adopted his suggestion limiting the power to expel. To allow essentially that same power to be exercised under the guise of judging qualifications, would be to ignore Madison's warning, borne out in the Wilkes case and some of Congress' own post-Civil War exclusion cases, against 'vesting an improper and dangerous power in the Legislature.' 2 Farrand 249."[334] Thus, the Court appears to say, to allow the House to exclude Powell on this basis of qualifications of its own choosing would impinge on the interests of his constituents in effective participation in the electoral process, an interest which could be protected by a narrow interpretation of congressional power.[335] These factors led the Court to conclude that Congress' power under Article I, § 5, cl. 1 to judge the qualifications of its Members was limited to ascertaining the presence or absence of the standing qualifications prescribed in Article I, § 2, cl. 2, and perhaps in other express provisions of the Constitution.[336]

The result in *Powell* had been foreshadowed when the Court had earlier held that the exclusion of a Member-elect by a state legislature because of objections he had uttered to certain national policies constituted a violation of the First Amendment and was void.[337] In the course of that decision, the Court denied state legislators the power to look behind the willingness of any legislator to take the oath to support the Constitution of the United States, prescribed by Article VI, cl. 3, to test his sincerity in taking it.[338] The unanimous Court noted the views of Madison and Hamilton on the exclusivity of the qualifications set out in the Constitution and alluded to Madison's view that the unfettered discretion of the legislative branch to exclude members could be abused in behalf of political, religious or other orthodoxies.[339] The First Amendment holding and the holding with regard to testing the sincerity with which the oath of office is taken are no doubt as applicable to the United States Congress as to state legislatures.

State Additions.—However much Congress may have deviated from the principle that the qualifications listed in the Consti-

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[334] 395 U.S. at 547–48.

[335] The protection of the voters' interest in being represented by the person of their choice is thus analogized to their constitutionally secured right to cast a ballot and have it counted in general elections, *Ex parte* Yarbrough, 110 U.S. 651 (1884), and in primary elections, United States v. Classic, 313 U.S. 299 (1941), to cast a ballot undiluted in strength because of unequally populated districts, Wesberry v. Sanders, 376 U.S. 1 (1964), and to cast a vote for candidates of their choice unfettered by onerous restrictions on candidate qualification for the ballot. Williams v. Rhodes, 393 U.S. 23 (1968).

[336] Powell v. McCormack, 395 U.S. 486, 518–47 (1969).

[337] Bond v. Floyd, 385 U.S. 116 (1966).

[338] 385 U.S. at 129–31, 132, 135.

[339] 385 U.S. at 135 n.13.