

## Sec. 2—House of Representatives

## Cl. 2—Qualifications

clusive<sup>327</sup> and that Congress could not add to them by excluding Members-elect not meeting additional qualifications.<sup>328</sup> Powell was excluded from the 90th Congress on the grounds that he had asserted an unwarranted privilege and immunity from the process of a state court; that he had wrongfully diverted House funds for his own uses; and that he had made false reports on the expenditures of foreign currency.<sup>329</sup> The Court's determination that Powell had been wrongfully excluded was based in the main on the Court's analysis of the Convention debates and historical developments.

The Court found that English parliamentary practice and colonial legislative practice at the time of the drafting of the Constitution had, after some earlier deviations, settled into a policy whereby exclusion was a power exercisable only when a Member-elect failed to meet a standing qualification.<sup>330</sup> Then, in the Constitutional Convention, the Framers had defeated provisions allowing Congress by statute either to create property qualifications or to create additional qualifications without limitation.<sup>331</sup> Further, both Hamilton and Madison had strongly urged in the *Federalist Papers* (and Hamilton in the New York ratifying convention) that the Constitution prescribed exclusive qualifications for Members of Congress.<sup>332</sup> In addition, the Court observed that the early practice of Congress, with many of the Framers serving, was consistently limited to the view that exclusion could be exercised only with regard to a Member-elect's failure to meet a qualification expressly prescribed in the Constitution. Not until the Civil War did contrary precedents appear, and practice after this was mixed.<sup>333</sup>

Finally, said the Court, even were the intent of the Framers less clear, it would still be compelled to interpret the power to exclude narrowly. "A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 *Elliot's Debates* 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agreement with this basic philosophy, the Convention

<sup>327</sup> The Court declined to reach the question whether the Constitution in fact does impose other qualifications. 395 U.S. at 520 n.41 (possibly Article I, § 3, cl. 7, disqualifying persons impeached, Article I, § 6, cl. 2, incompatible offices, and § 3 of the Fourteenth Amendment). It is also possible that the oath provision of Article VI, cl. 3, could be considered a qualification. See *Bond v. Floyd*, 385 U.S. 116, 129–131 (1966).

<sup>328</sup> 395 U.S. at 550.

<sup>329</sup> H. REP. NO. 27, 90th Congress, 1st sess. (1967); 395 U.S. at 489–493.

<sup>330</sup> 395 U.S. at 522–31.

<sup>331</sup> 395 U.S. at 532–39.

<sup>332</sup> 395 U.S. at 539–41.

<sup>333</sup> 395 U.S. at 541–47.