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abrogate any constitutional, statutory, or common law right of the complainants or witnesses who participate in the complaint procedure. (i.e. reopening criminal charges previously *settled.*)
Secton 16-50, That the Board shall prepare and publish a semi-annual statistical and *analytical* report regarding the complaints processed under this Article.

Appendix B — Recommendations of CRC Report — 6/12/78

In light of the refusal of the majority of the Board's members to comply fully with all portions of Article 16, Section 41-50, CRC staff has prepared the following recommendations addressing citizen complaints of police abuse:

1. Independent body be established and empowered to receive and investigate citizen allegations of police abuse. This investigative body shall have the legal access to all pertinent records, citizen and police personnel necessary to pursue and process citizen complaints. Establishment of such a body would remove the investigation of police abuse from its present vulnerability to influence and favoritism by members of one police division (i.e. IID) investigating police abuse of citizens by members of other police divisions. For example, the detective assigned to investigate allegations of police abuse by a citizen may tend to slant his investigation in favor of the accused police officer, in situations where that detective is under peer group pressure to advocate on behalf of the accused officers.
2. A civilian component of the CEB be instituted to sit at each meeting of the CEB, provide input and comment on each police complaint case as it comes before the CEB, their comments be incorporated into the Findings and Recommendations of the CEB.
3. Each statutory member of the CEB should prepare a written analysis and recommendations on police abuse cases, prior to every meeting of the CEB. Through the process of deliberation, the CEB should arrive at a recommendation on each case, based upon Findings adopted by the majority of the Board, as well as the Findings and Recommendations of each statutory member of the Board who may be in dissent from the majority.
4. There should be clearly defined procedures and guidelines by which the CEB could hold Hearings on citizen allegations of police abuse. These Hearings would provide citizens with an alternative to the present system of investigation by IID. The CEB would then present Findings and Recommendations to the Police Commissioner based upon Evidence presented at the CEB Hearings.
5. The Findings and Recommendations of the CEB should be binding upon the Police Commissioner, unless the respondent police personnel elects to appeal the decision of the CEB before a Police Trial Board.

Authority of The House of Representatives to Expell a Member

by Thomas J. Sehler*

I. INTRODUCTION

This report summarizes the historical and legal precedents respecting the power of the House of Representatives to expel one of its Members. There exists no constitutional provision, federal statute, House rule, or precedent which is totally dispositive of the issue. Instances in which the House has expelled Members number three, all occuring in the 37th Congress.

II. AUTHORITY

Each respective House of the Congress is given the power to expel its Members in Art. I, sec. 5, cl. 2 of the U.S. Constitution:

> Each House may determine the Rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member.

In a Library of Congress Multilith entitled "Precedents of the House of Representatives in Respect to Procedure for Censure or Expulsion", prepared by Robert L. Tienken (Dec. 29, 1966), there appears the following discussion:

> There is no judicial process for unseating a Member; it is not a function of the Executive; and, it cannot be achieved through State recall statutes (see *Burton v. U.S.*, 202 U.S. 344 (1906); *In Re Chapman,* 166 U.S. 661 (1897)). Even where a statute prescribes that conviction for an offense shall bar a person from federal office, there is no automatic expulsion of a Member. As the Supreme Court stated in *Burton v. U.S., supra,* P. 369: ". . .the final judgment of conviction [does] not operate, ipso facto, to vacate the seat of [a] convicted Senator, nor compel the Senate to expel him or to regard him as expelled by force alone of the judgment." The decision must be made by the House involved.

It follows, then, that the House has exclusive jurisdiction over the question of expulsion of its Members.

The grounds for expulsion are extremely far-reaching. While the House has been guarded in the use of its power to expel, Cannon's Precedents of the House of Representatives, vol. VI, sec. 78, reveals that "The power of the House to expel one of its Members is unlimited; a matter purely of discretion to be exercised by a two-thirds vote, from which there is no appeal." Included in this precedent, which relates to the South Carolina election case against Richard S. Whaley in the 63rd Congress, is lan-

guage cited from the report of the House Committee on Elections No. 1. The committee report states, in brief, that (1) the power of expulsion is necessary and inherent in all legislative bodies; (2) it is a power of protection and is necessary for the safety of the State; (3) a Member may commit a crime or do many things which would render him ineligible as a Member; (4) the power to expel is invaluable; (5) this power may be exercised for misconduct on the part of a Member committed in any place and either before or after conviction in a court of law; (6) its extent seems to be unlimited; and (7) this unlimited power must be administered fairly with due regard for the integrity of the House and the rights of the individual Member affected.

Despite such a clarification of the jurisdiction of the House and the grounds for expulsion, the pivotal distinction between the terms "expel" and "exclude" remains ill-defined. The celebrated case of *Powell v. McCormack*, 395 U.S. 486 (1969), fills this void. In *Powell* the Supreme Court held that "in judging the qualifications of its Members [under Art. I, sec. 5, cl. 1] Congress is limited to the standing qualifications prescribed in the Constitution." These qualifications include: age, United States citizenship, and State residency requirements in Art. I, sec. 2, cl. 2 (for Representatives); the taking of an oath or statement of affirmation to support the Constitution in Art. VI, cl. 3; no participation by a Member of Congress in rebellion or insurrection against the United States in Amend. XIV, sec. 3; the prohibition of simultaneous service as an officer of the United States and a member of either House in Art. I, sec. 6, cl. 2. Thus, the court declared that only in instances where a Member-elect failed to meet such constitutional standards could the House *exclude* him or her from its membership by a simple majority vote.

However, the *Powell* case further appears to suggest that while the House could not *exclude* Representative Powell under the circumstances which prevailed at the time, it may have *expelled* him by a two-thirds vote (of those present and voting) after he had been sworn in. Justice Douglas' concurring opinion seems to confirm this proposition by stating:

> By Art. I, sec. 5, the House may "expel a Member" by a vote of two-thirds. And if this were an expulsion case I would think that no justiciable controversy would be presented, the vote of the House being two-thirds or more. But it is not an expulsion case.

As mentioned above, although the House's power to expel one of its Members apparently is limitless, Cannon's Precedents of the House of Representatives, vol. VI, sec. 238, provides additional insight. This precedent relates to a case wherein Representative John W. Langley of Kentucky, while a Member of the 68th congress, was convicted of conspiracy in the U.S. District Court in Kentucky. Subsequently, he was reelected to the 69th Congress in November, 1924 and the U.S. Circuit Court of Appeals for the Ninth Circuit affirmed the conviction on November 13, 1925. When the 69th Congress convened in December, 1925, a special committee was created to investigate and recommend. In the meantime, Representative Langley was not sworn in and did not participate in the proceedings of the House.

Cannon's, *supra*, sec. 238, contains language from the special committee's report to the effect that, customarily, "the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense." The term "prior to. . .election" has been interpreted as applying to both incumbent and new Members and to each Congress separately (i.e., conviction in the 68th Congress had no bearing on membership in the 69th Congress). However, the committee report went on to provide that the committee was "strongly of the opinion" that the circumstances *did require action* on the part of the House "at the appropriate time." Such action was delayed specifically because of the custom of the House to defer the final disposition of such cases until all appeals had been exhausted. This position was reaffirmed in the report of the House Committee on Standards of Official Conduct, In the Matter of Representative Andrew J. Hinshaw, H. Rep. No. 94-1477, 94th Congress, 2d session (1976), wherein the committee states: "Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded on appeal."

The precedent set by the Langley case in Cannon's, *supra*, sec. 238, concludes with a reference to the fact that there existed "every prospect of an early disposition" of the petition for certiorari filed on behalf of Mr. Langley in the Supreme Court. In addition, Mr. Langley had agreed not to participate in the proceedings of the House and to resign immediately if his petition of certiorari were denied. This being the case, the committee recommended no action be taken at the time. The Supreme Court later denied the writ of certiorari, and Langley promptly tendered his resignation as Representative-elect on January 11, 1926.

The Langley case laid the predicate for what was later to become House Rule XLIII, cl. 10:

> A Member of the House of Representatives who has been convicted by a court of record for the commission of a crime for which a sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member and should refrain from voting on any question at a meeting of the House, or of the Committee of the Whole House, *unless or until*

judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction.

This rule is inapplicable to a Member if the conviction is overturned, the Member is pardoned, or is reelected to the House after the conviction.

III. PROCEDURE

The issue of expulsion involves a question of privilege which supersedes the regular order of business, and resolutions to expel are privileged (see House Rule IX; Cannon's, *supra,* vol. VI, sec. 236; and Hinds' Precedents of the House of Representatives, vol. II, sec. 2648). Debate is under the hour rule. A Member may be heard in his own defense or to present a written defense, but not to appoint another Member to speak on his behalf (Hinds, *supra,* vol. II, 1273).

A resolution relating to expulsion can be of two types: (1) a resolution to expel forthwith upon adoption by two-thirds of those present and voting, or (2) a resolution directing either a standing committee (i.e., Committee on Standards of Official Conduct) or a special (select) committee to investigate and recommend. Such an investigating committee may be granted subpoena power and may examine witnesses under oath.

IV. ALTERNATIVES TO EXPULSION

The authority of the House of Representatives to censure a Member is derived from Art. I, sec. 5. cl. 2 of the U.S. Constitution, as quoted earlier. The grounds underlying the consideration of a resolution to censure a Member are based on (1) a breach of the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and (2) a breach of the rights, reputation, and conduct of Members, individually, in their representative capacity only (Cannon's Procedure in the House of Representatives, House Doc. 610, 87th Cong., p. 284; and see House Rule IX). Between expulsion and censure, censure is the milder of the two, requiring a simple majority vote (of those present and voting).

In recent times the House has resorted to less stringent methods of punishing its Members for their improprieties, when it did not conclude that expulsion or censure was appropriate. Such alternative methods include suspension of a Member's right to vote under House Rule XLIII, cl. 10; imposition of fines; stripping of committee chairmanships; reprimand, and rebuke by a committee.

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S.S.I. RECIPIENTS FORFEIT BENEFITS WHEN TRAVELING ABROAD

by J. Michael Dougherty, Jr.

On December 11, 1978, in *Califano v. Aznavorian,* 99 S.Ct. 471 (1978), the Supreme Court unanimously upheld the constitutionality of §1611(f) of the Social Security Act (42 U.S.C. §1382(f)). Though §1611(f) denies benefits to Supplemental Security Income (SSI) recipients for any month that the recipient spends entirely outside of the United States, the Court concluded that the provision was not an impermissible burden on the right of international travel as guaranteed by the Fifth Amendment.

On July 21, 1974, Grace Aznavorian, a United States citizen and a recipient of SSI benefits,[1] left the United States and traveled to Guadalajara, Mexico, where she sought medical attention. Aznavorian remained in Mexico until September 1, 1974 due to an unexpected illness. As a result of this sojourn, HEW denied Aznavorian SSI benefits for the months of August and September pursuant to §1611(f) of the Social Security Act. Section 1611 (f) provides that:

> [N]o individual shall be considered an eligible individual for purposes of this Title for any month during all of which such individual is outside the United States . . .For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

After exhausting her administrative remedies, Aznavorian filed a class action[2] asserting that §1611(f) denied her the Fifth Amendment guarantees of due process, equal protection and the right of international travel.

The District Court for the Southern District of California granted summary judgment to the plaintiff class.

[1] To become eligible for benefits under the Supplemental Security Income (SSI) program, a person must be a resident of the United States, 42 U.S.C. §1382c(a)(1)(b); be over 65 years old or meet statutory definitions of blindness and disability, 42 U.S.C. §1382c(a); and be poor, 42 U.S.C. §1382a (income), 42 U.S.C. §1382b (resources). 99 S.Ct. at 472.

[2] The class was limited to those who had presented unsuccessful claims to the Secretary of HEW. Based on §1611(f), the Secretary approximated that "between 4,823 and 9,195 persons were deprived of their SSI benefits per month from February to October, 1976." *Aznavorian v. Califano,* 440 F.Supp. 788, 793 (S.D.Cal. 1977).