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Constitutional Law - Qualifications of Congressmen

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own wrong."[28] In *Lowe* v. *Quinn,* the defendant-donee would make a profit. The ring was worth $60,000. In the instant case, Justice Tilzer, dissenting, made the interesting observation in regard to defendant's wrongful conduct that it was not the plaintiff-donor attempting to take another man's wife, but it was the defendant-donee seeking to take another woman's husband. "And while it may be that the plaintiff's hands are not too clean, the defendant's hands are covered with more than diamonds."[29]

Throughout history, the donor's attempts to recover an engagement ring after his intended wife jilted him have proved successful. In Pennsylvania, the trend of the law in allowing the donor to recover the engagement ring when the donee breaks the engagement is clear. In the instant case, the equities in favor of the plaintiff-donor are manifest. If a case such as *Lowe* v. *Quinn* should come before a court of Pennsylvania, it is submitted that the court would allow recovery for the plaintiff-donor.

William C. Costopoulos

CONSTITUTIONAL LAW—QUALIFICATIONS OF CONGRESSMEN—The Supreme Court of the United States has held that Congress, in judging the qualifications of its members, is limited to the standing qualifications prescribed by the Constitution.

Powell v. *McCormack,* 89 S. Ct. 1944 (1969).

In November, 1966, petitioner Powell was elected from the 18th Congressional District of New York to serve in the House of Representatives for the 90th Congress. However, pursuant to a House Resolution, Powell was not permitted to take his seat.[1] He then filed suit in the

28. Furman v. Krauss, 175 Misc. 1018, 1021, 26 N.Y.S.2d 121, 124 (1941), *aff'd,* 262 App. Div. 1016, 30 N.Y.S.2d 848, (1941).
29. Lowe v. Quinn, 301 N.Y.S.2d 361, 364 (1969).

1. Powell was denied his seat in the following manner. During the 89th Congress, a special Subcommittee on Contracts of the Committee on House Administration conducted an investigation into the expenditures of the Committee on Education and Labor, of which Powell was the Chairman. The special Subcommittee issued a report concluding that Powell and certain staff employees had deceived the House authorities as to travel expenses and that there was strong evidence that certain illegal salary payments had been made to Powell's wife. (H.R. REP. No. 2349, 89th Cong., 2d Sess. 6-7 (1966).) No further action was taken until just prior to the organization of the 90th Congress, when the

federal district court claiming that the House could exclude him only if it found that he failed to meet the standing requirements of age, citizenship, and residence as contained in Article I, § 2, of the Constitution—requirements which the House specifically found that Powell met. The district court dismissed petitioner's complaint "for want of jurisdiction of the subject matter."[2] The Court of Appeals affirmed the dismissal, although on somewhat different grounds.[3] The United States Supreme Court held that it was error to dismiss the complaint, and that petitioner Powell was entitled to his seat in the 90th Congress.[4] The Court reached the following conclusions: (1) that this case had not been mooted by petitioner's seating in the 91st Congress; (2) that although this action should be dismissed against respondent Congressmen, it could be sustained against their agents; (3) that the 90th Congress' denial of membership to Powell could not be treated as an expulsion; (4) that the federal district court had jurisdiction over the subject matter of this controversy; and (5) that the case was justiciable.[5]

Article I, § 5, of the Constitution gives the House of Representatives authority to punish a member for disorderly behavior and to expel a member "with the concurrence of two-thirds."

Whether or not this power extends over members-elect who were

Democratic members-elect voted to remove Powell as Chairman of his Committee. (H.R. REP. No. 27, 90th Cong., 1st Sess. 1-2 (1967).)

When the 90th Congress met to organize, Powell was asked to step aside while the oath was administered to the other members-elect. The House adopted a resolution which provided that the Speaker appoint a Select Committee to determine Powell's eligibility. The Select Committee, on February 23, 1967, found that Powell met the standing qualifications of Article 1, Sec. 2. H.R. REP., No. 27, 90th Cong. 1st Sess. 31 (1967).); and recommended that Powell be seated as a member of the 90th Congress, but that he be censured by the House, fined $40,000, and be deprived of his seniority.

The report was presented to the House on March 1, 1967. An amendment was offered calling for the exclusion of Powell and a declaration that his seat was vacant. The amendment was adopted by a vote of 248 to 176 and Powell was prevented from taking his seat in the 90th Congress.

2. Powell v. McCormack, 266 F. Supp. 354 (D.C. Cir. 1967).

3. The Court of Appeals held that a claim of Congressman-elect was one "arising under the Constitution" within the constitutional provision extending federal judicial power to causes and controversies arising under the Constitution. The court stated that on this basis, the District Court did, in fact, have subject matter jurisdiction. Furthermore, the statute giving District Courts original jurisdiction of all civil actions which arise under the Constitution is a grant of jurisdiction to entertain action of Congressman-elect for injunctive relief, mandamus and declaratory judgment on the basis that his exclusion from membership in the House of Representatives was in violation of the Constitution. U.S. CONST. art. 1, § 2 cl. 2; 28 U.S.C.A. § 1331(a). Nevertheless, the District Court's dismissal was affirmed on the ground that the issues raised by the action were non-justiciable and that the Resolution of the House of Representatives excluded Congressman from the statute requiring three judge District Courts to hear application for injunctions restraining enforcement of an act of Congress repugnant to the Constitution. Powell v. McCormack, 129 U.S. App. D.C. 354, 395 F.2d 577 (C.A.D.C.), C.R. 1968.

4. Powell v. McCormack, 89 S. Ct. 1944.

5. *Id.*, at 1979.

guilty of misconduct during a previous Congressional session is not stated in the Constitution. The Court decided that the power did not extend over members-elect and that Powell, therefore, could not be "excluded."[6]

Powell's alleged misconduct occurred prior to the convening of the 90th Congress. The House has on various occasions debated whether a member can be expelled for misconduct during a previous Congress, and the House's own manual of applicable procedure in the 90th Congress states that "both Houses have distrusted this power to punish in such cases."[7] The report of the Select Committee appointed by the 69th Congress, first session, to consider the expulsion of John W. Langley, states unequivocally that the House will not expel a member for misconduct committed during an earlier Congress.[8]

It is clear that Congressional power to expel does not entail a corresponding power to exclude. However, the question of what the limitations are on Congressional power to expel or otherwise punish a member once he has been seated remains unanswered. A controversy also remains as to whether the exclusionary power can be limited by the judiciary. Mr. Justice Douglas, concurring in the instant case, contended that if this were an expulsion case, with the concurrence of two-thirds of the House, no justiciable controversy would be presented. Notwithstanding this contention, the majority's opinion is significantly inconclusive on this issue. The Court has left the door open to further litigation in this area, and retained the possibility of a powerful check on the legislative branch of government, should the question be resolved in the affirmative in the future.

There was considerable question as to whether the federal courts had jurisdiction over the subject matter of this case. The district court determined that to decide this case on the merits would be a clear violation of the doctrine of separation of powers. The Court of Appeals,

6. Powell was "excluded" from the 90th Congress, i.e., he was not administered the oath of office and was prevented from taking his seat. If he had been allowed to take the oath and subsequently had been required to surrender his seat, the action of the House would have constituted an "expulsion."

7. Rules of House of Representatives, H.R. Doc. No. 529, 89th Cong., 2d Sess. 25 (1925).

8. H.R. Rep. No. 30, 69th Cong., 1st Sess. 1-2 (1925). It is noteworthy that the instant opinion does not settle the question of whether the House can punish for previous misconduct in another Congressional session. There is strong dicta indicating the negative of the above proposition however, Congress could seemingly settle the controversy by instituting a provision in its rules covering this subject.

however, thought that separation of powers was more importantly considered in determining whether or not the issue was justiciable.[9]

The Supreme Court has established comprehensive guidelines for identifying federal subject matter jurisdiction and justiciability. Mr. Justice Brennan announced in the case of *Baker* v. *Carr*[10] that: (1) if the cause does not "arise under" the Federal Constitution, Laws, or Treaties; (2) or fall within one of the other enumerated categories of Article III; (3) or if the cause is not one described by any jurisdictional statute, then the Federal Courts cannot properly assume subject matter jurisdiction.[11] Since the instant case presents for the first time the question of whether the federal courts can consider claims that a member-elect has been improperly excluded from his seat in the House of Representatives, the application of the above guidelines presents as Mr. Justice Brennan termed in *Baker* "a delicate exercise in Constitutional interpretation."[12]

Mr. Chief Justice Warren rejected the respondent's contention that this is not a case "arising under" the Constitution within the meaning of Article III. Respondent urged that certain constitutional delegations[13] are explicit grants of judicial power to the Congress and constitute specific exceptions to the general mandate of Article III, which vests judicial power in the federal courts. The classic test to determine whether or not a suit "arises under" the Constitution is whether the petitioner's claims will be sustained or defeated depending upon the construction given to the Constitution.[14] On this basis, the Court concluded that it was evident that judicial power extended over this case.[15]

9. The District Court determined that to decide this case on the merits would constitute a clear violation of the doctrine of separation of powers and then dismissed the complaint for want of jurisdiction of the subject matter. Powell v. McCormack, 266 F. Supp. 354, 359 (1967). However, the Court of Appeals recognized that the doctrine of separation of powers is more properly considered in determining whether the case is justiciable. 395 F.2d. at 593, Baker v. Carr, 369 U.S. 186 (1962), Bond v. Floyd, 385 U.S. 116 (1966).

10. Baker v. Carr, 369 U.S. 186, (1962).

11. *Id.*, at 198.

12. *Id.*

13. U.C. CONST. art. 1, § 5, assigns to each House of Congress the power to judge the elections and qualifications of its own members and to punish its members for disorderly conduct. U.S. CONST. art. 1, § 3 states that the Senate has "sole power" to try all impeachments.

14. Bell v. Hood, 327 U.S. 678, 685 (1946). *See also* King County v. Seattle School District No. 1, 263 U.S. 361, 363-364 (1923). *See,* generally, WRIGHT, FEDERAL COURTS 48-52, (1963).

15. Respondents also claimed lack of jurisdiction as not being authorized by a jurisdictional statute, i.e., 28 U.S.C. § 1331(a), (1964), which provides that the District Courts

Having concluded that the federal courts had subject matter jurisdiction, the Court turned to the question of justiciability. With regard to this problem, the Court was confronted by two determinations: first, whether the claim asserted and the relief sought are of the type which admit of judicial resolution; and secondly, whether the structure of the Federal Government renders the issue a "political question," i.e., a question which the federal courts will not adjudicate because of the doctrine of separation of powers.[16] In resolving the former, the Supreme Court in *Baker* v. *Carr* stated that

> in the instance of nonjusticiability consideration of the cause is not wholly and immediately foreclosed; rather, the court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined and whether protection for the right asserted can be judicially molded.[17]

Respondents did not seriously contend that the duty asserted and its alleged breach could not be judicially determined. However, the respondents did maintain, and the Court of Appeals agreed,[18] that it was impossible for a federal court to mold effective relief. Powell sought both coercive relief and a declaratory judgment.[19] The Supreme Court did not consider Powell's request for coercive relief since the district court could have granted the request for a declaratory judgment.[20] The availability of coercive relief is contingent upon whether there is a "live" controversy between the litigants,[21] while a request for declaratory relief may be considered independently regardless of

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shall have jurisdiction in all civil actions wherein the matter in controversy "arises under" the Constitution. Respondent urged a narrow construction of the above statute but the instant court refused to adopt this interpretation, stating that it had generally been recognized that the intent of the drafters was to provide a broad jurisdiction grant to the Federal Courts. *See* Mishkin, *The Federal Question in District Courts,* 53 COLUM. L. REV. 157, 160 (1953).

16. Baker v. Carr, 369 U.S. 186 (1962), Bond v. Floyd, 385 U.S. 116, (1966). *See also* Sevilla v. Elizalde, 72 App. D.C. 108, 112 F.2d 29, at 32, 37 (1940).

17. Baker v. Carr, 369 U.S. 186, 198.

18. Powell v. McCormack, 395 F.2d 577, 596.

19. The coercive relief sought by Powell included: (1) to enjoin execution of House Resolution 278; (2) to require the Speaker of the House to administer the oath of office to Powell; (3) to enjoin all members of the House from any action to enforce Resolution 278 or otherwise to deny Powell his seat; and (4) for injunctive and mandatory relief addressed to non-elected employees of the House relating to access to the House, pay, and other prerequisites of the office of a member.

20. The Declaratory Judgment Act. 28 U.S.C. § 2201 (1964), provides that a District Court may "declare the rights . . . of any interested party whether or not further relief is or could be sought."

21. Golden v. Zwickler, 394 U.S. 103 (1969).

whether other forms of relief are appropriate.[22] Thus, the Court concluded that in applying the general criteria of justiciability, as announced in the *Baker* case, this case is generally justiciable.

Even with the determination that the case was justiciable, the problem remained as to whether this cause presented a political question. The fact that a claim seeks the enforcement of a political right or a claim to political office may superficially raise speculation that it is a political question.[23] The term "political" is employed to distinguish between controversies which are essentially for decision by the political branches from those which are essentially for adjudication by the judicial branch.[24] In some areas the political question can be readily discerned; for example, the construction of foreign policy is vested exclusively in the Executive,[25] and the power to declare war or raise armies is vested in the Congress.[26] However, even in these areas problems may arise on the peripheries so that the labels of "foreign policy" and "state of war" are not automatic bars to judicial scrutiny.[27] Nonjusticiability of an issue because it is determined to be essentially political is a doctrine peculiar to confrontations with the federal establishment and results from the fundamental structure of our system of divided and separate powers.[28] Taking caution to avoid any attempt to enunciate exclusive criteria for identifying a political question, Mr. Justice Brennan in *Baker* announced six factors to be found "on the surface" of a case of this nature. They are:

> a textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.[29]

22. United Public Workers v. Mitchell, 330 U.S. 75, 93 (1947).
23. Bond v. Floyd, 385 U.S. 116, (1966).
24. Field, *The Doctrine of Political Questions in the Federal Courts*, 8 MINN. L. REV. 485 (1924); McCloskey, *Forward: The Reapportionment Case*, 76 HARV. L. REV. 54, 59-64 (1962).
25. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319.
26. U.S. CONST. art. 1, § 8.
27. The Three Friends, 166 U.S. 1, (1897); Baker v. Carr, 369 U.S. at 212-213.
28. 369 U.S. at 210.
29. Baker v. Carr, 369 U.S. 186, 217 (1962).

Baker made it clear that the presence of any one of these six factors or a combination thereof may be a bar to justiciability.

The respondent urged the Supreme Court to adopt the first criterion noted above, i.e., that there is a textually demonstrable constitutional commitment to the House of the judicial power to determine Powell's qualifications. In order to ascertain if such a commitment exists, the Court had to determine what power the Constitution confers upon the House through Article I, § 5. Adhering to the guidelines of *Baker,* which required in deciding "whether a matter had in any measure been committed by the Constitution to another branch of government, or whether that action exceeds whatever authority had been committed,[30] required a careful exercise in constitutional interpretation. The Court indulged in an extensive historical analysis including the pre-convention precedents of the English Parliament and American colonial assemblies, and actual convention debates, in order to resolve this question. The respondents moved for a broad interpretation which would grant the House extensive powers to judge qualifications of its members. The respondents asserted that the exclusion precedents of the Alex Nowell[31] and Robert Walpole cases,[32] both being expelled from the House of Commons, firmly establish the power of a legislative body to be the sole judge of its member's qualifications. However, the respondent failed to recognize an extremely relevant distinction—that the above cases clearly illustrated that a member could be excluded only if he had been previously expelled. Mr. Chief Justice Warren agreed with the petitioner's narrow construction of Article I, § 5, that the records of debates during the Constitutional Convention and during the post ratification period render the House without authority to exclude any person who has met the standing qualifications and who has been duly elected. Although the historic pattern of the Congress has been erratic,[33] bringing forth vehement dissents when someone

30. *Id.*, at 211.
31. J. TANNER, TUDOR CONSTITUTIONAL DOCUMENTS 1485-1603, at 596 (2d ed. 1930).
32. 17 H.C. JOUR. 28.
33. For example, in 1870 the House refused to exclude a Texas Congressman accused of a variety of criminal acts; 1 Hinds Sec.465; but in 1882 and again in 1900 the House excluded a member-elect for practicing polygamy. 1 Hinds Sec 473, 477-480. Thereafter, it apparently did not consider excluding anyone until shortly after World War I, when it twice excluded Victor L. Berger, an avowed Socialist, for giving aid and comfort to the enemy. Significantly, the House committee investigating Berger concluded that he was ineligible under the express provision of Sec. 3 of the Fourteenth Amendment. 6 C. CANNON, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, § 56-59, (1935). Berger, the last person to be excluded from the House prior to Powell, was later re-elected and finally admitted after his criminal conviction was reversed. 65 Cong. Rec. 7 (1923).

was excluded, the Court admitted that, were the Congressional exclusions precedents more consistent, their precedental value would remain quite limited, because their value lies solely in their ability to shed some insights on correctly ascertaining the draftman's intent. The evidence of Congress' early understanding confirms the conclusion that the House lacks power to exclude members-elect who meet standing qualifications.[34]

Nor were any of the other formulations of the political question doctrine "inextricable from the case at bar."[35] The Court found that each would require no more than a mere interpretation of the Constitution. It is settled doctrine that a case presents a political question if judicial resolution would produce a potentially embarrassing confrontation between coordinate branches of government.[36] The potential threat presented by this decision to Congressional expulsion power can in fact be very embarrassing and may elicit a Constitutional crisis of immense proportions. Fully cognizant of this possibility, the Court issued a warning to the legislature, by asserting that the federal courts on occasion must interpret the Constitution at variance with the construction given the document by another branch.[37] The overriding significance of this decision as a possible infringement on the powers of a coordinate branch may render an irreparable breach in the checks and balances system by channeling too much power in the federal judiciary.

Mr. Justice Stewart's dissenting opinion attacks the majority's conclusions on the issues of mootness and the Speech and Debate Clause. Simply stated, a case is moot when the issues are no longer "live" or the parties lack a legal cognizable interest in the outcome.[38] Moreover, where one of the issues becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy.[39] The majority

The House next considered the problem in 1925 when it contemplated excluding John W. Langley for his alleged misconduct. Langley resigned after losing a criminal appeal, and the House therefore never voted upon the question. 6 CANNON § 238. The most recent exclusion attempt prior to Powell's occurred in 1933, when the House refused to exclude a Representative from Minnesota who had been convicted of sending defamatory matter through the mail. 77 CONG. REC. 73-74, 131-139 (1933).

34. *See* THE FEDERALIST No. 52 2 ELIOT'S DEBATES, 292-293; 10 HOLDSWORTH, A HISTORY OF ENGLISH LAW, 540-542; 2 DEBATES ON THE FEDERAL CONSTITUTION, 257 (1876); 3 ELIOT'S DEBATES 8.

35. Baker v. Carr, 369 U.S. 186, 217.

36. *Id.*, at 198.

37. In fact, the Court has noted that it is an inadmissible suggestion that action might be taken in disregard of judicial finding. McPherson v. Blacker, 146 U.S. 1, 24 (1892).

38. *See* E. BORCHARD, DECLARATORY JUDGMENTS, 35-37 (2d ed., 1941).

39. United Public Workers v. Mitchell, 330 U.S. 75, 86-94 (1941).

used the unresolved issue of whether Powell was entitled to back pay as the gateway to the merits of the case.[40] Powell's subsequent seating in the 91st Congress raised the question of whether this seating mooted petitioner's claims that he was unconstitutionally deprived of his seniority; that the $25,000 fine imposed by the 91st Congress was a continuation of the alleged illegal exclusion; and that he was entitled to be paid for the period during which he was excluded.[41] Applying the "live issue" test stated earlier, the majority concluded that Powell's claim for back pay was viable making it unnecessary to determine whether the other contentions were moot. The dissenting opinion argues that a more appropriate criterion would have been whether the respondents adequately met the burden of proving that "subsequent events have made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to occur" again.[42] Moreover, Mr. Justice Stewart believed that voluntary cessation of unlawful conduct does make a case moot if the defendant can demonstrate that there is no reasonable expectation that the wrong will be repeated.[43] It is submitted that Mr. Justice Stewart's standards are remarkably deficient in adequate objective safeguards if they rely upon respondent's contentions that such activities will not occur in the future. Since the past history of the Congress is replete with such occurrences,[44] similar happenings are likely unless judicial or legislative guidelines are established for preventative purposes.

In his dissenting opinion, Mr. Justice Stewart argued that the majority's conclusion that Powell's back salary claim was viable was not sufficient to allow the court to go to the merits of the case. In doing this, the dissent blatantly disregarded the mandate of *Bond* v. *Floyd*,[45] which states that the mootness of a primary claim does not require a conclusion that all claims are moot. The dissent relied on *Alejandrino* v. *Quezon*,[46] where a duly appointed Senator of the Philippines was

40. The rule that the federal courts lack jurisdiction to consider the merits of a moot case is a result of the Constitutional doctrine that judicial power extends only to cases or controversies. *See* Sibron v. New York, 392 U.S. 40, 57 (1968); R. ROBERSON AND F. KIRKHAM, JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES, § 270-271.

41. *Id.*

42. United States v. Concentrated Phosphate Export Assn., 393 U.S. 199, 203 (1968).

43. United States v. W.T. Grant Co., 345 U.S. 629, 633 (1953).

44. Note the attempted exclusions of a Texas Congressman, 1 Hinds § 465; Victor L. Berger, 6 CANNON, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, §§ 56-59; John W. Langley, 6 CANNON, 238; and Theodore C. Bilbo, 93 CONG. REC. 3-28.

45. 385 U.S. 116 (1966).

46. 271 U.S. 528 (1926).

suspended for one year by the Philippine Senate for misconduct. When the appeal reached the United States Supreme Court, his suspension had expired and the Court dismissed as moot his claims. The Court considered Alejandrino's claim for back pay as sufficient for a mandamus for this purpose, but concluded that he had not sufficiently briefed the salary issue and his mandamus request did not state the officials against whom the mandamus should issue. The Supreme Court distinguished Powell's claims, since Powell very clearly named the officials responsible for payment of salaries and requested both a mandamus and an injunction against that official.[47] *Alejandrino* stands only for the proposition that where one claim has become moot and the pleadings are insufficient to decide whether the petitioner is entitled to another remedy, the action should be dismissed as moot.[48] But the *Alejandrino* opinion recognized and stated that a properly pleaded mandamus action could be brought, thus impliedly saying that his salary claim was not moot.[49]

Lastly, Mr. Justice Stewart contended that the Speech and Debate Clause of the Constitution, Article I, § 6,[50] was an absolute bar to petitioner's action. The Speech and Debate Clause bars action against Congressmen in order to make their job of representation free from fear.[51] The reach of the clause was first articulated in *Kilbourn* v. *Thompson*,[52] and followed in *Dombrowski* v. *Eastland*,[53] which state that an action against a Congressman may be barred by the Speech and Debate Clause. However, even though Congressmen may be free from liability, legislative employees who participate in unconstitutional

47. Paragraph 18b of petitioner's complaint asserts that "Leake W. Johnson, as Sergeant-at-Arms of the House" is responsible for a refusal to pay Powell's salary and petitioner prays for an injunction restraining the Sergeant-at-Arms from implementing the House Resolution depriving the petitioner of his salary as well as mandamus to order that the salary be paid.

48. Alejandrino v. Quezon, 271 U.S. at 535.

49. The dissent noted the following questions: is the Sergeant-at-Arms the only necessary defendant; if the Speaker does not issue the requisite certificates and Congress does not rescind House Resolution 278, can the House agents be enjoined to act in direct contravention of the orders of their employers; and since the office of Sergeant-at-Arms serves the 91st Congress, if he were made a party in that capacity, would he have authority —or could the 91st Congress confer the authority—to dispurse money for a salary owed to a representative in the previous Congress, particularly one who never took the oath of office. 89 S. Ct. 1989.

50. U.S. CONST. art. 1, § 6, provides, in relevant part, "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other place."

51. Tenny v. Brandhove, 341 U.S. 367, 373 (1951).

52. 103 U.S. 168 (1880).

53. 387 U.S. 82 (1967).

activity are responsible for their acts.[54] In *Kilbourn* the Supreme Court allowed the petitioner to bring his false imprisonment action against the House's Sergeant-at-Arms, and in *Dombrowski* suit was permitted against a chief counsel of a Senate Subcommittee. The application of the doctrine announced in the above cases allows the Court to disregard whether under the Speech and Debate Clause petitioner would be entitled to maintain this action solely against members of Congress where no agents participated in the challenged action and no other remedy was available.

It is submitted that the significance of this decision lies in two areas: first, it manifests the court's intention to grant the electorate at large more political effectiveness by strengthening the power of the popular vote and by barring a possible limitation on whom the people may choose to represent them. Finally, this decision may be the catalyst which destroys Congress' "laissez-faire" policy towards the Supreme Court's subject matter jurisdiction. A Constitutional crisis may be in the offing if Powell attempts to recover his back pay and seniority in the face of Congressional resistance to this Court's judgment.

Elmer S. Beatty, Jr.

54. *Id.*, at 83.