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OPINION

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Preventing the Next George Santos*

By [Jerry H. Goldfeder](#)



Now that the House of Representatives finally is able to do the people’s business, Rep. Ritchie Torres is trying to prevent the next George Santos. He’s promising to propose a law requiring congressional candidates to file sworn affidavits attesting to their qualifications and background. He calls it the S.A.N.T.O.S. bill (“Stop Another Non-Truthful Office Seeker”).

Torres is optimistic that it will pass, but during the drafting process he needs to be mindful of the courts’ repeated prohibition of states or Congress from changing or impacting the constitutional qualifications for federal office. Santos was able to take his seat because the Constitution does not require a member of Congress to be a truth-teller.

Indeed, the Founders laid out a very simple set of qualifications — 25 years of age, a U.S. citizen for seven years, and an inhabitant of the state when elected. According to the Federalist Papers, their view was that this formula permitted the “door” to the House to be “open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.”

It's hard to imagine that the drafters of the Constitution could anticipate this door swinging so wide-open as to allow a confessed scam-artist to skate right in as Santos has now done. Why is this?

By specifying in the Constitution three basic requirements to be a congressman, the Founders intentionally denied the states any authority to change the rules of who could serve. Their goal was to have a national legislature, in which everyone was equally qualified, and, presumably, looking out for the nation's interest rather than some issue a state's additional requirement might seek to elevate.

States cannot require their representatives to have pedigrees or characteristics beyond those in the Constitution. And Congress itself was also meant to have no authority to change this — so much so that, as articulated by the 1969 United States Supreme Court in a case involving New York's Adam Clayton Powell Jr., Congress had no right to refuse to seat a duly elected member who satisfied these requirements, even if they were scoundrels or worse.

When states have tried to circumvent this iron-clad rule, their efforts have been stymied. During the height of the term-limits movement, Arkansas prohibited candidates from running for Congress if they had already served three consecutive terms. The Supreme Court struck down this law on the ground that a state could not change the three constitutional requirements to serve in the House.

The same proscription relates to serving in the U.S. Senate and White House: when partisans in New Jersey attempted to oust Sen. Robert Menendez through its otherwise lawful "recall" process, the state's Supreme Court disallowed it as an improper alteration of the federal requirements for that office; and in response to former President Trump's refusal to release his tax returns, a California law that required presidential candidates to make public their tax filings was struck down by that state's high court on the ground that California could not change the U.S. Constitution's qualifications to be president.

Torres, as usual, is undaunted. He reminds us that financial and campaign disclosures are required of candidates for the House, Senate and presidency — so why not a filing that swears to the accuracy as to who they say they are? Perhaps there is a route. That said, there are First Amendment rights that cannot be breached. After all, embellishing or outright lying about one's credentials or about an opponent goes back to the John Adams-Thomas Jefferson campaign of 1796. Yet trying to deal with the problem is a worthwhile effort. A well-crafted Torres bill could avoid these constitutional obstacles.

Nevertheless, I would rather leave it up to the voters to judge the facts and character of candidates. The problem with this is that voters have a lot on their plate, and often, as in the Santos case, the truth comes out only after an election. Thus, a robust analysis of a candidate must be done during the campaign. Investigative journalists and opposing candidates can do this job. Of course, this is more difficult than it sounds. Reporters are overworked, and campaigns would rather spend their precious dollars on connecting with voters. Obviously, this also is not a perfect solution.

But, in order to avoid the kind of buyer's remorse that many of Santos' constituents are experiencing, such opposition research by experienced professionals may need to be part of the candidate's budget. Perhaps this, combined with a sworn disclosure statement as envisioned by Torres, might very well address the embarrassment George Santos now personifies.

*The Daily News used the headline "Go Slow in Policing Santos' Lies," but I think my title better reflects what I wrote.

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