

The question of Mr. Bilbo's right to a seat, and his right to take the oath, were laid on the table pending his recovery from a medical operation.⁽¹⁵⁾ Mr. Bilbo died on Aug. 21, 1947, without further action being taken by the Senate on his right to a seat.⁽¹⁶⁾

Qualifications of Senate Appointee

§9.7 The validity of an appointment to the Senate may be challenged on the ground that the appointee does not meet the qualifications required by state law.⁽¹⁷⁾

On Aug. 5, 1964,⁽¹⁸⁾ Senator Everett M. Dirksen, of Illinois, challenged the validity of the appointment of Pierre Salinger, appointed to fill a vacancy in the

Senate caused by the death of Senator Clair Engle, of California. Senator Dirksen's challenge was based on the fact that the California code required that an appointee by the governor must be an elector, and that an elector must be a resident for one year before the day of election. It was claimed that Mr. Salinger was not a resident of California for a period of one year prior to appointment.

The Senate, after lengthy debate, agreed to a motion that the oath be administered to Mr. Salinger, and that his credentials be referred to the Committee on Rules and Administration.

§10. Age, Citizenship, and Inhabitancy

The Constitution requires that a Representative be at least 25 years old, have a period of citizenship of at least seven years, and be an inhabitant of his state at the time of election.⁽¹⁹⁾ Those three qualifications are unalterable by either the state legislature

15. *Id.* at p. 109.

16. See the announcement of Nov. 17, 1947, 93 CONG. REC. 10569, 80th Cong. 1st Sess.

17. Under U.S. Const. amend. 17, a state legislature may empower the state executive to make temporary appointments to the Senate in the event of a vacancy, with the legislature setting qualifications for appointees. However, in the case of a House vacancy, an election must be held, with candidates possessing the constitutional qualifications. See U.S. Const. art. I, §2, clause 4.

18. 110 CONG. REC. 18107-20, 88th Cong. 2d Sess.

19. Art. I, §2, clause 2. These requirements are the express "standing" qualifications for a Representative, although there are other prerequisites in the nature of qualifications and disqualifications (see §9, *supra*).

or by Congress itself, except by way of constitutional amendment.⁽²⁰⁾

The Constitution only sets a minimum age for membership.⁽¹⁾ No mandatory retirement age may be imposed,⁽²⁾ although such proposals have been suggested.⁽³⁾

20. See *Powell v McCormack*, 395 U.S. 486 (1969) and *Burton v United States*, 202 U.S. 344 (1906). Cf. *Bond v Floyd*, 385 U.S. 116 (1966).

The individual states cannot fashion more restrictive inhabitancy requirements, such as residency in the congressional district sought to be represented. *Exon v Tiemann*, 279 F Supp 609 (Neb. 1968); *State ex rel. Chavez v Evans*, 79 N.M. 578, 446 P. 2d 445 (1968); *Hellman v Collier*, 217 Md. 93, 141 A.2d 908 (1958).

1. For a commentary on the rationale for a minimum age requirement, see Story, *Commentaries on the Constitution of the United States*, §616, Da Capo Press (N.Y. repub. 1970).

Mr. John Y. Brown (Ky.) did not take the oath in the House until the second session of the 36th Congress, because he did not meet the age qualification until that time (see 1 Hinds' Precedents §418 and Biographical Directory of the American Congress, S. Doc. No. 8, 92d Cong. 1st Sess. p. 650 [1971]). Even more unique was the case of Mr. William C. Claiborne (Tenn.), who evidently took the oath with the 5th and 6th Congresses while, respectively, only 22 and 24 years old (see Biographical Directory of the American Congress, S. Doc. No. 8, 92d Cong. 1st Sess. p. 739 [1971]).

2. See 5 USC §8335 (no mandatory retirement age for Congressmen).
3. A mandatory retirement age would require either exclusion or expulsion

If a Member-elect is not of the required age, his name will not be entered on the roll of the House and he may not take the oath of office until he reaches the age of 25.⁽⁴⁾ Likewise, the citizenship requirement of seven years need not be met until the time that a Member-elect presents himself to take the oath. The qualification of state inhabitancy must be met, however, at the time of election. That interpretation of article I was established in the 73d and 74th Congresses.⁽⁵⁾ Both the Senate and the House concluded that a Member- or Senator-elect need not satisfy the age or citizenship requirements, or remove himself from an incompatible office,⁽⁶⁾ until the time he presents himself to take the oath of office. The constitutional requirement of inhabitancy was construed to be applicable at the time of election.

In order to attain citizenship and satisfy that qualification for

for a disqualification not mentioned in the Constitution. Compare *Powell v McCormack*, 395 U.S. 486 (1969) and *Burton v U.S.*, 202 U.S. 344 (1906).

4. See 1 Hinds' Precedents §418.
5. See §§10.1, 10.2, *infra*.
6. For a detailed discussion of the right of a Member-elect to hold an incompatible office, and to receive compensation both for such an office and for his congressional seat, before he has taken the oath, see §13, *infra*.

membership, a Member-elect must either be born or naturalized in the United States.⁽⁷⁾ And where a person has forfeited his rights as a citizen by reason of a felony conviction, his right to take a seat may be challenged.⁽⁸⁾

The House generally presumes that a Member-elect has satisfied the requirements of the inhabitancy qualification.⁽⁹⁾

Cross References

Age, citizenship, and inhabitancy qualifications of Delegates and Resident Commissioners, see §3, *supra*.

Exclusiveness of the qualifications of age, citizenship, and inhabitancy, see §9, *supra*.

7. See U.S. Const. amend. 14, §1, for the definition of citizenship.

Aliens cannot stand for election to Congress. *Narisiades v Shaughnessy*, 342 U.S. 580, rehearing denied, 343 U.S. 936 (1952).

Generally, citizenship is assumed, and failure to produce proof thereof has not acted as an impediment to holding office. See 1 Hinds' Precedents §§420, 424; 6 Cannon's Precedents §184.

8. See §10.3, *infra*.
9. For a catalog of House decisions on inhabitancy, based on specific facts, see *House Rules and Manual* §11 (comment to U.S. Const. art. I, §2, clause 2) (1973) and USCA notes to U.S. Const. art. I, §2, clause 2.

For a catalog of analogous Senate decisions on inhabitancy, see *House Rules and Manual* §35 (comment to U.S. Const. art. I, §3, clause 3) (1973).

Citizenship as affected by criminal conviction, see §11, *infra*.

Relationship of age, citizenship, and inhabitancy to credentials and administration of oath, see Ch. 2, *supra*.

Collateral References

In general, see:

House Rules and Manual §§9–11 (comment to U.S. Const. art. I, §2, clause 2) (1973).

House Rules and Manual §35 (comment to U.S. Const. art. I, §3, clause 3, qualifications of Senators) (1973).

Commentaries on the constitutional provisions, see:

Schwartz, *A Commentary on the Constitution of the United States*, p. 97, McMillan Co. (N.Y. 1963).

Story, *Commentaries on the Constitution of the United States*, §616, Da Capo Press (N.Y. repub. 1970).

Time of meeting qualifications, see:

S. REPT. NO. 904, 74th Cong. 1st Sess., reprinted at 79 CONG. REC. 9651–53, 74th Cong. 1st Sess., June 19, 1935.

Age and Citizenship

§ 10.1 A Member who has been a citizen for seven years when sworn, although not when elected or upon commencement of his term, is entitled to retain a seat, since the age and citizenship qualifications of the Constitution need not be met until the time membership actually commences.

In the 73d Congress, Representative-elect from Pennsylvania Henry Ellenbogen did not take the oath of office until the beginning of the second session on Jan. 3, 1934, although Congress had convened on Mar. 4, 1933. Mr. Ellenbogen forestalled taking the oath since he had not attained the seven-year citizenship requirement of the Constitution either at the time of election, Nov. 8, 1932, or at the commencement of his term on Mar. 4.⁽¹⁰⁾

On Mar. 11, 1933,⁽¹¹⁾ the right of Mr. Ellenbogen to his seat was challenged by memorial based on his alleged failure to meet the citizenship qualification of the Constitution. His right to a seat was referred to committee, and the House adopted the following resolution on June 15, 1934:

Resolved, That when Henry Ellenbogen on January 3, 1934, took the oath of office as a Representative from the 33d Congressional district of the State of Pennsylvania, he was duly qualified to take such oath; and it be further

10. At the time of election, Mr. Ellenbogen had been a citizen for six years and five months; at the commencement of the term he had been a citizen for six years and eight and a half months. See S. REPT. NO. 904, 74th Cong. 1st Sess., reprinted in 79 CONG. REC. 9651-53, June 19, 1935.
11. 77 CONG. REC. 239, 73d Cong. 1st Sess.

Resolved, That said Henry Ellenbogen was duly elected as a Representative from the 33d district of Pennsylvania, and is entitled to retain his seat.

§ 10.2 As a Member-elect or Senator-elect does not become a Member of Congress until he is sworn, he need not meet the age and citizen requirements of the Constitution until he appears to take the oath of office (Senate decision).

On Jan. 3, 1935,⁽¹²⁾ the opening day of the 74th Congress, the oath was not administered to Rush D. Holt, Senator-elect from West Virginia, who was absent. In subsequent proceedings in the Senate, a contestant to Mr. Holt's seat asked that the election be voided on the ground that Mr. Holt was not yet 30 years old when elected and that he therefore did not meet the qualification stated in article I, section 3, clause 3, of the United States Constitution. The right of Mr. Holt to the seat was referred to the Committee on Privileges and Elections.

On June 19, 1935,⁽¹³⁾ the committee submitted its report to the Senate. The majority report pro-

12. 79 CONG. REC. 8, 74th Cong. 1st Sess.
13. 79 CONG. REC. 9651-53, 74th Cong. 1st Sess.

posed that Mr. Holt be seated and sworn, since he met the age qualification when he “presented himself to the Senate to take the oath and to assume the duties of the office.”⁽¹⁴⁾ The committee had concluded, based upon constitutional interpretation and upon precedents of the House and of the Senate, that the residency requirement of article I, section 3, clause 3, must be met at the time of election, but that the age and citizenship requirement need not be satisfied until an elected Member of Congress presents himself to take the oath.⁽¹⁵⁾

On June 21, 1935,⁽¹⁶⁾ the Senate rejected a substitute amendment voiding Mr. Holt’s election and adopted the original resolution, seating Mr. Holt and specifically referring to his satisfaction of the

14. 79 CONG. REC. 9653, 74th Cong. 1st Sess. The report, No. 904, was reprinted in the Record, *id.* at pp. 9651–53.

15. The age, citizenship, and residency qualifications for Members of the House, at U.S. Const. art. I, §2, clause 2, have the same phrasing as the Senate requirements (the only difference being the number of years for age and citizenship), and are therefore subject to the same constitutional interpretation. See 1 Hinds’ Precedents §418; *cf.* 1 Hinds’ Precedents §§429, 499.

16. 79 CONG. REC. 9841, 9842, 74th Cong. 1st Sess.

age requirement upon presenting himself to take the oath.

§ 10.3 Where the right to a seat of a Representative-elect was challenged on the ground that he had forfeited his rights as a citizen by reason of a felony conviction, the House authorized the Speaker to administer the oath but referred the question of final right to an election committee.

On Mar. 10, 1933,⁽¹⁷⁾ the right of Francis H. Shoemaker, of Minnesota, to be sworn in was challenged on the ground that he had been convicted of a felony, and that under the Minnesota state constitution any felony conviction resulted in the loss of citizenship, unless restored by the state legislature.⁽¹⁸⁾

Since, however, Mr. Shoemaker had been convicted of a federal and not a state felony, and the conviction involved no moral turpitude, the House adopted a resolution authorizing Mr. Shoemaker to be sworn but referring the question of his final right to a seat to an elections committee:⁽¹⁹⁾

THE SPEAKER:⁽²⁰⁾ The pending business is the seating of Mr. Francis H.

17. 77 CONG. REC. 131–39, 73d Cong. 1st Sess.

18. *Id.* at p. 134.

19. *Id.* at pp. 137–39.

20. Henry T. Rainey (Ill.).

Shoemaker, of Minnesota. Without objection, the Clerk will again report the resolution offered by the gentleman from California [Mr. Carter].

The Clerk read as follows:

Mr. Carter of California offers the following resolution:

Whereas it is charged that Francis H. Shoemaker, a Representative elect to the Seventy-third Congress from the State of Minnesota, is ineligible to a seat in the House of Representatives; and

Whereas such charge is made through a Member of this House, on his responsibility as such Member and on the basis, as he asserts, of public records, statements, and papers evidencing such ineligibility: Therefore

Resolved, That the question of prima facie right of Francis H. Shoemaker to be sworn in as Representative from the State of Minnesota in the Seventy-third Congress, as well as of his final right to a seat therein as such Representative, be referred to the Committee on Elections No. 1, when elected, and until such committee shall report upon and the House decide such questions and right the said Francis H. Shoemaker shall not be sworn in or be permitted to occupy a seat in the House, and said committee shall have power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution. . . .

The Clerk read as follows:

Substitute resolution offered by Mr. Kvale:

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Minnesota, Mr. Francis H. Shoemaker;

Resolved, That the question of the final right of Francis H. Shoemaker

to a seat in the Seventy-third Congress be referred to the Committee on Elections No. 2, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution. . . .

THE SPEAKER: Under the unanimous-consent agreement, the previous question is ordered.

The question is on agreeing to the substitute resolution.

The question was taken; and the Chair being in doubt, the House divided and there were—ayes 230, noes 75.

So the substitute resolution was agreed to.

THE SPEAKER: The question now recurs on the resolution as amended by the substitute.

MR. [PAUL J.] KVALE [of Minnesota]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. KVALE: Mr. Speaker, at what stage would it be in order to move to strike the preamble from the original resolution?

THE SPEAKER: Immediately after the vote on the resolution.

The resolution, as amended, was agreed to.

By unanimous consent, the preamble was stricken from the resolution, and a motion to reconsider laid on the table.

Hon. Francis H. Shoemaker, of the State of Minnesota, appeared at the bar of the House and received the oath of office.

Inhabitancy

§ 10.4 In the 90th Congress, challenges to a seat were

based on the failure to satisfy the state inhabitancy qualification but were not affirmed by the House, which excluded the Member-elect on other grounds.

On Mar. 1, 1967, the House excluded Adam C. Powell, Member-elect from New York, for prior misconduct as a Member of the House.⁽¹⁾ House Resolution No. 278, excluding Mr. Powell,⁽²⁾ stated that Mr. Powell had met the constitutional qualifications of age, citizenship, and inhabitancy, although challenges had been made on Jan. 10, 1967, on Feb. 28, 1967, and on Mar. 1, 1967, to Mr. Powell's status as an inhabitant of the State of New York.

On Jan. 10, 1967, during debate on whether Mr. Powell should be seated, Mr. Samuel Stratton, of New York, arose to state:

If a Representative-elect chooses to remain outside of his State rather than comply with the duly constituted orders of the courts of his own State, then I believe there is a very real question of whether he is in fact still a resident of the State which he purports to represent as the Constitution says he must be.⁽³⁾

1. See §9.3, *supra*, for a synopsis of the proceedings.
2. See 113 CONG. REC. 4997 (original resolution) and 5020 (adopted amendment), 90th Cong. 1st Sess., Mar. 1, 1967.
3. 113 CONG. REC. 20, 90th Cong. 1st Sess. Congress has decided that a

On the same day, Mr. Theodore Kupferman, of New York, arose to state that he also doubted that Mr. Powell was a resident of New York, since he was absent during House proceedings on an issue important to the State of New York, and was in Bimini.⁽⁴⁾

On Feb. 28, 1967, shortly before the House considered Mr. Powell's right to a seat, Mr. Stratton stated that he intended to offer an amendment to the resolution granting Mr. Powell his seat, in order to demand that Mr. Powell subject himself to the New York State courts, to satisfy the inhabitancy requirement of the Constitution. Mr. Stratton quoted from a committee report of the 70th Congress:

We think that a fair interpretation of the letter and the spirit of this paragraph with respect to the word "inhabitant" is that the framers intended that for a person to bring himself within the scope of its meaning he must have and occupy a place of abode within the particular State in which he claims inhabitancy, and that he must have openly and avowedly by act and by word subjected himself to the duties and responsibilities of a member of the body politic of that particular State.⁽⁵⁾

- Member must meet the inhabitancy requirement at the time of the election, but need not satisfy the age and citizenship requirements until appearing to be sworn. See §§10.1, 10.2, *supra*.
4. *Id.* at p. 21.
5. 113 CONG. REC. 4772, 90th Cong. 1st Sess. The report cited by Mr. Strat-

On Mar. 1, 1967, Mr. Fletcher Thompson, of Georgia, stated that he intended to offer an amendment stating that Mr. Powell was not entitled to a seat in the House since he had abandoned inhabitancy in New York prior to election.⁽⁶⁾

When the House excluded Mr. Powell, however, the resolution of exclusion admitted Mr. Powell's satisfaction of the inhabitancy qualification but excluded him on other grounds.⁽⁷⁾

§ 11. Conviction of Crime; Past Conduct

Although the Senate or the House may expel a seated Mem-

ton was submitted in the case of James Beck (see 6 Cannon's Precedents §174), wherein the House found to be an inhabitant of Pennsylvania a Member who occupied an apartment in Pennsylvania one or more times each week, and exercised his civic rights there, although owning summer homes and residences in other states.

6. 113 CONG. REC. 4993, 90th Cong. 1st Sess.
7. H. JOUR. 313, 314, 90th Cong. 1st Sess., Mar. 1, 1967. For Speaker John W. McCormack's responses to parliamentary inquiries related to the meaning of the adopted resolution and preamble in regards to the inhabitancy qualification, see 113 CONG. REC. 5038, 90th Cong. 1st Sess., Mar. 1, 1967.

ber for disorderly conduct committed during his term,⁽⁸⁾ Congress has no general authority to exclude a Member-elect solely for criminal or immoral conduct committed prior to the convening of the Congress to which elected.⁽⁹⁾ Although the Senate and the House have affirmed their power

8. U.S. Const. art. I, §5, clause 2. See, in general, Ch. 12, *infra*.
9. For a discussion of the limits on Congress to add qualifications to those specified in the Constitution, see §9, *supra*. See also *House Rules and Manual* §§10-12 (comment to U.S. Const. art. I, §2, clause 2, setting qualifications for Members) (1973).

For the views of constitutional commentators, see Federalist No. 60 (Hamilton), Modern Library (1937); Story, *Commentaries on the Constitution of the United States*, §§616-624, Da Capo Press (N.Y. repub. 1970); Schwartz, *A Commentary on the Constitution of the United States*, p. 97, McMillan Co. (N.Y. 1963); Dempsey, *Control by Congress Over the Seating and Disciplining of Members*, Ph.D. dissertation, University of Michigan (1956) (on file with Library of Congress); Note, *The Right of Congress to Exclude Its Members*, 33 Va. L. Rev. 322 (1947); Note, *The Power of the House of Congress to Judge the Qualifications of Its Members*, 81 Harv. L. Rev. 673 (1968); Dionisopoulos, *A Commentary on the Constitutional Issues in the Powell and Related Cases*, 17 Journal Public Law 103 (1968).