

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aprea & Micheli, and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast on judging the qualifications of members of the Legislature.

California's Constitution, in Article IV, Section 5(a)1, specifies that "each house of the Legislature shall judge the qualifications and elections of its members and by roll call vote entered in the journal, two-thirds of the membership concurring, may actually expel a member."

The courts in the state have determined how far that judgment, judging the qualifications actually goes. By the way, the Legislature also has the constitutional power to suspend members. This is also found in Article IV, but in Section 5(a)2(a), which essentially says that each house of the Legislature may suspend a member by motion or resolution adopted by a roll call vote requiring two-thirds of the membership. And, the motion or resolution must contain findings and declarations that set forth the basis for that particular suspension.

Now, this section of the state constitution also allows the Legislature to deem the salary and benefits of the member to be forfeited for all or part of the period of his or her suspension. A suspended member cannot exercise any of the rights, privileges, duties, or powers of his or her office, or utilize any resources of the Legislature during the period that the suspension is in effect.

The courts have been clear in deferring to the Legislature on the question of judging the qualifications and giving full respect to the explicit language in the state constitution. As a result, challenges to whether a member of the Legislature is entitled to take his or her seat, or whether to remain in office is rarely considered by the courts.

One of the most famous cases was a dispute between then-Assemblymembers Gil Ferguson and Tom Hayden. Under Article IV, Section 5, the Legislature is granted the sole jurisdiction to determine the qualifications of its members and the sole right to expel them from membership. Accordingly, in an action by a veterans' group to disqualify an Assemblyman from holding office because of his alleged support of North Vietnam during the U.S. conflict, they relied upon the Constitution, Article VII, providing that no person who advocates the support of a foreign government against the United States, in the event of any hostilities, is allowed to hold any office or employment under that particular statute.

And the trial court properly dismissed the complaint. The appellate court ruled that under the same constitutional principle of separation of powers, plaintiffs were foreclosed from attempts to prohibit the Attorney General, or the Secretary of State, or even the County Registrar of Voters from certifying the election results, or the swearing in, or disbursement of money to the Assemblyman or interfering in the Legislature's determination of the qualifications, fitness, and elections of its own members. This decision was issued in 1986 by the California Appellate Court called *California War Veterans for Justice versus Hayden*.

Similarly, a state appeals court ruled that the judiciary lacked the jurisdiction to judge qualifications to serve as a Senator in the 14th Senate District because Constitution Article IV, Section 5a vests in the State Senate the sole authority to judge qualifications of a member.

So, the California Constitution vests in each house of the Legislature the sole authority to judge the qualifications and elections of a candidate for membership in that house of the Legislature, even when the challenge to the candidate's qualifications is brought prior to the primary election. This was the decision of a California appellate court in 2012 in *Fuller v Bowen*.

More than 100 years ago the California Supreme Court ruled that the power conferred upon the Senate by the State Constitution to determine the rule of its proceedings, and to expel a member, is exclusive to that house. The judicial branch has no power to revise even the most arbitrary and unfair action of the Legislative branch. There is no constitutional provision giving persons who have been expelled the right to have a trial, an opportunity to be heard in the Senate, other than that which they have received. This was a decision by the California in Supreme Court in 1905, in *French v the Senate of California*.

And finally, there was an Attorney General opinion that said that the election of a member of the Legislature to an incompatible office does not have the effect of removal of the legislator from the legislative office as only the house of the Legislature has the power to judge the qualifications and thereby to remove a member.

Hence, as you've heard, the state's courts have deferred entirely to the Legislature based upon a clear reading of the state constitution and the exclusive power that's vested in the Legislative branch of government to determine the qualifications of its members.

I hope you enjoyed this podcast looking at judging the qualifications of members of the California legislature. Thanks for joining.