

## Qualifications for Members of Congress - Not Subject to State Control - *Helman v. Collier*

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**Qualifications For Members Of Congress —  
Not Subject To State Control**

*Hellman v. Collier*<sup>1</sup>

The petitioner brought a mandamus proceeding against the Secretary of State of Maryland to compel him to certify to the Board of Supervisors of Elections for Baltimore City the petitioner's candidacy for nomination to the House of Representatives of the United States. The Secretary had refused such certification on the ground that the petitioner was not a resident of the district from which he sought election. The lower court entered an order adverse to the Secretary, who now appeals. On appeal the decision was affirmed, the Court of Appeals holding that the Maryland statutory<sup>2</sup> provision that every candidate for election to the United States House of Representatives shall be a resident of the congressional district in which he seeks election contravened the sections of the Federal Constitution which set forth the qualifications for a member of the House of Representatives and was therefore unconstitutional and void.

The states by virtue of the Constitution are allowed to prescribe the time, place and manner of holding elections for their Representatives, but Congress reserves the right to alter these regulations or make new ones.<sup>3</sup> Pursuant to this authority Congress provided in 1842,<sup>4</sup> for the election of Representatives by districts to secure fair representation of the states in the House and to allow the House to determine whether the states have properly fulfilled their responsibility.<sup>5</sup> When this statute was passed, the majority of the states were already selecting their representatives by districts; since that time legislation has occasionally been enacted concerning congressional districts. The present statute established an automatic, but discretionary, reapportionment procedure to reflect population changes when necessary.<sup>6</sup>

In 1807, the existing statute law in Maryland required that one of the two members of the State's fifth congress-

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<sup>1</sup> 217 Md. 93, 141 A. 2d 908 (1958).

<sup>2</sup> 3 MD. CODE (1957) Art. 33, §158(c).

<sup>3</sup> U.S. CONST. Art. 1, §4, Cl. 1.

<sup>4</sup> 5 Stat. 491 (1842). *Of.* 2 U.S.C.A. (1927) §3.

<sup>5</sup> *Colegrove v. Green*, 328 U.S. 549, 554 (1946).

<sup>6</sup> 2 U.S.C.A. (1958) §§2a, 2b.

sional district live in Baltimore City as a condition to election to the House of Representatives. In that year a dispute arose as to the lawful residence of one of the two persons receiving the highest vote; the House Committee reviewed the situation and issued a report declaring the Maryland law unconstitutional. This report caused strong debate, but was not adopted, and the matter was settled by a simple resolution of the House seating the original victor who did not so reside. This was done without indication whether the Maryland statute was constitutional or not. However in 1856, Congress decided that the states could not impose additional restrictions on the qualifications of their members.<sup>7</sup>

The Constitution of the United States fixes the qualifications for members of Congress.<sup>8</sup> To be eligible for election to the House of Representatives, a person shall have attained the age of 25, have been a citizen of the United States for 7 years, and, at the time of his election, an inhabitant of the state from which he is chosen.<sup>9</sup> These qualifications are exclusive<sup>10</sup> and state constitutions or statutes can neither add to nor detract from them.<sup>11</sup> However, these qualifications are "subject, . . . to reasonable provisions of time and method of getting a candidate's name upon the ballot."<sup>12</sup> The requisites prescribed in the Constitution, alone, determine eligibility for office,<sup>13</sup> and as a result, one will not be disqualified by state constitutional and statutory provisions which would make one, otherwise eligible, ineligible for public office. This applies to prohibitions intended to bar persons who: have been convicted of felonies,<sup>14</sup> are subversive persons,<sup>15</sup> are known Communists,<sup>16</sup> are candidates that have been defeated in the state primary elections for state office,<sup>17</sup> or were holders of certain state

<sup>7</sup> CLARKE AND HALL, DIGEST OF CONTESTED ELECTION CASES (1834) 167-221.

<sup>8</sup> U.S. CONST. ART. 1, §§2, 3. See *State v. Thorson*, 72 N.D. 246, 6 N.W. 2d 89 (1942).

<sup>9</sup> U.S. CONST. ART. 1, §2, CL. 2.

<sup>10</sup> *Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332 (1950).

<sup>11</sup> *Stockton v. McFarland*, 56 Ariz. 138, 106 P. 2d 328 (1940).

<sup>12</sup> *Shub v. Simpson*, *supra*, n. 10, 198.

<sup>13</sup> *In Re O'Connor*, 173 Misc. 419, 17 N.Y.S. 2d 758 (1940).

<sup>14</sup> *State v. Schmahl*, 140 Minn. 219, 167 N.W. 481 (1918).

<sup>15</sup> *Shub v. Simpson*, 196 Md. 177, 76 A. 2d 332 (1950).

<sup>16</sup> *In Re O'Connor*, 173 Misc. 419, 17 N.Y.S. 2d 758 (1940).

<sup>17</sup> *State v. Thorson*, 72 N.D. 246, 6 N.W. 2d 89 (1942). *Cf. State v. Swanson*, 127 Neb. 806, 257 N.W. 255 (1934), where the court held that as such a person could be a candidate, and elected by write-in vote, even though he could not have his name on the published ballot, the statute was constitutional.

offices made ineligible by state law to hold public office during their term.<sup>18</sup>

If the states were allowed to add to or vary the qualifications of Representatives in Congress, they would, in essence, be determining the prerequisites for federal office. Logically, states may make rules and determine qualifications for their own officers, but it has been held that a Representative is an officer of the Federal government and not of his state.<sup>19</sup> Aside from the oath to support the Constitution which is taken by all members<sup>20</sup> and the power of each House to determine the qualifications of its members,<sup>21</sup> there appears to be nothing more specific which would preclude a member of Congress from being a person whose ideas are adverse to basic American precepts, yet one who still upholds the Constitution in his own manner. If that is to be a disqualification of a Representative it must be determined by Congress, or by constitutional amendment, and not by a state legislature or a state court.<sup>22</sup>

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<sup>18</sup> *Ekwall v. Stadelman*, 146 Or. 439, 30 P. 2d 1037 (1934); *State v. Zimmerman*, 249 Wis. 237, 24 N.W. 2d 504 (1946).

<sup>19</sup> *Lamar v. U.S.*, 241 U.S. 103 (1916).

<sup>20</sup> U.S. CONST. Art. 6, Cl. 3.

<sup>21</sup> U.S. CONST. Art. 1, §5, Cl. 1.

<sup>22</sup> *Shub v. Simpson*, 196 Md. 177, 196, 76 A. 2d 332 (1950).

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