

HIGH COURT TO HEAR CHALLENGE BY NIXON

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He Contests Law Giving U.S. Control Over His Presidential Papers

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WASHINGTON, Nov. 29—The Supreme Court agreed today to hear former President Richard M. Nixon's challenge to the 1974 statute that gave the Government control over his Presidential papers and tape recordings.

Mr. Nixon lost the first round of his challenge last January, when a three-judge Federal court here unanimously upheld the statute as constitutional.

The lower court reasoned in part that Congress, in passing the law, had "an adequate basis for concluding that Mr. Nixon might not be a wholly reliable custodian of the materials."

The Court also moved today in two key areas, capital punishment and abortion, taking the following actions:

It agreed to decide whether a state may make the death penalty mandatory for the murder of a police officer, acting in a case involving a Louisiana law that the Court seemed to have struck down last July. [Page 23.]

It affirmed a lower court ruling that struck down an Indiana law requiring first-trimester abortions to be performed in a licensed health facility.

In the Nixon case, the Ford Adminis-

Continued on Page 31, Column 1

Continued From Page 1

tration had asked the Court through the Justice Department to deny Mr. Nixon a hearing and simply to affirm the lower court's decision.

The Court's action, announced without comment, sets the stage for a landmark ruling on the rights of Presidents and former Presidents.

More specifically, it also gives the Justices an opportunity to elaborate on the scope of the Presidential "privilege" against forced disclosure of confidential White House communications. That was the subject of the Court's historic ruling in 1974 ordering Mr. Nixon to give various tape recordings to the Watergate special prosecutor for use in the Watergate cover-up trial.

In the Nixon tapes case, the Court found that the privilege could sometimes be overridden by other interests, such as the need for materials in a criminal prosecution. But its decision established for the first time that there were constitutional "underpinnings" for at least qualified privilege.

The Court's action today further delays processing of the materials. The lower court, when it upheld the statute in January, barred almost all processing and disclosure pending appeal.

Mr. Nixon began his attack on the statute on Dec. 20, 1974, the day after President Ford signed it. The former President challenged it as unconstitutional on a variety of grounds.

Separation of Powers

He contended that it violated the principle of separation of powers, infringed on the Presidential privilege against forced disclosure of confidential Presidential communications, violated his right to privacy, denied him equal protection of the laws by treating him differently from other Presidents and infringed on his First Amendment rights of free speech and freedom of association.

The lower court disposed of each challenge. It gave some credence to Mr. Nixon's privacy claims, saying that he had a reasonable expectation of privacy, and that the law did pose a "not insignificant" invasion of his privacy. But the court also found that the law served national interests of "overriding importance."

Regarding Mr. Nixon's claim of privilege, the lower court made several points: It said that it was not sure that a former President could claim the privilege; that the law would in any event lead to only a minimal intrusion on confidentiality; that Congress might "rationally" have concluded that Mr. Nixon might not be a "wholly reliable" custodian.

In his appeal to the Supreme Court, Mr. Nixon reiterated most of his original complaints.

He contended that in "seizing and authorizing review and potential disclosure" of the materials of the Nixon Administration, "Congress has launched an unprecedented invasion of the autonomy of the executive branch."

"Would the Constitution permit the Congress to enact a 'Judicial Materials Preservation Act' that would subject to 'complete possession and control' of the Government every memorandum and document kept by Federal judges, including the Justices of this Court?" he asked.

The former President said that it would be possible, if Congress acted "carefully and within narrow limits, to implement overriding constitutional interests," for the legislature to compel disclosure of some specific information from the executive branch.

"But," he charged, "in this case, Congress employed not a delicate scalpel, but a cleaver."

On the privacy issue, Mr. Nixon faulted the lower court for stressing that the screening would be carried out by "professional and discreet" Government archivists.