

will decide whether our Legislature have any authority to superinduce the qualification of *District residence*; and of consequence whether that part of the Act of Assembly which requires it is not merely void.'

"Here I mean to draw the question into a narrow compass. Mr. Pinkney charges the Assembly with having by their regulations superadded an article of qualification to those already required by the Constitution. I deny that the Legislature has done so; and upon this single point I rest the matter.

"I pass over the ingenious reasoning employed by Mr. Pinkney to prove that the prohibitory language of the Constitution on the subject of qualifications, implies a permission in favor of all persons not expressly excluded, to represent their States in the general Government, because whether his principle be well founded or not, I am willing to concede in the present case, that all persons not excluded by the express terms of the Constitution are eligible as Representatives and must remain so, until it is altered.

"I shall now quote Mr. Pinkneys language for the purpose of adopting it—'*Who* may or may not be chosen (says Mr. P.) is one thing—'*How* they may be chosen by the people, another: who are qualified to be elected is one consideration. The manner in which an election shall be held for persons so qualified, a different one.'

'The language of the General Government is obviously this—The people qualified to vote for State Delegates/shall elect representatives qualified as the Constitution prescribes; but as to manner in which the choice of qualified Representatives shall be made by qualified voters, that subject shall be referred to the State Legislatures and Congress.' [p. 236]

'The Convention determine themselves *who may choose and who may be chosen*, but do not ascertain *when, where* or *how* the choice shall be made. They first decide that Representatives shall be elected by the people. They next point out what descriptions of people may elect; and lastly who may be elected.'

"Here I cease to quote Mr. Pinkney's expressions because it is here that I cease to agree with him, but the foregoing distinction I cheerfully adopt as the ground of my own argument, that the Regulations of the State operate upon a Subject expressly committed to its authority, To wit the *when* the *where* and *how*, but have not touched upon the Subject upon which the Convention has itself decided—That is to say *who* or what description of persons may be elected.

"The two points of enquiry are

1st. Who may or may not be chosen?

2d. How may they be chosen?

"The first of these questions is answered by the Constitution which gives every man a capacity to be elected, who is 25 years of age, has been seven years a Citizen of the United States, and who is actually a resident of the State he claims to represent

"The 2nd. Question is *not* answered by the Constitution; but means are provided for its receiving an answer in the modes which the States may adopt, or that which the National Legislature may in the last resort direct. To show that our Law has neither infringed or touched the Subject not entrusted to State Regulation To wit eligibility or a capacity to be elected, it seems necessary in the first place to define the nature of this right.

"I take eligibility or a legal capacity to be elected, to be derived to a Citizen from the circumstance of his agreeing in personal and accidental qualities with a description previously laid down by competent authority; further I hold it to be a quality not divisible into parts or degrees and of course not liable to be impaired without being destroyed; for whoever is