

Sec. 2—House of Representatives

Cl. 2—Qualifications

tives or the Senate before attaining the required age or term of citizenship have been admitted as soon as they became qualified.³²⁰

Exclusivity of Constitutional Qualifications

Congressional Additions.—Writing in *The Federalist* with reference to the election of Members of Congress, Hamilton firmly stated that “[t]he qualifications of the persons who may . . . be chosen . . . are defined and fixed in the constitution; and are unalterable by the legislature.”³²¹ Until the Civil War, the issue was not raised, as actions taken by either house conformed to the idea that the qualifications for membership could not be enlarged by statute or practice.³²² But in the passions aroused by the fratricidal conflict, Congress enacted a law requiring its Members to take an oath that they had never been disloyal to the National Government.³²³ Several persons were refused seats by both houses because of charges of disloyalty,³²⁴ and thereafter House practice, and Senate practice as well, was erratic.³²⁵

But years later, in *Powell v. McCormack*,³²⁶ it was conclusively established that the qualifications listed in Art. I, § 2, cl. 2 are ex-

³²⁰ 1 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES § 418 (1907); 79 CONG. REC. 9841–9842 (1935); *cf.* HINDS’ PRECEDENTS, *supra* § 429.

³²¹ No. 60 (J. Cooke ed. 1961), 409. *See also* 2 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 623–627 (1833) (relating to the power of the states to add qualifications).

³²² All the instances appear to be, however, cases in which the contest arose out of a claimed additional state qualification.

³²³ Act of July 2, 1862, 12 Stat. 502. Note also the disqualification written into § 3 of the Fourteenth Amendment.

³²⁴ 1 HINDS’ PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 451, 449, 457 (1907).

³²⁵ In 1870, the House excluded a Member-elect who had been reelected after resigning earlier in the same Congress when expulsion proceedings were instituted against him for selling appointments to the Military Academy. *Id.* at § 464. A Member-elect was excluded in 1899 because of his practice of polygamy, *id.* at 474–80, but the Senate refused, after adopting a rule requiring a two-thirds vote, to exclude a Member-elect on those grounds. *Id.* at §§ 481–483. The House twice excluded a socialist Member-elect in the wake of World War I on allegations of disloyalty. 6 CANON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES §§ 56–58 (1935). *See also* S. REP. NO. 1010, 77th Congress, 2d sess. (1942), and R. HUPMAN, *Senate Election, Expulsion and Censure Cases From 1789 to 1960*, S. Doc. No. 71, 87th Congress, 2d sess. (1962), 140 (dealing with the effort to exclude Senator Langer of North Dakota).

³²⁶ 395 U.S. 486 (1969). The Court divided eight to one, Justice Stewart dissenting on the ground that the case was moot. *Powell’s* continuing validity was affirmed in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), both by the Court, holding that the qualifications set out in the Constitution are exclusive and may not be added to by either Congress or the states, *id.* at 787–98, and by the dissenters, who held that Congress, for different reasons could not add to qualifications, although the states could. *Id.* at 875–76.