the House who voted to impeach President Trump in 2019, to inquire whether they conducted illegitimate legislative activity in the manner they used their sole power to impeach?

PARTIES TO THE PROCEEDINGS

Petitioner David H. Penny was the Plaintiff in the district court proceedings and the appellant in the court of appeals proceedings. Respondents Alma Adams, Justin Amash, Pete Aguilar, Colin Allred, Cindy Axne, Nanette Barragan, Karen Bass, Joyce Beatty, Ami Bera, Don Beyer, Sanford D Bishop Jr, Earl Blumenauer, Lisa Blunt Rochester, Suzanne Bonamici, Brendan F Boyle, Anthony Brindisi, Anthony Brown, Julia Brownley, Cheri Bustos, G K Butterfield, Salud Carbajal, Tony Cardenas, Andre Carson, Matt Cartwright, Ed Case, Sean Casten, Kathy Castor, Joaquin Castro, Judy Chu, David Cicilline, Gil Cisneros, Katherine M Clark, Yvette D Clarke, William Lacy Clay, Emanuel Cleaver II, James E Clyburn, Steve Cohen, Gerald E Connolly, Jim Cooper, J Luis Correa, Jim Costa, Joe Courtney, TJ Cox, Angie Craig, Charlie Crist, Jason Crow, Henry Cuellar, Joe Cunningham, Sharice Davids, Susan A Davis, Danny K Davis, Madeleine Dean, Peter A DeFazio, Diana DeGette, Rosa DeLauro, Suzan DelBene, Antonio Delgado, Val Demings, Mark DeSaulnier, Ted Deutch, Debbie Dingell, Lloyd Doggett, Mike Doyle, Veronica Escobar, Anna G Eshoo, Adriano Espaillat, Dwight Evans, Abby Finkenauer, Lizzie Fletcher, Bill Foster, Lois Frankel, Marcia L Fudge, Ruben Gallego, John Garamendi, Jesus Garcia, Sylvia R Garcia, Jared Golden, Jimmy Gomez, Vicente Gonzalez, Josh Gottheimer, Al Green, Raul M Grijalva, Deb Haaland, Josh Harder, Alcee L Hastings, Jahana Hayes, Denny Heck, Brian Higgins, Jim Himes, Kendra Horn, Steven

PARTIES TO THE PROCEEDINGS—Continued

Horsford, Chrissy Houlahan, Steny H Hoyer, Jared Huffman, Sheila Jackson Lee, Pramila Jayapal, Hakeem Jeffries, Hank Johnson, Eddie Bernice Johnson, Marcy Kaptur, William Keating, Robin Kelly, Joseph P Kennedy III, Ro Khanna, Dan Kildee, Derek Kilmer, Andy Kim, Ron Kind, Ann Kirkpatrick, Raja Krishnamoorthi, Ann McLane Kuster, Conor Lamb, Jim Langevin, Rick Larsen, John B Larson, Brenda Lawrence, Al Lawson, Barbara Lee, Susie Lee, Mike Levin, Andy Levin, Ted Lieu, Daniel Lipinski, Dave Loebsack, Zoe Lofgren, Alan Lowenthal, Nita M Lowey, Ben Ray Lujan, Elaine Luria, Stephen F Lynch, Tom Malinowski, Carolyn B Maloney, Sean Patrick Maloney, Doris Matsui, Ben McAdams, Lucy McBath, Betty McCollum, A Donald McEachin, Jim McGovern, Jerry McNerney, Gregory W Meeks, Grace Meng, Gwen Moore, Joseph D Morelle, Seth Moulton, Debbie Mucarsel-Powell, Stephanie Murphy, Jerrold Nadler, Grace F Napolitano, Richard E Neal, Joe Neguse, Donald Norcross, Tom O'Halleran, Alexandria Ocasio-Cortez, Ilhan Omar, Frank Pallone Jr, Jimmy Panetta, Chris Pappas, Bill Pascrell Jr, Donald M Payne Jr, Nancy Pelosi, Ed Perlmutter, Scott Peters, Dean Phillips, Chellie Pingree, Mark Pocan, Katie Porter, Ayanna S Pressley, David E Price, Mike Quigley, Jamie Raskin, Kathleen Rice, Cedric L Richmond, Max Rose, Harley Rouda, Lucille Roybal-Allard, Raul Ruiz, Dutch Ruppersberger, Bobby L Rush, Tim Ryan, Linda T Sanchez, John Sarbanes, Mary Gay Scanlon, Jan Schakowsky, Adam B Schiff, Brad Schneider, Kurt

PARTIES TO THE PROCEEDINGS—Continued

Schrader, Kim Schrier, Robert C Scott, David Scott, Terri A Sewell, Donna E Shalala, Brad Sherman, Mikie Sherrill, Albio Sires, Elissa Slotkin, Adam Smith, Darren Soto, Abigail Spanberger, Jackie Speier, Greg Stanton, Haley Stevens, Tom Suozzi, Eric Swalwell, Mark Takano, Mike Thompson, Bennie Thompson, Dina Titus, Rashida Tlaib, Paul Tonko, Norma J Torres, Xochitl Torres Small, Lori Trahan, David Trone, Lauren Underwood, Juan C Vargas, Marc Veasey, Filemon Vela, Nydia M Velazquez, Peter J Visclosky, Debbie Wasserman Schultz, Maxine Waters, Bonnie Watson Coleman, Peter Welch, Jennifer Wexton, Susan Wild, Frederica S Wilson, and John Yarmuth were the defendants in the district court proceedings and the appellees in the court of appeals proceedings.

RELATED CASES

David H. Penny v. Nancy Pelosi et al., 20-cv-2047 U.S. District Court Central District of Illinois. Judgment decided 10 May 2021

David H. Penny v. Nancy Pelosi et al., Seventh Circuit. Judgment decided on 23 December 2021

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
RELATED CASES	iv
TABLE OF AUTHORITIES	vii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	1
STATUTES AND CONSTITUTIONAL PROVI- SIONS INVOLVED	1
INTRODUCTION	5
STATEMENT OF THE CASE.....	6
I. Short History of Presidential impeach- ments	7
II. Facts and Legal Issues of the case	9
1. The anomaly of the 2019 impeachment of President Trump.....	9
2. Summary of District judge analysis	9
3. Summary of 7th Circuit order	9
REASONS FOR GRANTING THE PETITION.....	9
I. The National importance of the case	9
II. Last resort of the petitioner	12
III. Penny's complaint has standing.....	14

TABLE OF CONTENTS—Continued

	Page
a. Injury	14
b. Causal connection.....	16
c. Favorable decision	17
IV. The complaint is justiciable	18
a. Subject matter jurisdiction	18
b. Speech or debate clause.....	19
c. Justiciability.....	19
d. Political doctrine question.....	20
e. Definite and manageable standard	20
f. So what if Trump got removed, the Vice President is republican?	21
g. Additional reasons to allow amendment of the complaint.....	21
CONCLUSION.....	22
 APPENDIX	
Opinion, United State Court of Appeals for the Seventh Circuit (23 December, 2021)	App. 1
Opinion, United States District Court, Central District of Illinois (10 May, 2021)	App. 7
Revised Sections of Complaint.....	App. 20

TABLE OF AUTHORITIES

	Page
CASES AND CONGRESSIONAL PRECEDENT	
<i>Citizens United v. Federal Election Com'n</i> , 558 U.S. 310 (2010)	14
<i>Cohens v. Virginia</i> , 19 U.S. (6 Wheat.) 264, 5 L.Ed. 257 (1821)	10
<i>Comcast Corp. v. Nat. Assn. African American-owned</i> , 140 S. Ct. 1009, 589 U.S., 206 L. Ed. 2d 356 (2020)	16
<i>Kilbourn v. Thompson</i> , 103 U.S. 168 (1881)	18
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803)	18
<i>Marshall v. Knight et al.</i> , 445 F.3d 965 (7th Cir. 2006)	10, 21
<i>Maty v. Grasselli Chemical Co.</i> , 303 U.S. 197, 58 S. Ct. 507, 82 L. Ed. 745 (1938)	21
<i>Panther Partners, Inc. v. Ikanos Commc'ns, Inc.</i> , 2009 U.S. App. LEXIS 20652 (2d Cir. Sept. 17, 2009)	21
<i>Powell v. McCormack</i> , 395 F.2d 577 (D.C. Cir. 1968)	11, 14
<i>Powell v. McCormack</i> , 395 U.S. 486 (1969) ...	11, 14, 19, 20
<i>Shakman v. Democratic Organization of Cook County</i> , 435 F.2d 267 (7th Cir. 1970)	12
<i>United States v. Brewster</i> (1972)	18
<i>United States v. Mendez</i> (2016)	18

TABLE OF AUTHORITIES—Continued

	Page
U.S. CONSTITUTIONAL ARTICLES AND AMENDMENTS	
First Amendment.....	<i>passim</i>
Fifth Amendment	4, 14, 15, 16
Fourteenth Amendment	5, 15, 16
U.S. Constitution Article I sec. VI clause 1	4
U.S. Constitution Article II Sec. 4	4, 7, 19
U.S. Constitution Article VI para. 3	4, 17
STATUTES	
5 U.S. Code Oath of Office	1
923 18 U.S.C. 371 Conspiracy to Defraud the United States	2
925 18 U.S.C. 371 Obstructing or Impairing Le- gitimate Government Activity	2
18 U.S. Code 2381 Treason	2
18 U.S. Code 2383 Rebellions or Insurrection	2
18 U.S. Code 2384 Seditious Conspiracy	3
18 U.S. Code 2385 Advocating overthrow of the Government	3
OTHER AUTHORITIES	
Congressional Globe (predecessor to the current Congressional Record) of the 40th Congress in 1886, February 24th, page 1386, center col- umn citing Mr. Julian's speech	7

TABLE OF AUTHORITIES—Continued

	Page
House Judiciary Committee July 27th, 1974, Articles of Impeachment for Richard M. Nixon	8
House Resolution 611 (1998), 105th Congress, 2nd Session, Articles of Impeachment Against William Jefferson Clinton.....	8
House Resolution 755 (2019), 116th Congress, 1st Session, Articles of Impeachment Against Donald John Trump	8
House Resolution 24 (2021), 117th Congress, 1st Session, Articles of Impeachment Against Donald John Trump	8
Dwight, Theodore W. (1867), Trial by Impeach- ment.....	8

PETITION FOR WRIT OF CERTIORARI

David Harold Penny petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The Seventh Circuit's opinion is reported at *David Harold Penny v. Nancy Pelosi et al.*, No. 21-2039, is at App. 1-6. The opinion of the Central District Court of Illinois No. 20-cv-2047 is at App 7-19.

JURISDICTION

The Court of Appeals entered judgment on December 23, 2021. This Court has a filing time of 90 days. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

5 U.S. Code Oath of Office provides in relevant part that: An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: "I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the

same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God." This section does not affect other oaths required by law.

923 18 U.S.C. 371 Conspiracy to Defraud the United States provides in relevant part that: If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose.

925 18 U.S.C. 371 Obstructing or Impairing Legitimate Government Activity provides in relevant part that: . . . providing false documents . . . and Obstructing, in any manner, a legitimate governmental function.

18 U.S. Code 2381 Treason provides in relevant part that provides in relevant part that: Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason . . . and shall be incapable of holding any office under the United States.

18 U.S. Code 2383 Rebellions or Insurrection provides in relevant part that: Whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more

than ten years, or both; and shall be incapable of holding any office under the United States.

18 U.S. Code 2384 Seditious Conspiracy provides in relevant part that: If two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down . . . the Government of the United States, . . . or to oppose by force the authority thereof, or by force to prevent . . . the execution of any law contrary to the authority thereof, they shall each be fined under this title or imprisoned not more than twenty years, or both.

18 U.S. Code 2385 Advocating overthrow of the Government provides in relevant part that: Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States . . . by force or violence . . . ; or Whoever, with intent to cause the overthrow . . . of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising of overthrowing . . . any government in the United States by force or violence, or attempts to do so; or Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who . . . advocate, or encourage the overthrow . . . of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

U.S. Constitution Article I Sec. 6 clause 1 provides in relevant part that: The Senators and Representatives . . . They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from arrest . . . and for any Speech or Debate in either House, they shall not be questioned in any other place.

U.S. Constitution Article II Sec. 4 provides in relevant part that: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason; Bribery, or other high Crimes and Misdemeanors.

U.S. Constitution Article VI para. 3 provides in relevant part that: The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial Officers, both for the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . .

First Amendment to the U.S. Constitution provides in relevant part that: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment to the U.S. Constitution provides in relevant part that: No person shall be held to answer for a capital, or otherwise infamous crimes . . . ; nor shall be compelled in any criminal case

to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . .

Fourteenth Amendment to the U.S. Constitution Sections 1 and 3 provides in relevant part that: Sec. 1- All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 3 – No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. . . .

INTRODUCTION

Several impeachments of Presidents have occurred in American history, and only one stands out as unlawfully done. This writ explains why Penny should

be allowed to amend his complaint concerning the 2019 vote by members of the House of Representatives to impeach President Trump. This case squarely presents a violation of Penny's 1st Amendment political speech and due process rights caused by the illegitimate legislative activity. This case presents an opportunity for the Court to reinforce and strengthen its precedent on the importance of adhering to the case law and Congressional precedent on the textual commitment to the U.S. Constitution. This case foreshadows probable violations of similar nature by future factions when they gain control of the House and Senate, which disrupts the normal function of government and tramples on rights to due process and First Amendment rights of free speech in the form of political speech and voting. Furthermore, the issues at hand are of national and Constitutional importance.

STATEMENT OF THE CASE

This court is the last resort for protecting Petitioners' rights and the opportunity for due process to hold Defendants accountable for their criminal and Constitutional law violations. It is possible for a citizen constituent (the petitioner) to write an amended complaint: which is not futile, meets the standards of standing; defines a concrete injury to petitioner, shows causation, has subject matter jurisdiction, is justiciable, has a definite and manageable standard to follow from Congressional precedents and case law, and is not prohibited by the Speech or Debate Clause or the

Political Question Doctrine; it is an inquiry to determine whether the specific act of voting to impeach President Trump in 2019 and submitting those articles to the Senate for trial is legitimate legislative activity.

I. Short History of Presidential impeachments

- a. Following the assassination of President Lincoln, the then-called Radical Republicans sought to impeach the Democratic vice president Johnson who then became President Johnson. They vehemently disliked him since he was a Democrat, even though he stayed loyal to the Republic and was Lincoln's vice president who supported Lincoln's reconstruction and healing of the nation through equitable treatment of the South, which the Radical Republicans opposed. According to the Congressional Globe, in their congressional debates, an indictable offense must have been committed to meet the criteria of Article II section 4 (Congressional Globe 40th Congress 1868). One direct reference was the excitement expressed by Mr. Julian that the President had violated the Tenure Act, which was an indictable offense. The Radical Republicans created the Tenure Act to ensnare President Johnson into committing an indictable offense to justify his removal. Johnson vetoed it, but Congress overrode his veto. Once it became law Johnson violated it, believing it was unconstitutional. As this was the first impeachment of a President, it affirmed the criteria precedent for future presidential

impeachments. Contemporary legal review commentary on the issue, Trial By Impeachment (Dwight, 1867) presents a more in-depth discussion. It also concluded that an indictable offense is necessary according to the limits of the sole power of impeachment in the U.S. Constitution. The Tenure Act was repealed almost twenty years later, and in 1926 the Court further vindicated Johnson declaring it unconstitutional.

- b. Only the House Judiciary Committee, not the House, ever voted on the drafted impeachment articles due to President Nixon's resignation. The precedent for needing a specific indictable offense to impeach stood.
- c. President Clinton committed perjury and obstruction of justice, clearly annotated illegal and indictable offenses (House Resolution 611, 105th Congress, Second Session). The precedent set by Congress affirmed.
- d. In Dec of 2019, the House voted Articles of Impeachment against President Donald J. Trump and submitted to the Senate in January 2020 for trial. The trial found President Trump not guilty.
- e. In January of 2021, the House voted again to impeach President Trump for the indictable offense of incitement of insurrection. The Chief Justice Court declined to preside over this impeachment trial, which the Senate conducted and found the President not guilty.

II. Facts and Legal Issues of the case

1. The anomaly of the 2019 impeachment of President Trump

In every instance of voting for articles of impeachment, whether only in the House Judicial Committee or by the House as a whole, laws were alleged to have been broken and indictable offenses levied against the President, except in the case of the 2019 impeachment. Abuse of power allegations are not actual crimes, and exercise of Executive privilege in not disclosing requested information is a common legally accepted doctrine in the separation of powers.

2. Summary of District judge analysis

The judge found Penny insufficiently articulated standing and that his complaint was futile, so he ordered the case dismissed with prejudice and denied Penny's opportunity to amend his complaint.

3. Summary of 7th Circuit order

The Circuit acknowledged under normal circumstances that Penny would be allowed to amend his complaint but affirmed the lower court's order and added the reasoning that they did not have subject matter jurisdiction.

REASONS FOR GRANTING THE PETITION

I. The National importance of the case

a. Accountability of members of Congress when they exceed their authority as expressed in Article I of

the U.S. Constitution is essential. When government entities or branches can no longer be trusted to hold themselves accountable, the final authority they answer to is the citizen or citizens. Therefore, the citizen whose freedom of speech and due process rights have been nullified when their duly elected candidate is put in jeopardy of unlawful removal has legal standing to sue Congress. If Congress does not have to follow its precedents, the precedents of case law, nor adhere to the textual commitment to the U.S. Constitution, which is the supreme law of the land. The Petitioner's rights, and arguably any citizen constituent in the Petitioner's situation, are free to be ignored or nullified. If so be the case, then Congressional precedent and this Court's precedents do not have to be followed by the House of Representatives. Then the House, without fear of being held substantively accountable, other than possibly being unseated in some election, which does not provide relief to injured parties, can ignore or violate the U.S. Constitution at will. And if they can ignore the supreme law of the land at will, the Petitioner's rights and freedoms and the rule of law of the U.S. Constitution are in constant jeopardy.

b. There are times when jurisdiction is determined that the court has no choice but to take the case and act. As Chief Justice Marshall in *Cohens v. Virginia* remarked, courts have no right to decline its exercise any more than the right to usurp jurisdiction where there is none. *Marshall* goes on to say that to do either is an act of treason against the U.S. Constitution. *Penny v. Pelosi et al.* is one of those times.

c. In *Powell* (1968) the court determined that in *Bond*, the constituent appellant's claims of standing were not addressed. However, had their claims been part of their first amendment rights, as the Petitioners is, they rightly pointed toward the "relationship between the first amendment and rights to political expression and the related right of voters to have their views articulate for them in Congress." Even though they found against Mr. Powell, which the Court reversed in *Powell* (1969), the lower court judges' observation was not undone. That the function of government is for the one to speak for the many, and the rights of the many should be held in high regard. Therefore, any action which infringes upon those rights should be scrutinized *Powell* (1968). Their reasoning of the relationship between first amendment rights and voters' expression of their free speech through voting stood. Furthermore, in *Powell* (1968), voting rights were determined as not academic, and its primary function undermined "when the person elected cannot assume the powers and responsibilities of the office." Moreover, *Powell* (1968) notes that the relationship between the elected official and the constituent is so intertwined that they cannot be separated.

d. There is a demonstrated motive and intent to use the power of impeachment as a partisan political weapon and not a check or balance. It is common knowledge through media outlets, and various magazine and newspaper reporting's that starting with Donald Trump's pick as the Republican candidate for President, calls for impeachment should he win began.

Then throughout the election, after being elected, and the same day of his inauguration in January 2017, calls are heard about impeaching him. As noted above, the result was multiple votes to impeach and harass the President for years to come. The obvious weaponization of the sole power to impeach by an opposing party outraged they lost a fair election of the people, was warned about by Dwight (1867) was exhibited before the world. The weaponization of impeachment demonstrates invidious official discrimination by those who plotted, advocated, and took action to overthrow the legitimate government in attempting to illegally oust President Trump against the Petitioner's voting first amendment interest and political voice apart from the due process of law. Such action against the Petitioner is secure from discrimination under the equal protection clause see *Shakman v. Democratic Organization of Cook County et al.*, at 270 (1970).

e. Weaponization of any part of the U.S. Constitution, especially the power to impeach, is contrary to the Framers' intent as a last resort to check government overreach, threatening the Constitution's fabric, and cannot be allowed to linger unchecked.

II. Last resort of the petitioner

- a. Because of legal gerrymandering, most of the districts which voted in the Defendants into office are virtually uncontested, leaving the chance of constituents rallying to unseat or put pressure on their State to recall any of the Defendants to virtually zero. When the

majority of the House has committed the illegitimate legislative act, it is not reasonable to expect them to hold themselves accountable. The only authority left to hold them accountable is the Petitioner, who by extension, is part of We the People of the Preamble. The Preamble is not for show. The Preamble enumerates from whose authority and their purpose for establishing this Republic. The subsequent articles describe what authority is delegated to whom and how it is to be used to facilitate the people's will and purpose for being established in the Preamble.

- b. If the U.S. Supreme Court does not hold it is possible for the Petitioner to submit an amended complaint the case dead-ends here. Then there is no one else to protect his rights, defend the integrity of our U.S. Constitution, and maintain the appropriate checks and balances between the Branches, holding them to the textual commitment of the U.S. Constitution. Furthermore, there is already talk of impeaching Joe Biden in a similar vein toward Trump in 2016-2021, and Johnson in 1866-68. Not allowing Petitioner to amend and or accept a drafted amended complaint (see appendix C) increases the likelihood of another political faction doing to Joe Biden what was done to President Trump. No matter which faction controls Congress, the law must be followed.
- c. This problem of law and equity, which rises under the U.S. Constitution, will happen again. It will get worse regardless of which

political party you belong to. And it is a looming threat to the Petitioner's rights and freedoms and over every future President, the integrity of the U.S. Constitution, and the freedom of speech and due process of the Petitioner unless action is taken now.

III. Penny's complaint has standing

a. Injury

1. The plaintiff contributed to President Donald J. Trump's campaign and voted for him in the 2016 election, which he legally won and was lawfully inaugurated into. In *Citizens United v. Federal Election Com'n* (2010), the Court found that political speech is free speech. As noted above, the interrelatedness of the relationship between a constituent and their elected official is inextricable *Powell* (1968). In *Powell* (1969), the Court found Mr. Powell had the standing to contest his unlawful exclusion from the House because textual commitment to the Constitution demonstrated exclusion was not a power the House could wield. Therefore, the legislative act of exclusion, not being an enumerated power but beyond the House's Constitutional limits to discipline its members, was illegitimate. Penny claims his first and fifth amendment rights and juxtaposed relationship to his elected official caused injury to him when they voted to impeach President Trump illegitimately.
2. Penny's money he donated to the campaign is part of his expressing and facilitating his

freedom of political speech to help elect Trump through financial support and direct voting. Since the organization Citizens United has standing, so does Penny, an individual, through his contribution and voting for President Trump, as his rights were infringed upon.

3. In not following the proper procedure in impeaching President Trump, the House denied the President his due process rights, and by extension, due to the inextricable relationship between a voter and their seated elected official. Therefore, Penny's Fifth and Fourteenth Amendment rights to due process and equal protection were also denied; because the seated elected President Trump represents Penny the Petitioners will and is an extension of his exercise of policymaking and facilitation of government in the office of the President.
4. In every article of impeachment in 1974 (Judiciary Committee), 1998, 2017, 2019, and 2021 there is one material injury consistently declared to provide standing for the article, which essentially functions as a Grand Jury indictment. The injury in every article for impeachment is "... and to the manifest injury of the people of the United States". Since Congress declares the crimes of a President to be a manifest injury to the people of the United States. And there is an indivisible relationship between a voter and their elected official. And once elected, according to Congress, injury and relationship is extended to all people of the nation should that official be President.

Then, if a crime committed by a President worthy of lawful removal from his office is a concrete or manifest injury to Penny, being one of the people of the United States, the reverse is also true. Therefore, Penny has standing because the impeachment illegitimately conducted beyond the textual limits of the sole power of impeachment manifestly injures the Petitioner, whose duly elected official was threatened with unlawful removal from office. Which injury includes but is not limited to: a disruption of the normal function of government, and advocating the overthrow of legitimate government, rebellion against the U.S. Constitution.

b. Causal connection

The but-for causation standard is reiterated and clarified in *Comcast Corp. v. Nat. Assn* (2020). If the Defendants had not voted to impeach President Trump in 2019 outside the authority to do so and presented those articles of impeachment to the Senate for trial to attempt his removal from office, no injury to the Petitioner would have occurred. Nor the continued threat of it occurring again be present as it is now. Therefore, Penny has standing because: the House members who voted to impeach in 2019, among other things, attempted to defraud the United States, caused manifest injury to the Petitioner and violated his rights of first amendment speech, fifth amendment due process, fourteenth amendment equal protection, privileges, and immunities (if a State cannot abridge them, neither can any federal

Branch of government), by endeavoring to unlawfully remove the duly elected official whom the Petitioner voted for and contributed to financially.

c. Favorable decision

1. One type of favorable decision provides direct opportunity to redress the injury and imminent threat- the Court accepting the drafted amended complaint provided in the appendix as is, acknowledging the petitioner has met the criteria for standing, justifiableness of the case, the importance of the case, and subject matter jurisdiction of the case, then remanding it back to the district court.
2. Another type of favorable decision is the Court sees the possibility for the Petitioner to amend a complaint demonstrating sufficient standing and justiciability and overrules the lower courts' denial of being allowed to amend his complaint. Thereby enforcing Penny's right to petition the government with at least one attempt to amend the complaint, especially given the Petitioner is not trained in the law, neither could he afford a lawyer to help craft his complaint.
3. A favorable decision can lead to an ultimate conclusion after a trial of relief requested preventing future violations of Petitioners rights by the Respondents, since it disqualifies all Defendants from running for re-election and disqualifies them from holding office again according to Article VI of the U.S. Constitution and other authorities.

4. A favorable decision leading to a final relief after a trial also becomes a deterrent to further violations; because the precedent consequences for causing manifest injury to one or more peoples of the United States for exceeding Constitutional authority by a holder of an official office in general, not just specific to the sole power to impeach, would likely constrain current and future elected officials in the House at a minimum, from doing so again.

IV. The complaint is justiciable

a. Subject matter jurisdiction

Judicial review of potentially illegitimate and unconstitutional acts is founded in *Marbury v. Madison* (1803) and *Kilbourn v. Thompson* (1881). In *Brewster* (1972), Justice Brennan, dissenting in part and agreeing in part, spoke about immunity and protections of the Speech and Debate clause that "*The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions.*" In *Mendez* (2016), the court held that if an act cannot clearly be determined legitimate legislative activity, inquiry should and possibly must be made into the motivation of the representatives and purpose of the act to determine legitimacy. These two opinions clearly show that an examination to determine legitimacy must be made, and the Speech or Debate Clause does not prohibit any examination to this effect. Our Founders never intended the Speech or Debate Clause to protect members of Congress when they exceed their

authority and violate the U.S. Constitution and rights of citizens, in this case, the Petitioners' rights. Since the complaint concerns a federal question, Penny has subject matter jurisdiction in federal court.

b. Speech or debate clause

In *Powell v. McCormack*, 395, U.S. 486, 502-03 (1969), once it is determined that Members are acting within the 'legitimate legislative sphere' the Speech or Debate Clause is an absolute bar to interference. Penny agrees, but an inquiry must be made to determine the legitimacy of an act. Absent an inquiry, no determination can be made, and the Speech or Debate Clause is not applicable. The amended complaint of *Penny* is to initiate the inquiry as to whether the act of voting for the impeachment of President Trump in 2019 was legitimate or illegitimate, per the criteria for impeachment expressed in the U.S. Constitution. Unless inquiry is made, the legitimacy of this act remains unclear, being undetermined by due process of law.

c. Justiciability

Powell (1969) provides further justiciability as parallel to the issue in *Penny v. Pelosi* which is a matter of textual commitment to the U.S. Constitution, specifically Article II section 4. Specific criteria cannot be added to or taken away from except by a ratified Amendment. Congress, according to *Powell*, cannot exercise

action or authority beyond the limits of the U.S. Constitution and that it is appropriate for the Judicial Branch to review such alleged ultra vires legislative actions. In principle, *Penny* parallels *Powell*, and the Court has already ruled that this type of issue is justiciable. Just as in *Powell*, Congress cannot exclude a member nor legally prevent them from being seated since this is not expressed in their authority. Neither can Congress impeach a President outside of the criteria of the U.S. Constitution.

d. Political doctrine question

Powell (1969) also answered the Political Doctrine question and the Judiciary appropriateness to review the case and found it did not violate the Political Doctrine to review it. As the Constitutional principle addressed in *Powell* parallels *Penny*, the court has also already answered the Political Doctrine question for *Penny* in *Powell*.

e. Definite and manageable standard

There is a definite manageable standard to follow, as shown in the short history of impeachment. The manageable standard is found in case law precedents as noted above, but also in Congress' precedent for impeachment set in 1868. It is worth repeating only once in over 150 years, and multiple impeachment votes did Congress violate their own precedent, the vote of 2019.

f. So what if Trump got removed, the Vice President is republican?

Some may say unlawful removal would not give Respondents any advantage since the VP was Republican. On the contrary. Successful or not, unless held accountable, Respondents set a new precedent. The power to harass or possibly remove any President or official (even judges) at will; threatening the Petitioner's liberty, destroying the separation of powers, and rendering the Judicial Branch unable to stop them. It is not too late to act before the Bill of Rights becomes the Bill of Suggestions.

g. Additional reasons to allow amendment to the complaint

Even if this was a second amendment to the complaint, a leave to amend is not futile as all possibilities should be considered, especially when a dismissal with prejudice coincides with a denial to amend *Panther Partners v. Ikanos* (2009, 2d Circuit). *Marshall v. Knight et al.* 2005, held pro se complaints should be viewed liberally to permit ample opportunity to amend. *Marshall* also held that the dismissal of pro se claims should be on merit and not technical grounds. The petitioner's complaint has merit but was not articulated well technically speaking to demonstrate at first it's standing etc., correctly. In a pro se case, *Maty v. Grasselli* (1938), the Court held that pleadings, though important to articulate

well, should not be a barrier to achieving justice.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted, and if the answer to the question presented is yes, then relief requested is to either allow the Petitioner to submit an amended complaint to the district court, or that the Court accept the draft complaint provided in the appendix as is and remand back to the district court for further proceedings.

Respectfully submitted,

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March 23, 2022