

# Powell's Suit To Be Heard By High Court

By John P. MacKenzie  
Washington Post Staff Writer

Apparently braced for a historic confrontation with Congress, the Supreme Court agreed yesterday to consider whether Adam Clayton Powell had a constitutional right to the seat denied him by the House of Representatives in the 90th Congress.

Even though the Court did no more than call for oral argument on the Powell case, its action was considered certain to anger many Congressmen, who contend that courts may not even look into the way Congress judges the qualifications of its membership.

The House excluded the once-powerful Harlem Democrat on March 1, 1967, for the duration of the 90th Congress—which adjourned last month—on grounds of misconduct.

Powell, 59, who won re-election to the 91st Congress in the Nov. 5 election, claims that the exclusion order denied voting rights to his constituents and robbed him of his right to represent them. Two lower courts have dismissed his suit for an order to re-seat him and for back pay.

Powell told a Harlem news conference yesterday that he was gratified that "we are now living again under a republic that has three branches of government." He also expressed hope that a favorable Supreme Court ruling would give him more than \$65,000 he lost from being barred.

His claim for back pay is considered enough to keep the legal controversy alive in the courts beyond Jan. 3, when Powell is expected to offer himself as a freshman representative in the new Congress. How the new legal test will affect the reception he gets at the well of the House was anybody's guess.

Whatever the high court

W. Post  
11/29/68

does with the case is not expected to settle Powell's claim for all the trappings of political power he says were taken away unjustly—including his 22 years of seniority and his chairmanship of the House Education and Labor Committee. Those benefits are doled out by the Democratic Party leadership in the House.

Powell told his news conference that he hopes his seniority will be restored but, if not, he will return as a freshman. He added that Vice President Humphrey, House Democratic whip Hale Boggs (La.) and "many members of the House" have sent telegrams congratulating him on his re-election.

The Powell case is complicated by the dormant grand jury investigation of the alleged payroll abuses that formed part of the House's misconduct charges. No grand jury action has been reported, but after Jan. 20 the prosecution machinery will be in the hands of a Republican Administration. The high court is expected to hear arguments on Powell's suit in February at the earliest, with a decision to follow in the spring.

The Court could have denied Powell's petition for review without giving any reasons. Its action was especially

See POWELL, A2, Col. 1

## POWELL, From A1

surprising after the imbroglio over the separation-of-government powers that marked the Senate fight over the confirmation of Justice Abe Fortas as the replacement for retiring Chief Justice Earl Warren.

Fortas, whose nomination died in a floor filibuster, refused to answer numerous questions by hostile Senators on grounds that it would violate the separation of powers to yield to inquiry by another branch of government on his judicial philosophy, pending cases or his dealings with the White House during his three years as Associate Justice.

Only four votes were required for yesterday's action, which technically was limited to deciding whether the issues were important enough for full review. Which Justices voted for review, and how many of them are favorably disposed toward any of Powell's arguments, was kept secret.

Specially hired lawyers for the House, led by Wall Street lawyer Bruce Bromley, conceded that Powell had raised important and undecided ques-

tions. But they contended in a memorandum that "time and the evolution of the political process have eliminated any practical occasion or reason for further review."

Powell was excluded for payroll abuses and for ignoring court orders and House investigating committees. His suit contended that the House may consider only whether he was old enough for membership, whether he is a citizen and whether he resided in New York's 18th Congressional District.

Although the lawsuit contended that the black voters in Harlem who joined him as plaintiffs had been deprived of their rights to their chosen representative, Powell refrained from charging that the House discriminated against him because he is a Negro.

Although the House countered that its members could not be compelled "to vote to seat the member-elect," Powell's lawyers argued that the courts had only to strike down the House resolution, which would leave House staff employes with the simple "ministerial duty" to treat him like a Congressman and pay him like one.

The House called the dispute a classic "political question" that courts should avoid. Although the high court in 1966 struck down the exclusion of Negro pacifist Julian Bond from the Georgia legislature, the House said that was a far cry from giving orders to a coordinate branch of the Federal Government.