Contested Election Cases in the House of Representatives: 1933 to 2009

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Summary

From 1933 to 2009 (the 73rd Congress through the 111th Congress), the U.S. House of Representatives considered 107 contested election cases. The vast majority of these cases were resolved in favor of the *contestee*, a term referring to a Member or Member-elect of the House of Representatives whose election was challenged. The term *contestant* refers to an individual who challenged the election of a Member-elect of the House of Representatives.

It appears that of the 107 contested election cases considered by the House since 1933, in at least three cases, the House ultimately seated the contestant, and in at least one case, the House ultimately refused to seat any individual, declaring a vacancy. In the majority of the other cases, the contest was dismissed based on reasons including lack of evidence; a determination that voting irregularities, fraud, or misconduct was insufficient to affect the results of the election; failure to sustain the burden of proof necessary to award the contested seat to the contestant; and improper initiation of a contest or other procedural failures.

With regard to procedures followed on the first day of a new Congress, of the 107 contested election cases considered by the House since 1933, it appears that in at least 15 cases, the Member-elect was asked to "step aside" or "remain seated" while the oath of office was collectively administered to the other Members-elect. Of those 15 cases where a Member-elect was asked to step aside, it appears that in at least two instances, the Member-elect was subsequently administered the oath on an expressly provisional basis. In at least two of the 15 cases where a Member-elect was asked to step aside, the House declined to administer the oath of office to that Member-elect, until after the committee to which the question was referred had conducted an investigation and issued a report. In the remaining 11 of the 15 cases where a Member-elect was asked to step aside, in most instances, the House adopted a resolution providing merely that the Member-elect "be now permitted" to take the oath of office, with no specific reference to final determination of the right to the seat nor any express reference to a filed election contest. As has been noted by House Parliamentarians, the seating of a Member-elect does not prejudice a contest pending under the Federal Contested Elections Act (FCEA) regarding the final right to a seat.

The summaries of contested election cases contained in this report focus primarily on the nature of the contest and the disposition of the case. For more detailed information regarding each contest, it is important to consult relevant House records. This report examines only cases considered by the House of Representatives involving the question of whether a Member-elect was *duly elected*, that is, questions regarding elections and returns, not questions regarding qualifications (age, citizenship, and inhabitancy). Cases decided at the state level are beyond the scope of this report. Furthermore, information contained in this report is derived solely from findings made by the reporting congressional committee or as documented in the *Congressional Record*; CRS did not make any of the findings independently.

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Introduction

The following compilation provides a synopsis of the 107 contested election cases considered by the U.S. House of Representatives from the 73rd Congress through the 111th Congress, 1933 to 2009.[1] According to the U.S. Constitution, the House of Representatives has final authority over the "Elections, Returns and Qualifications of its own Members."[2] This report examines only cases involving the question of whether a Member-elect was *duly elected*, that is, questions regarding elections and returns. Questions regarding qualifications (age, citizenship, and inhabitancy)[3] are not the focus of this report.[4]

The case summaries highlight the nature of the contest and the disposition of the case. For more detailed information regarding each contest, it is important to consult relevant House records. This report is limited to those cases considered by the House of Representatives; cases decided at the state level are beyond the scope of this report. Furthermore, information contained in this report is derived solely from findings made by the reporting congressional committee or as documented in the *Congressional Record*; CRS did not make any of the findings independently.

For the purposes of this report, the term *contestant* refers to an individual who challenged the election of a Member-elect of the House of Representatives, and the term *contestee* refers to a Member or Member-elect of the House of Representatives whose election was challenged.

Overview of Cases

From 1933 to 2009, it appears that the House of Representatives considered 107 contested election cases, many involving allegations of fraud or other election improprieties. Of these cases, a vast majority were resolved in favor of the contestee. Since enactment of the Federal Contested Elections Act of 1969 (FCEA),[5] most cases have been dismissed due to failure by the contestant to sustain the burden of proof necessary to overcome a motion to dismiss.

Cases Where the Contestant Was Ultimately Seated

It appears that of the 107 contested election cases considered by the House since 1933, in at least three cases, the House ultimately seated the contestant,[6] and in at least one case, the House

[1] This report begins discussion of contested election cases considered by the House of Representatives in 1933 due to the fact that *Hinds' and Cannon's Precedents of the U.S. House of Representatives* compiled contested election cases up until 1933. For further discussion of more recent contested election cases, *see also Deschlers' Precedents of the U.S. House of Representatives.*

[2] U.S. CONST. Art. I, § 5, cl. 1.

[3] The U.S. Constitution provides: "No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. CONST. Art. I, § 2, cl. 1.

[4] The Supreme Court has distinguished between cases involving elections and returns and cases involving qualifications, holding that "the Constitution leaves the House without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution." Powell v. McCormick, 395 U.S. 486, 520 (1969).

[5] *See* 2 U.S.C. §§ 381-396.

[6] *See* Roy v. Jenks, H.Rept. 75-1521, 1st District of New Hampshire (although the state issued a certificate of election to (continued...)

ultimately refused to seat any individual.[7] Generally, in the majority of the other cases, the contest was dismissed based on reasons including lack of evidence; a determination that voting irregularities, fraud, or misconduct were insufficient to affect the results of the election; failure to sustain the burden of proof necessary to award the contested seat to the contestant; and improper initiation of a contest or other procedural failures.

Overview of House Procedure on the First Day of a New Congress

The presentation of "credentials," that is, a certificate of election from the appropriate state authority[8] by a Member-elect at the beginning of a Congress, is considered to be only prima facie evidence that the person holding those credentials was "elected" by the people of his or her district.[9] A "Member-elect" is not a "Member of Congress" until that person is sworn in and seated by the respective House.[10] Under express provisions of the U.S. Constitution, the *final* authority over the "Elections, Returns and Qualifications of its own Members" is clearly lodged within each House of Congress.[11]

Although procedures have not been absolutely consistent, House practice is that any Member-elect, on the first day of the new Congress and before the Members-elect have been sworn (i.e, at the time when the Speaker asks the Members-elect to rise to take the oath of office), may object to the seating of another Member-elect based on the objecting Member-elect's own "responsibility as a Member-elect" and/or on "facts and statements" that the Member-elect "considers reliable."[12] The Member-elect about whom the objection is made is generally asked to step aside, or to remain seated, while the other Members-elect rise to be collectively administered the oath of office.[13]

(...continued)

Jenks and the House provisionally administered the oath of office to Jenks—after asking him to "stand aside" during the collective administration of the oath—following hearings by the Committee on Elections, the House adopted a resolution declaring that contestant Roy was entitled to the seat), 81 Cong. Rec. 12-13 (January 5, 1937); Roush or Chambers, H.Rept. 87-513, 5th District of Indiana (although the state issued a certificate of election to Chambers, on the first day of the new Congress, the House passed a resolution stating that it would issue the oath of office to neither contestant Roush nor contestee Chambers; on June 14, 1961, the House adopted a resolution declaring that contestant Roush was duly elected), 107 Cong. Rec. 10377-10391 (June 14, 1961); McCloskey and McIntyre, H.Rept. 99-58, 8th District of Indiana (although the state issued a certificate of election to McIntyre, on the first day of the new Congress, the House adopted a resolution stating that it would issue the oath of office to neither McIntyre nor McCloskey; after a House task force investigation and recount, McCloskey was determined to have won by a 4 vote margin), 131 Cong. Rec. 9998-10019 (May 1, 1985).

[7] *See* Sanders v. Kemp, H.Rept. 73-334, 6th District of Louisiana (after two special elections were held to fill the vacancy created by the death of the incumbent, the House adopted a resolution declaring both elections to be null and void, that neither Kemp nor Sanders was entitled to the seat, and a vacancy was created), 78 Cong. Rec. 1513-1521 (January 29, 1934).

[8] 1 *Deschler's Precedents of the U.S. House of Representatives,* H. Doc. 94-661, Ch. 2, § 3, at 98 (1977) [hereinafter *Deschler's*].

[9] *Deschler's supra* at Ch. 2, § 6, at 131-132, *see* specifically n. 9.

[10] U.S. CONST. Art. VI, cl. 3; *Deschler's supra* at Ch.2, § 6.

[11] U.S. CONST. Art. I, § 5, cl. 1; *See* Roudebush v. Hartke, 405 U.S. 15 (1972).

[12] *Deschler's, supra* at Ch. 2, § 6, at 130, and Ch. 2, § 6.2, at 133-134; *House Practice, A Guide to the Rules, Precedents and Procedures of the House*, Brown and Johnson, 108th Cong. (2003) at Ch. 33, § 3, at 634-635 [hereinafter Brown and Johnson]("[t]he fact that the challenging party has not himself been sworn is no bar to his right to invoke this procedure," *citing* 1 *Hinds* § 141). *See also Deschler's, supra* at Ch. 2, § 5, at 117.

[13] Brown and Johnson, *supra* at Ch. 33, § 3, at 634; *Deschler's supra* at Ch. 2, § 6.

Generally, there are three different procedures that may then be followed with regard to the challenged Member-elect. The House may agree to a resolution to simply seat the Member at that time, determining both "his prima facie as well as final right to the seat."[14] Second, with regard to a Member-elect who presents valid credentials and is "qualified" to be a Member, a resolution may be offered to seat the Member-elect provisionally or conditionally (even though those words are not expressly used), based on his or her prima facie right to the seat, by resolving to seat the Member-elect but to refer the question of the *final* disposition of his or her entitlement to the seat to the appropriate committee of jurisdiction (now the Committee on House Administration).[15] In some instances, the resolution offered to swear in the challenged Member-elect did not expressly provide that condition or mention any election contest filed, but the House later considered the matter of "election" on merely a majority vote basis, thus demonstrating, in fact, that the swearing in and "seating" was provisional, conditional, or "without prejudice" to the House's right to eventually and finally resolve the question of who was "duly elected."[16] As stated by Brown and Johnson in *House Practice, A Guide to the Rules, Precedents and Procedures of the House*, "[t]he seating of a Member-elect does not prejudice a contest pending under the Federal Contested Elections Act (FCEA) over final right to the seat."[17] Third, the resolution may refer both the prima facie right to the seat, as well as the final right to the seat, to the committee without authorizing the swearing in (and seating) of anyone.[18]

Cases Where Member-elect Was Asked To "Step Aside" or "Remain Seated" on the First Day of a New Congress

Of the 107 contested election cases considered by the House since 1933, it appears that in at least 15 cases, the Member-elect was asked to "step aside" or "remain seated" while the oath of office was collectively administered to the other Members-elect on the first day of a new Congress.[19] Of those 15 cases where a Member-elect was asked to step aside, it appears that in at least two instances, the Member-elect was subsequently administered the oath on an expressly provisional basis.[20] Typically, during such provisional administrations of the oath, the House adopts a privileged resolution authorizing the Speaker to administer the oath, and further providing that "the question of the final right" of the Member-elect to a seat in the new Congress be referred to the appropriate committee of jurisdiction and that such committee "shall have the power to send for persons and papers and examine witnesses on oath" in relation to the contest. In at least 2 of

[14] *Deschler's supra* at Ch. 2, § 6, at 131.

[15] *Deschler's, supra* at Ch. 2, § 6, pp. 131-132. *See, e.g.,* Mackay v. Blackburn, 113 Cong. Rec. 27 (January 10, 1967).

[16] *See, e.g.,* Roy v. Jenks, 81 Cong. Rec. 12-13 (January 5, 1937).

[17] Brown and Johnson, *supra* at ch. 33, § 3, at 635.

[18] *Deschler's supra* at Ch. 2, 6, at 132; *see, e.g.,* Sanders v. Kemp, 78 Cong. Rec. 12 (January 3, 1934); Roush or Chambers, 107 Cong. Rec. 24 (January 3, 1961); McCloskey and McIntyre, 131 Cong. Rec. 380-388 (January 3, 1985).

[19] *See* Brewster v. Utterback, 77 Cong. Rec. 71 (March 9, 1933); Roy v. Jenks, 81 Cong. Rec. 13 (January 5, 1937); Dale Alford, 105 Cong. Rec. 14 (January 7, 1959); Roush or Chambers, 107 Cong. Rec. 23-24 (January 3, 1961); Morgan M. Moulder, 107 Cong. Rec. 23-25 (January 3, 1961); Victor Wickersham, 107 Cong. Rec. 23-25 (January 3, 1961); Frankenberry v. Ottinger, 111 Cong. Rec. 19 (January 4, 1965); Wheadon v. Abernethy, 111 Cong. Rec. 18-19 (January 4, 1965); Hamer v. Whitten, 111 Cong. Rec. 18-19 (January 4, 1965); Cosey, Wilson, and Johnson v. Williams, 111 Cong. Rec. 18-19 (January 4, 1965); Devine v. Walker, 111 Cong. Rec. 18-19 (January 4, 1965); Jackson v. Colmer, 111 Cong. Rec. 18-19 (January 4, 1965); Mackay v. Blackburn, 113 Cong. Rec. 14, 27 (January 10, 1967); Hansen v. Stallings, 131 Cong. Rec. 380,388 (January 3, 1985); McCloskey and McIntyre, 131 Cong. Rec. 380, 381-388 (January 3, 1985).

[20] *See* Dale Alford, 105 Cong. Rec. 14 (January 7, 1959); Mackay v. Blackburn, 113 Cong. Rec. 14, 27 (January 10, 1967).

the 15 cases where a Member-elect was asked to step aside, the House declined to administer the oath of office to any Member-elect, deciding to wait until after the committee to which the question was referred had conducted an investigation and issued a report.[21] In the remaining 11 of the 15 cases where a Member-elect was asked to step aside, in most instances, the House adopted a resolution providing merely that the Member-elect "be now permitted" to take the oath of office, with no specific reference to final determination of the right to the seat nor any express reference to a filed election contest.[22]

Synopsis of Cases

73rd Congress[23]

Bowles v. Dingell (H.Rept. 695), 15th District of Michigan

Nature of contest—Not disclosed by record. No notice of contest was filed in this matter and consequently, the Committee on Elections dismissed it, recommending that contestant Bowles was not entitled to a seat and that contestee Dingell was entitled to a seat.

[21] *See* Roush or Chambers, 107 Cong. Rec. 24 (January 3, 1961); McCloskey and McIntyre, 131 Cong. Rec. 380, 381-388 (January 3, 1985).

[22] *See, e.g.*, Brewster v. Utterback, 77 Cong. Rec. 71 (March 9, 1933)(resolution authorized the Speaker to administer the oath, and provided that the contestant was still entitled to contest the seat even though the time for bringing contests had expired, on the condition that the notice of contest was filed within 60 days after the resolution was adopted); Roy v. Jenks, 81 Cong. Rec. 13 (January 5, 1937)(resolution provided that Member-elect be permitted to take the oath office); Frankenberry v. Ottinger, 111 Cong. Rec. 20 (January 4, 1965)(resolution authorized and directed Speaker to administer oath of office). As noted earlier, "[t]he seating of a Member-elect does not prejudice a contest pending under the Federal Contested Elections Act (FCEA) over final right to the seat." Brown and Johnson, *supra* at ch. 33, § 3, at 635.

[23] During the 73rd Congress, two additional cases came before the House, Estep v. Ellenbogen and Francis H. Shoemaker, which are not included in this synopsis because they presented a question of *qualification* rather than a question of *who was duly elected*. In brief summary, Estep v. Ellenbogen (H.Rept. 1341), 33rd District of Pennsylvania, involved contestant Estep, not a candidate, but a former Member of Congress, challenging the qualifications of contestee Ellenbogen on the ground that he had not been a citizen for seven years at the date of election, but had only been a citizen for six years and 8½ months. Ellenbogen stood aside on the opening of the House session on March 9, 1933, and did not present himself until January 3, 1934, when he had been a citizen for 7½ years. He was sworn and took his seat (*see* 78 Cong. Rec. 2). The Elections Committee held that the contestee qualified at the time of the administration of the oath, and equated the citizenship requirement with the age requirement, holding that both could be met subsequent to the election. H.Res. 370, stating that Representative Ellenbogen was qualified when he took the oath of office on January 3, 1934 and that he was entitled to the seat, was passed by the House on June 16, 1934 (*see* 78 Cong. Rec. 7873, 7876, 12193). Francis H. Shoemaker (no report filed), of Minnesota, involved Shoemaker being asked to stand aside at the general swearing in on the first day of the new Congress (77 Cong. Rec. 71). H.Res. 6, was introduced, alleging that he was ineligible to serve, noting that he had not been sworn in, and directing that the question of his prima facie right, as well as his permanent right, be examined by the Elections Committee. It was asserted that in 1930, he had been convicted and served a sentence for mailing libelous matter, a felony. After House debate, on March 10, 1933, a substitute resolution was offered, authorizing the Speaker to administer the oath to Shoemaker and referring the question of the permanent right to the Elections Committee (77 Cong. Rec. 132). After extended debate, the substitute resolution was agreed to, and the preamble of the original resolution alleging Mr. Shoemaker's ineligibility was stricken (77 Cong. Rec. 139). It does not appear from the record that this matter was considered by the Elections Committee.

Disposition of the contest—H.Res. 260, awarding the seat to Dingell, was introduced by Mr. Kerr and passed by the House on February 24, 1934 (78 Cong. Rec. 2282, 2292, 3165).

Shanahan v. Beck (H.Rept. 694), 2nd District of Pennsylvania

Nature of contest—Not disclosed by record. While a notice of contest was filed, the contestant failed to transmit the evidence taken in this matter to the Clerk of the House. There was no evidence presented before the Committee on Elections and no briefs were filed.

On February 9, 1934, the Committee dismissed the contest even though its report noted that "the official returns in this contest disclose that the contestant had more than a 14,000 majority of the votes cast in the General election held November 8, 1932."

Disposition of the contest—H.Res. 259 was reported from the Committee on Elections recommending that contestant Shanahan was not entitled to a seat and that contestee Beck was entitled to a seat. On February 24, 1934, the House passed the resolution (78 Cong. Rec. 2282, 2292, 3165).

Reese v. Ellzey (H.Rept. 696), 8th District of Mississippi

Nature of contest—Contestant Reese, the regular Republican candidate for Congress in the 8th District of Mississippi, complained of Mississippi election law infractions. Specifically, he alleged that there had been a second candidate for Congress on the ballot in the district who ran as a "Republican," but who had no connection with the regular, national party; and that there had been a failure to appoint any Republican election officers or judges in the District "as mandated by the laws of the State of Mississippi."

Disposition of the contest—Contestant Reese filed a letter with the House Elections Committee on May 6, 1933 withdrawing from the contest. The Committee recommended the adoption of H.Res. 261, declaring that Reese was not entitled to the seat and that Ellzey was entitled to the seat. On February 24, 1934, the House adopted H.Res. 261 (78 Cong. Rec. 2282, 3165).

Brewster v. Utterback (H.Rept. 1725), 3rd District of Maine

Nature of the contest—Contestee Utterback was returned to the Congress by a majority of 294 votes (34,520 to 34,226). Contestant Brewster charged illegal or insufficient returns and registrations, and illegal and fraudulent marking of ballots. The Governor of Maine sent the vote tabulation to Congress with a statement that Utterback was "apparently elected." On the first day of the new Congress, Utterback was asked to step aside while the oath was collectively administered to the other Members-elect (77 Cong. Rec. 71, March 9, 1933).

The Elections Committee majority noted that although there had been some election irregularities in some district precincts, it found that "these irregularities, however, are of long standing and were no different in the election under consideration than in preceding elections in which the contestant was a successful candidate for office." The contest involved 16 precincts and had been submitted to the Supreme Court of Maine, which could render advisory opinions to the Governor and council. The court advised that returns from two of the precincts should be thrown out for failure by the election officials to carry out certain statutory duties. Consequently, contestee acquired a majority of 74 votes. The Committee held hearings on the returns from the 14

precincts, concluding that there "was no sufficient evidence of legal fraud or intentional corruptness to justify the Committee to recount the ballots of the precincts or to justify the Committee in sustaining the contestant's contentions." A minority report was filed.

Disposition of the contest—The Committee recommended H.Res. 390, denying contestant Brewster a seat and awarding a seat to contestee Utterback. On May 28, 1934, the House of Representatives adoped the resolution (78 Cong. Rec. 3874, 9259, 9760).

Casey v. Turpin (H.Rept. 930), 12th District of Pennsylvania

Nature of the contest—Not disclosed by record. The contestant failed to transmit evidence taken in the matter to the Clerk of the House.

Having no evidence before it, the Elections Committee dismissed the case, recommending that contestant Casey was not entitled to the seat and that contestee Turpin was entitled to the seat.

Disposition of the contest—On April 20, 1934, the House adopted H.Res. 345, denying the seat to contestant Casey and awarding it to contestee Turpin (78 Cong. Rec. 137, 1854, 4359, 4360, 7002).

Gormley v. Goss (H.Rept. 893), 5th District of Connecticut

Nature of the contest—Contestee Gormley received 42,132 votes and contestant Goss received 42,054, a majority for the contestee of 78 votes. Contestant charged that through fraud, irregularities, corruption, and deceit, contestant was deprived of sufficient votes necessary to overcome contestee's majority. The main issue in this case involved one voting booth in the city of Waterbury.

The Elections Committee recognized that the contestant's allegations were general, vague, and uncertain as to "necessary particulars," and that while the allegations did not meet the statutory requirements, the Committee would nevertheless "pierce the veil." The Committee set forth guiding postulates for its consideration of the case: "(1) the official returns are *prima facie* evidence of the regularity and correctness of official action; (2) election officials are presumed to have performed their duties loyally and honestly; (3) the burden of coming forward with evidence to meet or resist these presumptions rests with the contestant."

The Committee held hearings and ascertained that while confusion existed at the polling place as to voting for repeal of the 18th Amendment, "in no instance was a single complaint made to anyone at the polling place as to irregularity, interference, or fraud, and this, in spite of the fact that the election board was nonpartisan." Therefore, the Committee found that the contestant failed to establish his case by a "fair preponderance of the evidence," concluding that contestee Goss was duly elected.

Disposition of the contest—On April 20, 1934, the House adopted H.Res. 346, awarding the seat to contestee Goss (78 Cong. Rec. 4035, 7087).

Chandler v. Burnham (H.Rept. 1278), 20th District of California

Nature of the contest—In the official returns, contestee Burnham received a plurality of 518 votes. Contestant Chandler charged that he had received a majority of the *lawful* votes cast. Specifically, contestant argued that he was deprived of a rightful count because election officers rejected ballots favoring him, citing that such ballots had been void, spoiled, mutilated, or marked. Contestant also maintained that the unused ballots, together with the stubs of the used ballots, exceeded the number of ballots delivered to some precincts, while in other precincts, the unused ballots, together with the stubs of the used ballots was less than the number of ballots delivered. Contestant further charged that many used ballots were missing from the ballot boxes.

As in *Gormley v. Goss*, *supra*, the Elections Committee reiterated its warning about vague charges and pointed out that the statute required the notice of contest to contain particulars. In addition to the three general guidelines for judging contested elections cases it set forth in *Gormley,* the Committee prescribed two more: "(4) that fraud is never presumed, but must be proven; and (5) that the mere closeness of the result of an election raises no presumption of fraud, irregularities or dishonesty."

The Committee found that the record disclosed no evidence of fraud or deception and that a private recount taken by the contestant without the knowledge of the contestee, which supposedly showed a decided gain for the contestant, was inadmissible as uncorroborated and self-serving. In respect to the contestant's charge that not all election board members signed the returns in some precincts and that in others, none signed the returns, the Committee stated:

> The Constitutional and statutory provisions relating to suffrage may be divided into two classes: First, mandatory, which defines the right of suffrage; second, directory, which directs the manner of its exercise. The first confers the right, and the last throws safeguards around that right. The laws enacted for the purpose of conserving the right of the elector to exercise his franchise are mandatory or directory depending upon whether the statutes make them so. If the statute provides that unless a certain procedure is followed the election is void, then the law is mandatory. If, however, it prescribes for the doing or not doing of a certain thing in a certain manner by the election officers and fixes a penalty for the disobedience of the law, but does not provide that such violation shall void the election, then it is directory. The rules prescribed by law for conducting an election are designed chiefly to accord an opportunity for the free and fair exercise of the elective franchise to prevent illegal voting, and to ascertain with certainty the result. A departure from the mode prescribed will not vitiate an election, if the irregularities do not deprive any legal voter of his vote, or admit an illegal vote, or cast uncertainty on the result, and has not been occasioned by the agency of a party seeking to derive benefit from them.

The Committee concluded that the contestant had failed to establish fraud in this case.

Disposition of the contest—H.Res. 386, declaring contestee Burnham to have been duly elected, was passed by the House on May 15, 1934 (78 Cong. Rec. 6971, 8921).

Ellis v. Thurston (H.Rept. 1305), 5th District of Iowa

Nature of the contest—Contestee Thurston received a majority of 177 votes. On a recount agreed to by the parties, contestee received a 619 majority, and on a split of disputed ballots, he received a majority of 194.

The central question in this case was whether ballots marked for the presidential nominees of the parties, but not for the congressional candidates, should be counted as straight party tickets, even though the laws of Iowa provided a separate space for a straight party vote. The Elections Committee decided against such an assumption and found that contestee Thurston had been duly elected.

Disposition of the contest—On April 25, 1934, the House adopted H.Res. 359, denying the election of contestant Ellis and awarding the seat to contestee Thurston (78 Cong. Rec. 2769, 7186, 7190, 7371).

Felix v. Muldowney (No report filed), 82nd District of Pennsylvania

Nature of the contest—Not disclosed by record. A letter from the Clerk of the House submitting the papers in the case is recorded at 78 Cong. Rec. 4500 (March 14, 1934), but the record does not indicate any subsequent further action.

Fox v. Higgins (H.Rept. 894), 2nd District of Connecticut

Nature of the contest—Contestant Fox claimed that contestee Higgins induced an individual named Rollo to run as a "Wet Party" candidate for Congress from the 2nd district of Connecticut; that 624 voters voted either a straight Republican or Democratic ticket, plus a straight "Wet Party" ticket, under the impression that they were voting for the repeal of the 18th Amendment; that such ballots were not counted; that indeed they should be counted as Democratic or Republican ballots, and if so counted, would produce a majority for the contestant.

The Elections Committee found no evidence of any collusion between the contestee and Rollo, nor any evidence of confusion because of the make-up of the ballot, nor any evidence as to the intention of the 624 voters who voted for two parties. The Committee concluded that there was no reason to change the result of the election.

Disposition of the contest—On May 28, 1934, the House adopted H.Res. 296, declining to seat Fox and awarding the seat to contestee Higgins (78 Cong. Rec. 4185, 4223, 9760).

Sanders v. Kemp (H.Rept. 334), 6th District of Louisiana

Nature of the contest—The elected Congressman from the 6th district of Louisiana, the Honorable Bolivar Kemp, died on June 19, 1933. On December 5, 1933, a special election at the call of the Governor was held to fill the vacancy. The Governor, however, only gave eight days' notice of the election, which did not conform with Louisiana state law. Mrs. Kemp, the contestee, was elected. On December 27, 1933, another special election was held, called pursuant to a mass meeting of the citizens of the district. At this election, Sanders was elected.

The Committee held that both elections were void under Louisiana law: the first because the party committee had not been given "at least ten days" to select a candidate, and the second because there was no provision in the Louisiana law for holding an election in such a fashion.

Disposition of the contest—On January 3, 1934, the House adopted H.Res. 202, under which neither party would be seated until the Elections Committee could investigate and report and the House decide (78 Cong. Rec. 12). The resolution was presented at the request of the Louisiana

delegation to Congress. On January 29, 1934, H.Res. 231, declaring both elections to be null and void and that neither Mrs. Kemp nor Mr. Sanders was entitled to the seat, was debated and passed by the House (78 Cong. Rec. 1513-1521; see also 78 Cong. Rec. 1107-1108, 1034-1035, 1206, 1208, 1510).

LaGuardia v. Lanzetta (No report filed), 20th District of New York

Nature of the contest—Not disclosed by record. A letter about the case from the Clerk of the House to the Speaker, dated January 2, 1934 (78 Cong. Rec. 137), indicated that the time for taking testimony had long since expired and that the case had abated.

Disposition of the contest—The case was not referred to the Committee. The contestee was seated by the House.

Lovette v. Reece (H.Rept. 1306), 1st District of Tennessee

Nature of the contest—Of six candidates in the race, the election was won by contestee Reece. Another candidate, contestant Lovette, alleged general charges of fraud. During Committee hearings, however, he offered no specific evidence in support of his charges.

The Committee found that the evidence "failed utterly" to substantiate the charges.

Disposition of the contest—H.Res. 358, declining the seat to contestant Lovette and awarding the seat to contestee Reece, was passed by the House on April 25, 1934 (78 Cong. Rec. 136, 7186, 7190, 7371).

McAndrews v. Britten (H.Rept. 1298), 9th District of Illinois

Nature of the contest—Contestant McAndrews charged violations of the Corrupt Practices Act and attempted to prove corruption due to the fact that the split votes cast for contestee Britten were disproportionate to the straight votes cast for him.

The Elections Committee concluded that charges of Corrupt Practices Act violations were "unsubstantiated" and that evidence in support of allegations of corruption was "inconclusive."

Disposition of the contest—H.Res. 362, declaring contestant McAndrews not elected and contestee Britten elected, was debated and adopted by the House on April 26, 1934 (78 Cong. Rec. 136, 7165, 7371, 7456-7462).

Weber v. Simpson (H.Rept. 1494), 10th District of Illinois

Nature of the contest—Contestee Simpson was elected by 1,222 votes out of 201,500. The contestant, after an examination of the tally sheets in all the precincts in the district, revealed mistakes in 128 precincts, thereby arguably lowering contestee's majority to 920 votes. Contestant requested a recount.

The Elections Committee concluded there was no evidence of fraud or irregularities, and that the contestant had failed to establish a prima facie case against the contestee. The Committee declined to undertake a recount.

Disposition of the contest—H.Res. 374, awarding the seat to contestee Simpson, was reported by the Elections Committee on May 4, 1934 (78 Cong. Rec. 760-61, 8085, 8122). The record did not disclose its being called up for passage.

74th Congress

Lanzetta v. Marcantonio (H.Rept. 3084), 20th District of New York

Nature of contest—Contestee was elected by a majority of 246. Contestant charged "the violation of nearly all of the election laws, including intimidation of voters, violation of the Corrupt Practices Act, illegal and excessive expenditure of money, failure to account for various contributions, inciting and leading riots, as well as many other law violations."

The Committee concluded that none of the charges were sufficiently proven, despite the fact that more than 4,000 pages of testimony and exhibits were taken. Although the election had been held on November 6, 1934, the record was not filed with the Clerk of the House until the early part of 1936. The Committee, finding that it could not properly decide the contest without taking further testimony, and due to the impending date of adjournment, concluded that it was impossible to consider the case further.

Disposition of the contest—On June 20, 1936, the House passed H.Res. 560, declaring that contestant Lanzetta was not entitled to the seat and that contestee Marcantonio was entitled to the seat (80 Cong. Rec. 18615, June 20, 1936).

McCandless v. King (H.Rept. 2736), Delegate from Hawaii

Nature of the contest—Contestee King won by a majority of 1,857 votes. Contestant charged that the contestee had engaged in voter intimidation and coercion, made excessive campaign expenditures, and committed other violations of the Corrupt Practices Act. Contestee argued that there had been a lack of timely notice by the contestant.

The House Committee on Elections concluded that all charges should be dismissed. The Committee found that contestee's full disclosure to the Committee, coupled with a lack of evidence that funds were used improperly or illegally to influence the election, were mitigating factors in this case. In addition, the Committee announced that contestee's failure to fully file in no way affected the rights of the contestant. Upon examination of Hawaii state law, the Committee dismissed a third contention made by the contestant.

Disposition of the contest—On June 2, 1936, the House adopted H.Res. 521, declaring that contestant McCandless was not elected and that contestee King was duly elected (80 Cong. Rec. 7765, 8705).

Miller v. Cooper (H.Rept. 2131), 19th District of Ohio

Nature of the contest—Contestee Cooper received a plurality of 4,177 votes from three counties in the district. Contestant Miller charged voting irregularities in one county.

Following an investigation, the House Committee on Elections concluded that although there was evidence of destruction of ballots and vote tabulations in one county, these acts could not be connected to the contestee. Furthermore, the Committee determined, even if the votes of the one county were to be excluded, contestee Cooper would still have won by 2,000 votes.

Disposition of the contest—On March 11, 1936, the House adopted H.Res. 438, declaring that contestant Miller was not entitled to the seat, and contestee Cooper was elected to the seat (88 Cong. Rec. 98,3337, 98,3740).

75th Congress

Roy v. Jenks (H.Rept. 1521), 1st District of New Hampshire

Nature of the contest—In the official election returns, Contestee Jenks received a plurality of 550 votes. Contestant Roy sought a recount by the New Hampshire Secretary of state pursuant to New Hampshire law, resulting in a tie. Both candidates appealed to the state ballot-law commission, which considered 108 controversial ballots, and decided that contestant Roy received a majority of 17 votes. Before the Governor issued an election certificate to Roy, contestee Jenks disclosed 34 or 36 previously missing ballots from one precinct. The ballot-law commission held hearings regarding the missing ballots and heard witness testimony, concluding that all 34 ballots were cast for Jenks, making him the final winner by 10 votes. The Secretary of State issued a certificate of election to Jenks. The issues considered by the commission involved the missing 34 ballots, the probative force of the recounts, and consideration of possible ballot box tampering.

On the first day of the new Congress, Member-elect O'Connor asked that Jenks "stand aside," stating that "[d]espite the fact that a certificate of his election has been filed with the Speaker, it may be impeached by certain facts which tend to show that he has not received a plurality of the votes duly cast in that congressional district." The Speaker then asked Jenks to "stand aside momentarily" and collectively administered the oath of office to the other Members-elect and Delegates (81 Cong. Rec. 13 (January 5, 1937)).

A majority of the Committee on Elections examined the facts of the case and concluded that contestant Roy was the winner by a majority of 20 votes, and so recommended. A minority report disagreed.

Disposition of the contest—Immediately after the Speaker collectively administered the oath to the other Members-elect on the first day of the new Congress, the House adopted H. Res 1, providing that Jenks "be now permitted to take the oath of office." Jenks then "appeared at the bar of the House" and took the oath (81 Cong. Rec. 13 (January 5, 1937)).

The majority of the Committee reported H.Res. 309, declaring that contestee Jenks was not entitled to the seat and that contestant Roy was entitled to the seat (81 Cong. Rec. 8842-8846 (August 13, 1937)). After further debate (81 Cong. Rec. 9356-9347 (August 19, 1937)), the resolution was recommitted by a vote of 231-129, and the Committee directed to take further testimony in the precinct regarding the 34 missing ballots. The length of the contest influenced an August 13, 1937 ruling by the Speaker that House Rule XI, requiring election cases to be reported within six months from the convening of Congress, was directory rather than mandatory (81 Cong. Rec. 9501).

On August 21, 1937, H.Res. 339, authorizing the Committee on Elections to hold hearings during the recess of the 75th Congress, was agreed to (81 Cong. Rec. 9627). On April 28, 1938, after holding hearings, the Committee reported H.Res. 482, recommending that Roy be seated (83 Cong. Rec. 5960). The Committee majority concluded that the ballots cast in the election had been preserved and that the original recounts should be accepted; that the contestant, Roy, was the winner by 20 votes (H.Rept. 2255). On June 9, 1938, following debate, the House, on a division of H.Rept. 482, adopted the first part of the resolution that Jenks was not entitled to the seat (214 - 122), and then adopted the second part, that contestant Roy was entitled to the seat (227 - 109) (83 Cong. Rec. 5960-61, 8642-8660, 8661, and Appx., at 2613).

Rutherford v. Taylor (No report filed), 2nd District of Tennessee

Nature of the contest—Contestant charged that because of "influence" by contestee Taylor, the boards of election commissioners in certain counties of the 2nd congressional district failed to place the name of contestant, as an independent, on the November ballot; that such action was an infraction of the election laws of Tennessee; and that through contestee's "influence," thousands of tax receipts were distributed to voters prior to the election, thereby "corrupting" them (H. Doc. 282). Notice of contest was filed and testimony taken, but the latter was not filed with the Clerk of the House of Representatives (81 Cong. Rec. 6630, 6643).

Disposition of the contest—It appears from the record that failure of the contestant to proceed abated the contest.

William v. Maas (No report filed), 4th District of Minnesota

Nature of the contest—Not disclosed by record. Letter from the Clerk of the House announcing withdrawal of contestant was placed in the Congressional Record of March 30, 1937 (81 Cong. Rec. 2901).

76th Congress

Smith v. Polk (No report filed), 6th District of Ohio

Nature of the contest—Not disclosed by record. During pendency of the contest, a letter from the Clerk of the House to the Speaker, announcing the withdrawal of the contestant, was inserted in the Congressional Record on March 15, 1939.

Disposition of the contest—On April 10, 1939, the House adopted H.Res. 156, declaring the election of contestee Polk (84 Cong. Rec. 4040).

Swanson v. Harrington (H.Rept. 1722), 9th District of Iowa

Nature of the contest—Contestee Harrington received a majority of 339 votes. Contestant Swanson alleged fraud, misconduct, and illegality, claiming that 70 votes cast by Works Progress Administration (WPA) workers residing temporarily in the district were illegal. Contestant Swanson argued that an informal recount in one county in connection with a race for sheriff gave him sufficient votes to win.

The Committee on Elections determined that contestant had not exhausted his remedy in the state courts for a recount under Iowa state law. It concluded that the 70 WPA workers' votes were illegal and should be disregarded, although such action would not affect the final result. It took note of the informal recount taken in connection with a recount for sheriff and another for a seat in the state legislature, and concluded that no evidence was produced to demonstrate fraud or irregularity. As for the contestant's application for a recount, the Committee stated, "it is a well settled principle established by the precedents and accepted by Congress that an application for a recount must be founded upon some proof sufficient at least to raise a presumption of irregularity or fraud, and a recount will not be ordered upon the mere suggestion of possible error." It further announced that returns made by election officials regularly appointed by the laws of the state, where the election is held, are presumed to be correct until they are impeached by proof of irregularity and fraud.

Disposition of the contest—H.Res. 419, declaring that contestant Swanson was not duly elected to the seat and that contestee Harrington was entitled to the seat, passed by the House on March 11, 1940 (86 Cong. Rec. 6, 15, 2662, 2689).

Scott v. Eaton (H.Rept. 1783), 10th District of California

Nature of the contest—Contestee Eaton received a majority of 342 votes. Contestant alleged violations of the federal and state Corrupt Practices Acts. The Elections Committee concluded that the contestant had failed to prove by a fair preponderance of the evidence that any violations occurred.

Disposition of the contest—H.Res. 427, declaring that contestant Scott was not elected to the seat and that contestee Eaton was entitled to the seat, was reported from the Elections Committee on March 14, 1940 (86 Cong. Rec. 2885; see also 86 Cong. Rec. 6, 15). It does not appear that any action was taken on the resolution.

Neal v. Kefauver (H.Rept. 2609), 3rd District of Tennessee

Nature of the contest—Not disclosed by record. The Elections Committee dismissed the contest because the contestant had failed to take evidence as required by law, and hence, there was no evidence for the Committee to consider.

Disposition of the contest—H.Res. 534, declaring contestant Neal not entitled to the seat and contestee Kefauver so entitled, was reported from the Elections Committee on June 18, 1940 (86 Cong. Rec. 8535; see also 86 Cong. Rec. 2202, 2246). There is no indication that any action was taken on the resolution.

77th Congress

Miller v. Kirwan (No report filed), 19th District of Ohio

Nature of the contest—Not disclosed by record.

Disposition of the contest—H.Res. 54 was reported to the House on January 18, 1941 as a privileged resolution and was immediately passed (87 Cong. Rec. 101). It stated that contestant

Miller had served notice of contest on contestee Kirwan, but that Miller was not a candidate for election at the general election of November 1940. Rather, he had been a candidate at the Democratic primary. The resolution concluded: "Resolved, that the House of Representatives does not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting member, Michael J. Kirwan, is hereby dismissed; and no petition or other paper relating to the subject matter contained in this resolution shall be received by the House, or entertained in any way whatever."

78th Congress

Clark v. Nichols (H.Rept. 1120), 2nd District of Oklahoma

Nature of the contest—Contestant Clark charged that election officials had engaged in fraud, irregularities, and violations and disregard of state election laws to the extent that he was deprived of votes that would have resulted in his winning the election.

The Elections Committee determined that no fraud was perpetrated on the contestant by any election official so as to deprive him of votes; that the election officials saw to it that every person entitled to vote was granted the opportunity; that no person not entitled to vote was permitted to vote; and that the result of the balloting as certified by the officials was correct. The Committee did find that some irregularities occurred, including failure to maintain registration books in some of the precincts as prescribed by Oklahoma law, but concluded that,

> "[it] is not the business nor the province of this Committee to attempt indirectly to compel the State of Oklahoma to enforce its laws with respect to certain provisions therein which patently were not complied with, but grossly disregarded. The electors, the people, of the district did choose between two candidates and they should not be deprived of their rights by the failure to those responsible for the administration of the law to do their duty."

The Committee decided that, while the constitution and laws of Oklahoma required registration books to be kept in the precincts, failure to comply with this requirement was not such an irregularity as to vitiate an election "unless the performance of the act of keeping the book be declared by law to be essential to the validity of the election." According to the Committee, under Oklahoma law, "[i]t follows, therefore, that the provision is merely directory and the final test as to legality of the election is whether or not the electors have been given an opportunity to express and have fairly expressed their will." The Committee determined that the alleged irregularities were insufficient to constitute a claim of fraud. That is, due to the fact that the irregularities were not of such a nature to invalidate the election, because the provisions of law governing the alleged irregularities were directory and not mandatory, the Committee decided that the contestant had failed to sustain the burden of proof.

Disposition of the contest—H.Res. 440, dismissing the contest, was passed by the House on February 16, 1944 (98 Cong. Rec. 1763; see also 89 Cong. Rec. 4243-4244, 10371; 90 Cong. Rec. 1675, 1718, 1761-1763).

Moreland v. Schuetz (H.Rept. 1158), 7th District of Illinois

Nature of the contest—Contestee received a plurality of 1,975 votes. Contestant alleged fraud, mistake, miscounting, mistallying, illegalities, "and other wrongs." The question before the

House Elections Committee was whether it should conduct a full recount of the ballots. Contestant and contestee entered into an agreement for a recount, which was commenced. The recount indicated some irregularities in the ballots for both parties, and was suspended by the contestant, after about 42% of the ballots had been recounted, with no substantial change in favor of the contestant.

The Committee concluded that the results of the partial recount did not warrant a full recount, and that the contestant had failed to sustain his allegations by sufficient proof. The Committee announced that it is the obligation of the contestant, not the Committee, to secure evidence.

Disposition of the contest—On April 6, 1943, the House passed a resolution extending the time for taking testimony in the case (H.Rept. 345; 89 Cong. Rec. 2982; House Doc. 120, 89 Cong. Rec. 1456-57; House Doc. 357, 89 Cong. Rec. 9529, 9556). On February 17, 1944, the House adopted H.Res. 444, dismissing the contest against Mr. Schuetz (90 Cong. Rec. 1833-1834, 1871).

McEvoy v. Peterson (H.Rept. 1423), 1st District of Georgia

Nature of the contest—Not disclosed by record. Contestant McEvoy attempted to run as an Independent Republican, though no such political party existed in Georgia, his name did not appear on any ballots, and he received no votes.

The Committee concluded that the contestant failed to exhaust all legal remedies available to him under the laws of Georgia, had not filed the election contest in good faith, and had failed to establish the requisite prima facie case.

Disposition of the contest—On May 5, 1944, the House passed H.Res. 534, dismissing the contest against contestee Peterson (90 Cong. Rec. 4074, 4078; see also 89 Cong. Rec. 7682, H. Doc. 2881).

Schufer v. Wasielewski (H.Rept. 1300), 4th District of Wisconsin

Nature of the contest—Contestee Wasielewski received a majority of 17,000 votes. Contestant charged that the contestee made expenditures in excess of those permitted under the laws of Wisconsin and the Federal Corrupt Practices Act; that contestee failed to fill correct reports with the Secretary of State of Wisconsin and the Clerk of the U.S. House of Representatives; and that contestee violated the laws of Wisconsin by publishing false and improper statements about the contestant.

The Committee concluded that the amounts of expenditures shown on the reports filed by contestee were in excess of the Wisconsin and federal limits, but that most of such expenditures were by a campaign committee that was not regulated by state or federal law. It also concluded that the funds expended by the campaign committee were not disbursed with contestee's knowledge, consent, and approval. The Elections Committee concluded that contestee had made mistakes in his filings resulting from negligence, which could not be condoned, but that there were no evidences of fraud. According to the Committee, the irregularity was not enough to thwart the will of the electorate and deny the contestee his seat.

Disposition of the contest—H.Res. 490, dismissing the contest against contestee Wasielewski, was passed by the House on March 29, 1944 (90 Cong. Rec. 3252; see also 89 Cong. Rec. 7682; 90 Cong. Rec. 3287).

Thill v. McMurray (H.Rept. 1032), 5th District of Wisconsin

Nature of the contest—Contestee received a majority of 6,000 votes. Contestant charged violations of the Wisconsin and Federal Corrupt Practices laws.

The Elections Committee concluded that while $7,300 was spent on contestant's behalf, it was spent by two campaign committees and not by the contestee. Consequently, the Committee found that there was no violation of Wisconsin or federal law. Furthermore, the Committee noted, that in line with its policy that a contestant, where recourse is available under state laws, should first exhaust such remedies, a supporter of the contestant had petitioned the Attorney General of Wisconsin to bring a special investigation, and had been denied. No effort was made by contestee to conceal expenditures, and no evidence of fraud was disclosed. The Committee concluded that the will of the electorate should not be thwarted due to accounting irregularities.

Disposition of the contest—On January 31, 1944, the House passed H.Res. 426, dismissing the contest against contestee McMurray (90 Cong. Rec. 933; see also 89 Cong. Rec. 7683, 90 Cong. Rec. 962).

Sullivan v. Miller (H.Rept. 180), 11th District of Missouri

Nature of the contest—Both contestant and contestee alleged that the ballots had been miscounted during the November 1942 election. They made a joint application to the Elections Committee for permission to have a recount made through their own offices, and not through the Committee, on the grounds that there was no provision in Missouri law for a recount in a federal election.

The Committee denied the request because it would set a precedent for the House to intervene in an election contest that had been initiated, but not brought officially to the House, simply for the purpose of procuring evidence for the use of the parties to the contest. The Committee concluded that jurisdiction of an alleged contested election case cannot be conferred on the House or one of its committees by any joint agreement of the parties unofficially or otherwise submitted. Consequently, on February 23, 1943, the House passed H.Res. 137, denying the joint application (89 Cong. Rec. 1324).

The parties then requested an extension of time for taking testimony (H. Doc. 122, 89 Cong. Rec. 1473, 1499). H.Res. 240, granting the request, was passed by the House on May 17, 1943 (H.Rept. 454, 89 Cong. Rec. 4529). During the time that elapsed between the passage of H.Res. 137 and H.Res. 240, the parties entered into an agreement for a recount, which was conducted on May 4, 1943. The recount did not substantially change the final result, and on June 5, 1943, the parties agreed to dismiss their claims.

Disposition of the contest—On November 24, 1943, the House passed H.Res. 368, dismissing the contest against contestee Miller (89 Cong. Rec. 9974, 9975; see also H. Doc. 331, 89 Cong. Rec. 8173).

79th Congress

Hicks v. Dondero (H.Rept. 1404), 17th District of Michigan

Nature of the contest—Contestee received a majority of 29,000 votes. Contestant filed "various and sundry general allegations." Contestant filed no evidence except two transcripts of proceedings before the Wayne County, Michigan canvassing board taken on November 10 and 11, 1944, before the contest was initiated. The Committee on Elections concluded that such evidence was *ex parte* in respect to the contestee, and was "incompetent as proof of any issues urged by the contestant."

Disposition of the contest—On December 12, 1945, the House passed H.Res. 455, dismissing the contest and declaring that contestee Dondero was entitled to the seat (91 Cong. Rec. 11922, 11931; see also 91 Cong. Rec. 7877).

80th Congress

Mankin v. Davis (H.Rept. 80-1822), 5th District of Georgia

Nature of the contest—Not disclosed by record. The report merely states that, "the aforementioned contest be dismissed as lacking in merit."

Disposition of the contest—On April 27, 1948, the House passed H.Res. 552, dismissing the contest against contestee Davis, and declaring that he was entitled to the seat (94 Cong. Rec. 4902-4922).

Lowe v. Davis (H.Rept. 80-1823), 5th District of Georgia

Nature of the contest—Not disclosed by record. The report merely states that "the aforementioned contest be dismissed as lacking in merit."

Disposition of the contest—H.Res. 553, dismissing the contest against contestee Davis and declaring that he was entitled to the seat, was passed by the House on April 27, 1948 (94 Cong. Rec. 4902-4922).

Michael v. Smith (H.Rept. 80-1106), 8th District of Virginia

Nature of the contest—Not disclosed by record. The report stated that the period for taking testimony had expired and no evidence had been received by the Committee on House Administration. It recommended that the contest be dismissed for "failure to comply with the rules."

Disposition of the contest—Contestee Smith filed a motion to dismiss (H.R. Doc. No. 418, 80th Cong.; 93 Cong. Rec. 10268-10522; see also, H.R. Doc. No. 213, 80th Cong.) H.Res. 345, dismissing the contest against the contestee and declaring Smith to be entitled to the seat, was passed by the House on July 26, 1947 (93 Cong. Rec. 10445-10523).

Roberts v. Douglas (H.Rept. 80-1106), 14th District of California

Nature of the contest—Not disclosed by record.

Disposition of the contest—Contestee Douglas filed a motion to dismiss the contest on July 24, 1947 (H.R. Doc. No. 416, 80th Cong.; 93 Cong. Rec. 10211-10203). H.Res. 345, dismissing the contest and declaring the contestee entitled to the seat, was passed by the House on July 26, 1947 (93 Cong. Rec. 10445-10523).

Woodward v. O'Brien (No report available), 6th District of Illinois

Nature of the contest—Not disclosed by record.

Disposition of the contest—On July 26, 1947, the House adopted H.Res. 345, dismissing the contest of Woodward and declaring that O'Brien was entitled to the seat (93 Cong. Rec. 1044).

Wilson v. Granger (H.Rept. 80-2418), 1st District of Utah

Nature of the contest—It was alleged that the laws of Utah, relating to the registration of voters, had been violated in numerous ways, including illegal appointment of registration officers, improper manner of registration, and failure to enter all required information upon the official register.

Disposition of the contest—The Committee on House Administration found that numerous and widespread irregularities and errors had occurred, revealing lack of knowledge and failure to enforce the statutes relating to registration, but that the results of the election had not been affected by such practices. On June 19, 1948, the House adopted H.Res. 692, dismissing the contest and seating Granger (94 Cong. Rec. 9184).

81st Congress

Thierry v. Feighan (H.Rept. 81-1252), 20th District of Ohio

Nature of the contest—Not disclosed by record.

Disposition of the contest—After more than 90 days had elapsed since the filing of the notice of contest, with no testimony having been received in support of the allegations, the Committee on House Administration recommended adoption of H.Res. 324, declaring Feighan to be entitled to his seat. This resolution was passed on August 11, 1949 (95 Cong. Rec. 11294).

Stevens v. Blackney (H.Rept. 81-1735), 6th District of Michigan

Nature of contest—Contestant sought a recount under supervision of the House Committee, on the ground that there had been irregularities in the counting of ballots.

Disposition of the contest—The Committee on House Administration reported that the evidence had not established the allegations contained in the notice of contest. It recommended, and the

House adopted on May 23, 1950, H.Res. 503, a declaration that Blackney had been duly elected (96 Cong. Rec. 7544).

Fuller v. Davies (H.Rept. 81-1252), 35th District of New York

Nature of the contest—Not disclosed by record.

Disposition of the contest—After more than 90 days had elapsed since the filing of the notice of contest, with no testimony having been received in support of the allegations, the Committee on House Administration recommended adoption of H.Res. 324, declaring Davies to be entitled to the seat. This resolution was passed on August 11, 1949 (95 Cong. Rec. 11294).

Browner v. Cunningham (H.Rept. 81-1252), 5th District of Iowa

Nature of the contest—Not disclosed by record.

Disposition of the contest—After more than 90 days had elapsed since the filing of the notice of contest, with no testimony having been received in support of the allegations, the Committee on House Administration recommended adoption of H.Res. 324, 81st Cong., declaring Cunningham to be entitled to his seat. This resolution was passed on August 11, 1949 (95 Cong. Rec. 11294).

82nd Congress

Macy v. Greenwood (H.Rept. 82-1599), 1st District of New York

Nature of contest—Macy charged registration of electors not qualified to vote because of failure to meet residence requirements of the state constitution, registration of voters after expiration of time allowed by law for registration, and miscellaneous irregularities in registration and voting.

The Committee on House Administration reported that the evidence was insufficient to support the contestant's charges, and recommended adoption of H.Res. 580, declaring Greenwood elected. This resolution passed the House on March 19, 1952 (98 Cong. Rec. 2517).

Karst v. Curtis (H.Rept. 82-905), 12th District of Missouri

Nature of the contest—Not disclosed by record.

Disposition of the contest—No testimony was taken in support of the contest and, on June 4, 1951, Karst requested that it be dismissed. On August 21, 1951, the House passed H.Res. 399, dismissing the contest (97 Cong. Rec. 18479).

Huber v. Ayres (H.Rept. 82-986), 14th District of Ohio

Nature of the contest—Huber contested the election of Ayres on the ground that the county boards of election had failed to rotate the names of the candidates on the ballots in the manner required by the Ohio Constitution.

Disposition of the contest—The Committee on House Administration found that the names had not been rotated as required, but that Huber had an adequate remedy under state law prior to election, and that the results of the election should not be overturned due to such a pre-election irregularity. The House adopted H.Res. 400, declaring Ayres legally elected on August 21, 1951 (97 Cong. Rec. 18479).

Lowe v. Davis (H.Rept. 82-904), 5th District of Georgia

Nature of the contest—Lowe had been a candidate in the Democratic primary, but his name did not appear on the ballot in the general election. The nature of his charges were not set forth in the report of the Committee on House Administration.

Disposition of the contest—The Committee on House Administration recommended that the contest be dismissed. It reported that nothing in the record indicated that the contestee was guilty of any acts in the primary that would disqualify him for the office of Representative in Congress, and that contestant had not complied with the statutory requirements for conducting a contest, specifically the taking of testimony pursuant to 2 U.S.C. § 203. The House passed H.Res. 398, dismissing the contest on August 21, 1951 (97 Cong. Rec. 10479).

Osser v. Scott (H.Rept. 82-1598), 3rd District of Pennsylvania

Nature of the contest—Osser charged fraud and irregularities in allowing numerous persons to register or remain registered despite the fact that they were disqualified by reason of absence or removal from the congressional district, by permitting unregistered persons to vote on election day and other irregularities.

Disposition of the contest—The Committee on House Administration declared that the contestant had not presented satisfactory evidence clearly showing that he had received a majority of the votes legally cast or that the election was so tainted with fraud, or with the misconduct of election officers, that the true result cannot be determined. It declared that the Committee was of the opinion that Scott had been duly elected. The House adopted H.Res. 579, declaring Scott elected on March 19, 1952 (98 Cong. Rec. 2517).

83rd Congress

No election contests.

84th Congress

No election contests.

85th Congress

Dolliver v. Coad (Report not available), 6th District of Iowa

Nature of the contest—Not disclosed by record. On January 15, 1957, Coad addressed a letter to the Clerk of the House of Representatives stating that he had received information that Dolliver

intended to contest his election, but that the notice of contest required by the statute had not been served upon him, and requested a resolution stating whether there was any notice of contest he was required by law to answer.

Disposition of the contest—After a hearing, the Committee on House Administration reported that the purported notice of contest served by Dolliver was not a sufficient notice under the statute because it did not bear the written signature of Dolliver or that of his counsel (H.R. Doc. No. 343, 85th Cong.). On April 11, 1957 the House adopted H.Res. 230, declaring that the unsigned paper was not the notice required by statute (103 Cong. Rec. 5502).

Carter v. LeCompte (H.Rept. 85-1626), 4th District of Iowa

Nature of the contest—Carter alleged that numerous absentee ballots had been illegally cast and illegally counted, that ballots on certain voting machines had been improperly printed, and other irregularities.

Disposition of the contest—The Committee on House Administration reported that there were apparent violations of the duties imposed by law upon the election officials, but that the contestant had not shown that he had exhausted his state remedies either to prevent such infractions or to punish those responsible. It also found that fraud had not been proved, nor had it been proved that the result of the election would have been different if the alleged and proven irregularities had not occurred. It expressed the opinion that LeCompte had been elected. The House adopted H.Res. 353, declaring LeCompte elected on June 17, 1958 (104 Cong. Rec. 11512-11517).

Oliver v. Hale (H.Rept. 85-2482), 1st District of Maine

Nature of the contest—Oliver challenged many of the absentee ballots cast in the district and a few of the regular ballots. He alleged that certain regular ballots had been improperly marked or counted. The absentee ballots were challenged on the ground of various violations of law in the handling of the ballots and the failure of the voter to comply with the law in preparing his absentee voting material.

Disposition of the contest—A subcommittee of the Committee on House Administration examined the challenged ballots. It found that the violations by election officials were of directory, rather than of mandatory, provisions of state law and consequently, did not invalidate the ballots affected. After making a deduction for ballots of voters who had failed to comply with the statute, it found that Hale had been elected by a plurality of the votes cast. It recommended and the House adopted, on August 12, 1958, H.Res. 676, declaring Hale to have been duly elected (104 Cong. Rec. 17119).

86th Congress

Dale Alford (H.Rept. 86-1172), 5th District of Arkansas

Nature of the contest—On the first day of the new Congress, a Member-elect of the 86th Congress, Dingell, objected to the oath being administered to Alford, based "upon facts and statements which I consider to be reliable." The Speaker of the House directed Alford "not to rise

to take the oath with the other Members, for the present at least," (105 Cong. Rec. 14 (January 7, 1959)), and administered the oath collectively to the other Members and Delegates-elect. The House then adopted H. Res 1, authorizing the Speaker to administer the oath to Alford conditionally and providing that the final right of Alford to a seat in the 86th Congress be referred to the Committee on House Administration, which would "have the power to send for persons and papers and examine witnesses on oath." Subsequently, the Speaker requested Alford "to appear in the well of the House and take the oath of office" and he was administered the oath.

Disposition of the contest—After recounting the ballots and investigating all complaints of irregularities and violations of law regarding unsigned circulars, campaign expenditures, and write-in ballots, the Committee found that Alford had been duly elected. On September 8, 1959, the House adopted H.Res. 380, declaring Alford to have been duly elected (105 Cong. Rec. 18610-18611).

Maloney v. Smith (H.Rept. 86-1409), 6th District of Kansas

Nature of the contest—Miscellaneous irregularities in the conduct of the election and the counting of ballots, and the casting of absentee ballots by persons who were not entitled to cast such ballots, were charged by the contestant, Maloney.

Disposition of the contest—The Committee on House Administration concluded that the evidence did not support the charges made and recommended a resolution declaring Smith to have been duly elected. A resolution to this effect, H.Res. 482, was passed on March 24, 1960 (106 Cong. Rec. 6523).

Meyers v. Springer (Report unavailable), 22nd District of Illinois

Nature of the contest—Meyers charged a violation of the Corrupt Practices Act and the Hatch Political Activities Act. He alleged that the editor of a newspaper had been appointed acting postmaster of a post office in the district and that this newspaper failed to print his speeches. He also alleged that he had been approached and asked how much money he would take to leave the U.S. until after the election (H.R. Doc. No. 123, 86th Cong.).

Disposition of the contest—On May 18, 1959, a subcommittee of the House Committee on Administration held a hearing and denied the petition to inaugurate a contest (Final Calendar, 86th Cong., House Committee on Administration, at 30 (1960)).

Ron Taylor (Report unavailable), 12th District of North Carolina

Nature of the contest—Not disclosed by record. On August 18, 1960, Taylor addressed a letter to the Clerk of the House stating that he had received a letter from Rollman, who was not a candidate in the special election, stating that he might contest the election, but that no valid notice of contest had been served within the time prescribed by statute. Taylor requested a resolution stating whether there was any notice of contest he was required by law to answer (H.R. Doc. No. 450, 86th Cong.).

Disposition of the contest—A subcommittee of the Committee on House Administration held a hearing on the matter on August 25, 1960 and on August 30, 1960 found that no valid notice of

contest had been give (Final Calendar, 86th Cong., Committee on House Administration, at 31 (1960)).

87th Congress

Morgan M. Moulder (Report unavailable), 11th District of Missouri

Nature of the contest—Not disclosed by record. On the first day of the new Congress, Member-elect Miller objected to the oath of office being administered to Moulder "based upon facts and statements made to me which I consider to be reliable." The Speaker then asked Moulder to "remain in his seat while the other Members take the oath of office" (107 Cong. Rec. 23 (January 3, 1961)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect.

Disposition of the contest—Immediately after the Speaker collectively administered the oath to the other Members-elect on the first day of the new Congress, the House adopted H. Res 2, providing that Moulder "be now permitted to take the oath of office." In response to a parliamentary inquiry as to whether adoption of the resolution would "preclude and foreclose any further contest of these elections before the Committee on House Administration," the Speaker stated that the "gentleman would have all rights he would have under the law." Moulder then "appeared at the bar of the House" and took the oath (107 Cong. Rec. 25 (January 3, 1961)).

Victor Wickersham (Report unavailable), 6th District of Oklahoma

Nature of the contest—Not disclosed by record. On the first day of the new Congress, Member-elect Miller objected to the oath of office being administered to Wickersham "based upon facts and statements made to me which I consider to be reliable." The Speaker then asked Wickersham to "remain in his seat while the other Members take the oath of office." (107 Cong. Rec. 23 (January 3, 1961)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect.

Disposition of the contest—On the first day of the new Congress, immediately after the Speaker collectively administered the oath to the other Members-elect, the House adopted H. Res 3, providing that Wickersham "be now permitted to take the oath of office." Wickersham then "appeared at the bar of the House" and took the oath (107 Cong. Rec. 25 (January 3, 1961)).

Roush or Chambers (H.Rept. 87-513), 5th District of Indiana

Nature of the contest—Contestee received a plurality of 3 votes from the tallies as filed by the county clerks with the Secretary of State. The Secretary of State, on the basis of corrected returns, certified that contestee Chambers had a plurality of 12 votes over contestant Roush. On the first day of the new Congress, Member-elect Davis objected to the oath being administered to Chambers, basing his objection "upon facts and circumstances I consider to be reliable" (107 Cong. Rec. 23 (January 3, 1961)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect. The House then adopted H. Res 1, providing that the question of the right of Roush or Chambers to a seat be referred to the Committee on House Administration, which "shall have the power to send for persons and papers and examine

witnesses on oath" and further providing that until the Committee issued its report and the House decided the question, "neither shall be sworn," (107 Cong. Rec. 24 (January 3, 1961)).

As Indiana law did not provide for recounts for legislative office, the case required a recount by the Committee on House Administration. The Committee adopted a set of rules for determining the validity of questionable ballots. At the conclusion of the recount, the Committee determined that contestant Roush was the winner by 99 votes.

Disposition of the contest—After considerable debate, on June 14, 1961, the House passed H.Res. 339, declaring that contestant Roush was duly elected (107 Cong. Rec. 10377-10391, 10160, 10186). The debate covered the failure to swear in Chambers as entitled to a prima facie right to the seat, as well as the method of conducting the recount, and the making of an unofficial tally of the votes by the House. A dissent, in part, to H.Rept. 87-513, took issue with the failure to follow established precedent to conditionally swear in a Member-elect, for whom credentials had been received by the Clerk of the House, and authorize a subsequent investigation by the appropriate House Committee.

88th Congress

Odegard v. Olson (Report unavailable), 6th District of Minnesota

Nature of the contest—Contestant alleged failures of certain election officials to properly fulfill their functions in checking voter registrations, the improper counting of votes, and the denial of access to polling places to Republican poll watchers. Contestant apparently failed to file evidence with the House Committee on Administration (H.R. Doc. No. 62, 88th Cong.), and contestee Olson asked that the contest be dismissed. On Februrary 26, 1963, the House Committee held a hearing (Committee on House Administration, Calendar of Business, 88th Cong., 1st Sess., December 30, 1963, at 28).

Disposition of the contest—On November 20, 1963, the Committee dismissed the case (Committee Calendar, *supra*, at 28).

89th Congress

Frankenberry v. Ottinger (Report not filed), 25th District of New York

Nature of contest—This case involved a question of standing to proceed under the Federal Contested Elections Act (FCEA), codified at 2 U.S.C. §§ 201-226, by an individual who had not been a candidate for the House seat at the general election. On December 19, 1964, contestant Frankenberry, head of a campaign committee for the defeated incumbent Representative Robert L. Barry, filed a notice of contest. The contestant alleged that $187,000 had been spent on the campaign by the contestee, of which $167,000 had been contributed by the contestee's mother and sister. Contestant alleged that this activity violated 18 U.S.C. § 608(a), which imposed a $5,000 limit on individual contributions to a federal office candidate, per calendar year. Contestant also argued that the creation of 34 campaign committees, only one of which had been registered as required, violated New York law (111 Cong. Rec. 41-45).

On the first day of the new Congress, Member-elect Cleveland objected to the oath of office being administered to Ottinger based "upon facts and statements which I consider to be reliable." The Speaker then asked Ottinger, "not to rise to take the oath with the other Members, for the present at least," (111 Cong. Rec. 19 (January 4, 1965)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect.

Disposition of the contest—Immediately after the Speaker collectively administered the oath to the other Members-elect on the first day of the new Congress, the House adopted H. Res 2, authorizing and directing the Speaker "to administer the oath" to Ottinger. In response to a parliamentary inquiry by Member-elect Cleveland as to whether adoption of the resolution would preclude him from offering his own resolution on the same subject matter, the Speaker stated that such a substitute resolution would not be in order once the resolution was adopted. Ottinger then "appeared at the bar of the House" and took the oath (111 Cong. Rec. 20 (January 4, 1965)).

The Committee on House Administration issued no report on the contest, but on January 19, 1965, reported out H.Res. 126. The resolution provided that the contest be dismissed on the ground that the contestant had not been a candidate from the district in the election, and that the House did not regard the contestant as a person competent to bring a contest for a seat in the House because as required by the FCEA, even if he were successful, he would not be able to establish his right to a seat in the House. After debate in the House as to whether the statutory procedure for contesting elections to the House applied only to candidates (as adoption of the resolution would have determined) or whether non-candidates had to file petitions asking for consideration of a contest rather than utilize the statutory notice of contest route, the resolution dismissing the contest was adopted, 245 to 102 (111 Cong. Rec. 951-957; see also, letter from the Assistant Clerk of the House to the Speaker, on procedures for initiating contested elections in the House, 111 Cong. Rec. 810-811). It was argued that precedent supported limiting the use of statutory procedure to candidates alone, and that to permit non-candidates to use it would enable those without a serious interest in the actual determination of the election to carry on numerous, spurious contests.

Wheadon v. Abernethy (H.Rept. 89-1008), 1st District of Mississippi; *Hamer v. Whitten* (H.Rept. 89-1008), 2nd District of Mississippi; *Cosey, Wilson, and Johnson v. Williams* (H.Rept. 89-1008), 3rd District of Mississippi; *Devine v. Walker* (H.Rept. 89-1008), 4th District of Mississippi; *Jackson v. Colmer* (H.Rept. 89-1008), 5th District of Mississippi

Nature of contests—The above listed contests were considered simultaneously. The questions involved failure of the contestants to avail themselves of the legal steps to challenge alleged discrimination among voters prior to the election and challenge the issuance of the certificates of election to the contestees after the elections were held; the denial of seats to Members-elect because of alleged discriminatory practices involving disenfranchised groups of voters; and the standing of contestants to proceed under the Federal Contested Elections Act, codified at 2 U.S.C. §§ 201-226.

At the November 1964 general election, the contestees were elected. In contrast, the contestants were selected at an unofficial "election" held by persons in Mississippi from October 30 through November 2, 1964, during which time it was alleged, "all citizens qualified were permitted to vote." The latter "election" was held without any authority of law in the state. The contestants were all citizens, none of whom had been candidates in the November elections. They alleged

that disenfranchisement of Negroes in Mississippi violated the Constitution and U.S. law; that the House had the authority to consider the contests and unseat the contestees; that the House had a duty to guarantee that the election of its Members be in accordance with the requirements of the Constitution; and that where large numbers of Negroes had been excluded from the electoral process, where intimidation and violence had been utilized to further such exclusion, and where the free will of the voters had been prevented from being expressed, the House should unseat the contestees, vacate the elections, and order new elections.

On the first day of the new Congress, Member-elect Ryan objected to the oath of office being administered to Abernethy, Whitten, Williams, Walker, and Colmer, based "upon facts and statements which I consider to be reliable." Member-elect Ryan also noted that he made this objection "on behalf of a significant number of colleagues who are now standing with me." The Speaker then asked the gentlemen "not to rise to take the oath with the other Members, for the present at least," (111 Cong. Rec. 19 (January 4, 1965)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect.

On September 13 and 14, 1965, the House Committee on Administration, Subcommittee on Elections held hearings and on September 15, 1965, issued its report, noting that the contestees had been sworn in by vote of the House on January 4, 1965, after they had been asked to step aside, which established the prima facie right of each contestee to his seat. The report noted that the contestants had not availed themselves of legal steps to challenge in court, the alleged exclusion of Negroes from the ballot nor the issuance of the certificates of election to the contestees. The report found that the contestants had not been candidates at the election and thus, under House precedents, had no standing to invoke the House contested election statute. According to the report, there been an election in Mississippi in November 1964 for Members of the U.S. House of Representatives, under statutes which had not been set aside by a court of competent jurisdiction, and that at the same election, presidential electors and a U.S. Senator had been elected without question. The report further observed that a case challenging the Mississippi registration and voter laws was progressing through the U.S. courts and that the question of the constitutionality of the statutes was a proper one for the courts to determine. According to the report, it was doubtful that any disenfranchisement, even if proven, would have actually affected the outcome of the November 1964 Mississippi congressional elections in any district. The report concluded that the House, in following its rules and procedures, should dismiss the cases because the contestants did not qualify to utilize the House contested elections statute, and because the contestees had been elected under laws that had not been set aside at the time of the election.

The report did state, however, that in arriving at such conclusions the Committee did not condone disenfranchisement of voters in the 1964 or previous elections, nor was a precedent being established to the effect that the House would not take action, in the future, to vacate seats of sitting members. It noted that the Voting Rights Act of 1965 had been enacted in the interim and that if evidence of its violation were presented to the House in the future, appropriate action would be taken.

Disposition of the contest—On the first day of the new Congress, after the Speaker collectively administered the oath to the other Members-elect, the House adopted H. Res 1, authorizing and directing the Speaker "to administer the oath of office" to Abernethy, Whitten, Williams, Colmer, and Walker, who "presented themselves at the bar of the House" and were administered the oath (111 Cong. Rec. 20 (January 4, 1965)).

On September 15, 1965, the House considered H.Res. 585, dismissing the contests and declaring the contestees to be entitled to their seats (111 Cong. Rec. 24263-24292). An amendment was adopted striking out the phraseology entitling the contestees to their seats, as language inappropriate in a procedural matter (111 Cong. Rec. 24290) and the resolution was adopted by a vote of 228 to143 (111 Cong. Rec. 24291).

Peter v. Gross (H.Rept. 89-1127), 3rd District of Iowa

Nature of contest—This case involved alleged violations of state elections law. At the November 1964 election, contestee was certified to have received 83,455 votes, and the contestant, 83,036 votes. On December 31, 1964, contestant filed a notice of contest, alleging violations of Iowa law, including burning of ballots on the day after the election, the casting of more ballots than there were names listed on the polls, the recording of absentee ballots in a back room by one person, and disappearance of a tally sheet. Contestant requested a recount.

On September 28, 1965, the Subcommittee on Elections of the Committee on House Administration held hearings. On October 8, 1965, it issued its report. The Committee found that the proof presented did not sustain the charges brought and recommended dismissal of the contest. Specifically, the Committee found that although there may have been human errors committed at the polls on election day, there was no evidence of fraud or willful misconduct. It found that the burned ballots were unused ballots and the practice of burning such had been a uniform one for numerous years. The allegation of more ballots cast than names listed on the polls was discharged by the conclusion that some inadvertent errors had been made, but the errors were insufficient to change the result even if all the excess ballots were added to the total of the contestant. The charge respecting the counting of absentee ballots was found to apply to one polling place and the circumstances were such as to make it inadequate as a charge. The disappearing tally sheet was located and involved technical operation of a voting machine, not the counting of the results. It was further disclosed by the contestant that the request for a recount was in the nature of a "fishing expedition" and that he knew of no fraud by which to substantiate it.

The Committee acknowledged that Iowa had no recount statute applicable to a U.S. House election, but found that the matter had no effect on the jurisdiction of the Committee, that the Committee would proceed to a recount if substantial allegations of irregularity or fraud were alleged, and the likelihood existed that the result of the election would be different were it not for such irregularity or fraud. Under the circumstances of the case, it declared that the evidence did not justify a recount because the contestant had not clearly presented proof sufficient to overcome the presumption that the returns of the returning officers were correct.

Disposition of the contest—On October 8, 1965, H.Res. 602, dismissing the contest, was reported by the Committee on House Administration. On October 11, 1965, the House considered the resolution and it was adopted (111 Cong. Rec. 26499-26504).

90th Congress

Mackay v. Blackburn (H.Rept. 90-366), 4th District of Georgia

Nature of contest—The issue involved the counting of so-called "overvotes" on punch card voting machines during the November 1966 election. Contestant alleged that the computers that

tallied the votes erroneously failed to count about 7,000 votes, and that the procedures for duplicating defective ballots were improper. Election officials, acting in accordance with their interpretation of Georgia law, had programmed the computing machines that counted the ballots to reject those cards where a voter had punched a straight party ticket and had also punched out the scored block for the congressional candidate of the opposing party.

On the first day of the new Congress, Member-elect Davis objected to the oath of office being administered to Blackburn, based "upon facts and statements I consider to be reliable." The Speaker then asked Blackburn to "step aside and remain seated" (113 Cong. Rec. 14 (January 10, 1967)). Subsequently, the Speaker administered the oath collectively to the other Members-elect.

While the contested election was under consideration, suit was filed in the Georgia courts concerning the interpretation of Georgia law relating to canvassing of punch card votes. On March 30, 1967, the litigation was effectively terminated when the Georgia Supreme Court declined to reconsider a January 25, 1967 Georgia Court of Appeals decision favoring the state election officials' interpretation of the law (*Blackburn v. Hall,* Georgia Court of Appeals, No. 42505, decided January 25, 1967, *rehearing denied* February 17, 1967, *cert. denied,* Supreme Court of Georgia, March 30, 1967). In brief, the judicial decision sustained the election of the contestee. On April 13, 1967, the contestant notified the House that he was withdrawing his notice of contest.

On June 14, 1967, the Committee on House Administration issued its report in conjunction with H.Res. 542, stating that the contestee was the duly elected Representative from the 4th congressional district of Georgia and was entitled to his seat. On July 11, 1967, a resolution to that effect was considered and adopted by the House. During House debate, the fact that difficulties had occurred in the counting and handling of punch card ballots and in voter use of "automatic" voting machines was discussed. These difficulties, however, were deemed not to be crucial to the outcome of the election.

Disposition of the contest—On the first day of the new Congress, after the Speaker collectively administered the oath to the other Members-elect, the House adopted H. Res 2, authorizing and directing the Speaker "to administer the oath of office" to Blackburn. The resolution further provided "[t]hat the question of the final right of Benjamin B. Blackburn to a seat in the Ninetieth Congress be referred to the Committee on House Administration," which "shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution." Immediately afterwards, Blackburn "appeared at the bar of the House" and took the oath of office (113 Cong. Rec. 27 (January 10, 1967)).

Lowe v. Thompson (H.Rept. 90-365), 5th District of Georgia

Nature of contest—This case involved the question of contestant's standing to utilize the procedures of the House contested elections statute, codified at 2 U.S.C. §§ 201-226, and the right of a primary loser in a party different from that of the contestee, to challenge the contestee. Contestant had filed notice under the contested elections statute and had subsequently filed a petition with the House requesting that contestee's seat be declared vacant on the grounds that the procedures for nomination of the candidate of contestant's party who ran in the general election in November against the contestee and was defeated, were contrary to the Georgia election statutes. The winner of the primary of contestant's party, in which the contestant had been a candidate, withdrew after the primary election and a successor nominee was substituted for the primary winner by the local county party executive committee. Contestant alleged that the Georgia

statutes and the rules of the Democratic Party of Georgia authorized a county executive committee to make a substitute nomination only where the vacancy occurred after a nomination had been made by the state Democratic Party Convention. He alleged that the substitute nomination in this case had been made prior to the state convention and that in such circumstances there should have been a special election to nominate a Democratic candidate for the congressional seat.

The Committee on House Administration issued its report on June 14, 1967. The report declared that based on precedent, due to the fact that the contestant had been an unsuccessful candidate in the Democratic primary and did not claim any right to the seat, he had no standing to proceed under the contested elections statute. Acting pursuant to the authority granted to it by House Rule XI, §9 (k) to consider questions surrounding the election of Members of Congress (House Rules Manual, 90th Cong.; H.R. Doc. No. 529, 89th Cong., 2nd Sess., the Committee took into consideration the petition filed with the House by the "contestant" on May 8, 1967. Precedents have authorized the Committee to consider petitions by non-candidates (see Cannon's Precedents of the House of Representatives, Vol. VI, §78).

The Committee noted that the contestant made no charges of fraud or irregularities by the contestee in connection with the Republic primary or the general election, and the contestee received the highest vote at the general election. It then declared that, assuming arguendo that the substitute nomination of the Democratic candidate for Congress was contrary to Georgia law, it did not follow that the House would unseat the Republican contestee. The Committee stated that it was unaware of any precedent for depriving a Member of his seat solely on the basis of the irregularity of the nomination of his opponent in the general election. It pointed out that this was not a case where fraud or irregularity in the returned Member's nomination was charged. The Committee then noted what it deemed the "potential danger" in declaring an election void, due to a finding of an unlawful nomination of losing candidate. According to the Committee, doing so would open the door for the party of a losing candidate in a general election to impeach the election of the winning candidate by claiming that the election was invalid because the losing candidate had not been nominated in accordance with election laws and party rules.

The Committee also noted that a suit brought in the Georgia courts by the "contestant" seeking a special primary had been dismissed. The "contestant" had been a write-in candidate in the general election, but his candidacy had been of only a few days' duration and he had publicly announced his withdrawal from the race several days prior to the general election. The Committee declared that the "contestant" had not been a candidate on election day.

The Committee recommended that the case be dismissed.

Disposition of the contest—On July 11, 1967, the House adopted H.Res. 541, 90th Cong. 1st Sess., dismissing the contest and denying the petition of Lowe (Cong. Rec. H8464-H8465 (daily ed. July 11, 1967)).

91st Congress

Lowe v. Thompson (H.Rept. 91-159), 5th District of Georgia

Nature of contest—The case involved allegations of malconduct, irregularity and fraud by poll officers in 40 precincts in the Democratic primary in which the "contestant" had unsuccessfully

sought the nomination, losing to Charles Weltner. Thompson, the winner of the general election, was the candidate of the Republican party. The major issue presented was whether a losing candidate in a primary had standing to contest the election of a Member who was the candidate of another party on the grounds that his opponent in the general election was improperly chosen.

The Committee on House Administration recommended dismissal, noting that none of the irregularities alleged involved Thompson, nor did they directly involve his opponent. Additionally, the Committee found that House precedent would deny Lowe standing to contest under the statute because the "contestant" was not a candidate in the general election

Disposition of the contest—On April 23, 1969, the House adopted H.Res. 364, dismissing the contest (115 Cong. Rec. 10040-41).

92nd Congress

Tunno v. Veysey (H.Rept. 92-627), 38th District of California

Nature of contest—Contestant alleged that the affidavits of registration of 11,137 voters in Riverside County, California, had been wrongfully and illegally canceled, depriving approximately 10,616 qualified voters of the right to vote. A motion to dismiss was filed by the contestant, based on the defense that the notice failed to state grounds sufficient to change the result of the election. (Federal Contested Election Act, P.L. 91-138, 83 Stat. 284, §4(b)(3) provides for a motion to dismiss on this ground.)

On May 11, 1971, the Subcommittee on Elections of the Committee on House Administration held hearings on the motion. The Committee recommended dismissal of the contest, noting that the contestant had not made a substantial offer to prove that those whose names were stricken were qualified voters of the district; that those stricken offered to vote and were not permitted to do so; that of those who might have been improperly denied the vote of sufficient number would have voted for contestant to change the results of the election.

Disposition of the contest—On November 9, 1971, the House adopted H.Res. 507, dismissing the contest (117 Cong. Rec. 40017).

The Case of *William Conover* (H.Rept. 92-1091), 27th District of Pennsylvania

Nature of contest—No notice was filed, but suit was brought protesting the special election called to fill a vacancy, alleging large numbers of voters did not vote in the election because of inconsistencies in the voting procedures. A preliminary injunction was obtained in the state court restraining the Governor of Pennsylvania from issuing a certificate of election.

The Committee on House Administration recommended administering the oath to the apparent winner, based on certified returns, referring the question of final right to the Committee (H.Res. 936, 92nd Cong., 2nd Sess.). At a hearing held on the resolution the plaintiff in the suit acknowledged that he was not claiming the seat or alleging fraud.

Disposition of the case—The House adopted H.Res. 986 and the oath was provisionally administered (118 Cong. Rec. 18654). It appears that no further action was taken in the matter, and Conover served the remainder of the term.

93rd Congress

No election contests.

94th Congress

Young v. Mikva (H.Rept. 94-759), 10th District of Illinois

Nature of the contest—On December 23, 1974, Young served Mikva and the Clerk of the House of Representatives with notice of his intention to contest the election of Mikva. The contestant alleged that votes were obtained by fraud and through widespread violations of the law. Specifically, the contestant alleged (1) that the contestee disseminated false information about the contestant prior to the election, and (2) that the contestee accepted and failed to report a campaign contribution in violation of Federal Election Campaign Act of 1971. No specific evidence was offered to support the general allegations of misrepresentation and failure to report contributions, nor did the contestant sustain the burden of proof to show misconduct influencing sufficient votes to change the result of the election. The contestee moved to dismiss the contest for failure to state grounds sufficient to change the results of the election. H.Rept. 94-759 contains a full discussion of House precedents regarding the contestant's burden of proof, the assumption of regularity of the returns, and the requirement that fraud be proven.

As to the argument that a full recount would change the result, Illinois state election law provides for a partial recount and leaves the decision as to whether or not further proceedings are warranted to the Houses of Congress. The contestant had a partial recount conducted in 124 of 533 precincts selected by the contestant. The House Administration Committee determined that there was an insufficient showing that a full recount would change the outcome of the election because the result of the partial recount had been to reduce contestee's 2,860 vote majority by only 471 votes.

Disposition of the contest—The Committee on House Administration decided that the contestant had failed to sustain the burden of proof necessary to award the contested seat to him. On December 19, 1975, the House passed H.Res. 894, dismissing the contest (121 Cong Rec. H13055 (daily ed., December 19, 1975)).

Kyros v. Emery (H.Rept. 94-760), 1st District of Maine

Nature of the contest—Under Maine state law, a recount is permitted when more than 100,000 votes are cast and the percentage difference of the vote between the two candidates is 1/2 of 1% or less; the voting in the Emery/Kyros election fell within those requirements. Kyros requested a state recount and in the recount, both parties agreed that all questionable ballots would be set aside as disputed. Both Kyros and Emery agreed and stipulated that only the U.S. House of Representatives could determine the validity of the ballots. On December 27, 1974, the contestant filed a Notice of Contest, sending copies to the Clerk of the House of Representatives and the contestee, Emery.

The ballots under dispute were divided into three types, plus a fourth miscellaneous category. The three categories were (1) Right Hand Ballots, (2) Apex Ballots, and (3) Distinguishing or Irregular Marks. Where state law was uncertain, the Subcommittee on Elections used the

"obvious voter intent" standard to determine the validity of ballots; where state law was certain, the Subcommittee would have been guided by those state laws only if it found a legitimate state interest, such as the safeguarding of the integrity of the electoral process. As it was, the Subcommittee found no such interest in the interpretations of state law proposed, so the Subcommittee was again guided by overriding considerations of equity and used the "obvious voter intent" standard to evaluate ballots.

Disposition of the case—The contestant withdrew from the case in the middle of the Subcommittee's review of the ballots, and on December 19, 1975, the House dismissed the election contest (121 Cong. Rec. H13055 (daily ed. December 19, 1975)).

Wilson v. Hinshaw (H.Rept. 94-761), 40th District of California

Nature of the contest—On January 6, 1975, contestant Wilson delivered a Notice of Intent to Contest to the Clerk of the House of Representatives. The grounds of contest were numerous, including alleged violations of the Federal Election Campaign Act of 1971, specifically, receipt of contributions by federal government contractors, misuse of the franking privilege, and misconduct of the contestee.

Disposition of the case—The Committee declared that insufficient evidence had been presented to support the contestant's allegations and found that evidence of wrongdoing in election campaigns, other than the one being contested, is not relevant. The House then adopted H.Res. 896, dismissing the contestant's case (121 Cong. Rec. H13055 (daily ed. December 19, 1975)).

Mack v. Stokes (H.Rept. 94-762), 21st District of Ohio

Nature of the contest—On December 10, 1974, Mack delivered a Notice of Intention to Contest to the Clerk of the House of Representatives. As to the grounds of the contest, he questioned the qualifications of Stokes to be a Representative, rather than specific objections to the manner in which the election was conducted. Generally, the Notice alleged that Stokes was "not a bona fide inhabitant possessing the requisite qualifications set forth in Article I, Section 2, clauses 1 and 2 of the U.S. Constitution." Though the Committee stated it would have been more appropriate to have had the case raised by a petition or a memorial and presented to the House, the Committee retained the case and decided it on its merits, saying that similar standards were applicable. Under those standards, the contestant "must state adequate grounds" for disqualification "with sufficient particularity" to justify the continuance of the proceeding and make a "substantial offer to prove that contestee is disqualified."

Disposition of the contest—The Committee found that the contestant had not made any factual allegations sufficient to cast doubt upon contestee's qualifications and recommended dismissal. On December 19, 1975, the House dismissed the case, H.Res. 897 (121 Cong. Rec. H13056 (daily ed. December 19, 1975)).

Ziebarth v. Smith (H.Rept. 94-763), 3rd District of Nebraska

Nature of the contest—On December 30, 1974, Ziebarth filed a Notice of Intention to contest stating as grounds for the contest the closeness of the election, the existence of overcounting and undercounting in precinct tallies, the opinion of a statistical recount expert that a recount would change the results of the election, and the fact that the state of Nebraska had no provisions for

recounts. In response, the contestee filed a motion to dismiss based on a failure of the notice of contest to state grounds sufficient to change the results of the election.

The subcommittee gave the contestant ten days to set forth a more definite statement, as "the House has consistently refused to grant a request for a recount solely on the grounds of a close vote and/or the absence of a state provision for recounting a congressional election." The amended notice of the contestant did not provide the requested details of the charge. The answer to the amended notice of contest attached an affidavit from the Secretary of State of Nebraska refuting the general allegations of the overcount and undercount. The contestant furnished no more particulars nor did he substantiate any of his generalities.

Disposition of the case—After carefully stating the reasons for rejecting a recount request merely because of closeness and/or the lack of state recount provisions, the Committee found that the contestant had not pled with sufficient particularity nor had he offered preliminary proof of mistake in the original count, and recommended dismissal of the contest. On December 19, 1975, the House adopted H.Res. 898, dismissing the case (121 Cong. Rec. H13056 (daily ed. December 19, 1975)).

95th Congress

Saunders v. Kelly (H.Rept. 95-242), 5th District of Florida

Nature of the contest—Contestee, Kelly, received a majority of 42,111 votes. The contestant, Saunders, challenged the election in accordance with the Federal Contested Elections Act (FCEA), 2 U.S.C. §§ 381 *et seq.* The contestant claimed that the Florida Ethics Commission conspired with the contestee to attack her candidacy. She further claimed that this attack led to her decline in the polls and eventual defeat. The contestee filed a motion to dismiss.

The Committee on House Administration concluded that the contestant failed to meet the burden of proof, by particularized pleadings and evidence, that would warrant concluding that a continuation of the contest would result in the award of the seat to her. The Committee therefore granted the motion to dismiss.

Disposition of the contest—On April 28, 1977, the Committee unanimously adopted a motion to report H.Res. 525, dismissing the contest. The House passed the measure on May 9, 1977.

Paul v. Gammage (H.Rept. 95-243), 22nd District of Texas

Nature of the contest—The result of the November 2, 1976 election gave contestee Gammage a 236-vote majority. A recount of the vote, based on Texas state law, gave the contestee a 268-vote majority. While pursuing an election contest in state court (these proceedings were later terminated by the court), the contestant filed a notice of contest, pursuant to the FCEA, with the Committee on House Administration.

A panel of the Committee met to consider a motion to dismiss, concluding that although the contestant's pleadings were in proper form and alleged instances of irregular and perhaps even illegal voting, he failed to demonstrate that any or all of the allegations would have changed the result of the election. Therefore, the Committee recommended that a resolution dismissing the contest be reported to the House of Representatives.

Disposition of the contest—By a 16 to 6 vote, the Committee adopted a motion to report H.Res. 526, dismissing the contest. On May 9, 1977, the House passed the measure.

Young v. Mikva (H.Rept. 95-244), 10th District of Illinois

Nature of the contest—The proclamation of the official canvass of the votes cast showed that Mikva had received 106,804 votes and that Young had received 106,603 votes, for a difference of 201 votes. Contestant Young contended that there were irregularities or errors involved in the election. Under Illinois law, the contestant was granted a discovery recount. However, the contestant was unable to secure a judicial recount. Subsequently, the contestant filed a notice of intention to contest the election.

An ad hoc panel of the Committee convened to hear testimony on the motion. By a two to one vote, the panel concluded that the contestant failed to provide sufficient and specific allegations, documents, affidavits of competent witnesses, or other materials which would enable to committee to determine that there were grounds sufficient to change the result of the election.

Disposition of the contest—The Committee, by a 16 to 6 vote, adopted a motion to report H.Res. 527, dismissing the contest. On May 9, 1977, the House passed the measure.

Pierce v. Pursell (H.Rept. 95-245), 2nd District of Michigan

Nature of the contest—The official canvass reported that contestee Pursell received 95,397 votes and that contestant Pierce received 95,053 votes, giving the contestant a majority of 344 votes. After failing to obtain an inspection and review of the tally sheets or a recount, the contestant filed a notice of contest pursuant to the FCEA. The contestant alleged that certain mistakes were committed in the election and asked that a recount be made in certain precincts. In response, the contestee filed a motion to dismiss.

An ad hoc panel of the Committee convened to take testimony. The panel found that the contestant did not meet its burden of proof to overcome a motion to dismiss or to order a recount. As in earlier cases, the contestant failed to show that but for specific irregularities or acts of fraud, the results of the election would have been different.

Disposition of the contest—The Committee unanimously adopted a motion to report H.Res. 528 and on May 9, 1977, the House passed the measure.

Dehr v. Leggett (H.Rept. 95-654), 4th District of California

Nature of the contest—The official returns showed that the contestee Leggett received 75,866 votes and that contestant Dehr received 75,202 votes. The margin consisted of 664 votes. Upon conclusion of a recount, the tally gave the contestee a total of 75,844 votes and the contestant a total of 75,190 votes. The margin was reduced to 651 votes. Under the FCEA, the contestant filed a notice of contest, claiming that 14 precincts were improperly counted.

The ad hoc panel of the Committee examined the allegation, concluding that there were no errors involving the ballots that would support the contestant's claim and recommending that the contest be dismissed.

Disposition of the contest—The Committee unanimously adopted a motion to report H.Res. 770. The House passed the measure on October 27, 1977.

Hill and Panasigui v. Clay (H.Rept. 95-723), 1st District of Missouri

Nature of the contest—In the primary election, the contestee received 29,094 votes, contestant Hill received 574 votes, and contestant Panasigui received 957 votes. This case was brought by the "Concerned Citizens Committee of the First Congressional District" (CCC) on behalf of the named contestants. Initially, CCC petitioned the board of election commissioners for a new primary election based on its claim that voting irregularities and fraud had occurred. After an investigation, the board of election commissioners found that the complaint was without merit. CCC then filed suit in both state and federal courts. These suits were both dismissed for lack of subject matter jurisdiction. CCC also filed a notice of complaint pursuant to the FCEA and requested a formal investigation by the Justice Department. The Justice Department concluded that the complaint was without foundation.

The Committee also found that the allegations were without foundation and that there were insufficient grounds to change the election results. Moreover, the Committee concluded that the notice of contest and subsequent pleadings did not sustain the contestants' claim of a right to the contestee's seat.

Disposition of the contest—The Committee recommended to the House the adoption of H.Res. 822, dismissing the election contest. The House passed the measure on October 27, 1977.

Lowe v. Fowler (H.Rept. 95-724), 5th District of Georgia

Nature of the contest—In a special election, contestee Fowler received 29,898 votes and contestant Lowe received 276 votes. In a runoff election, which did not include the contestant, the contestee received 54,378 votes and Lewis, not a party to this action, received 32,732 votes. The contestant filed a notice of contest under the FCEA which claimed that the contestee was ineligible to run for elected office and that there was a presumption of fraud or irregularities. The contestee filed a motion to dismiss, alleging that the contestant lacked standing and failed to state sufficient grounds to change the result of the election.

An ad hoc panel of the House Administration Committee found that the contestee was not ineligible to run for congressional office because he failed to resign from the City Council prior to seeking another elected office. The panel also found that the disparity between the number of votes received by the contestant in his 1970 (36,194 votes) and 1977 (276 votes) election bids did not raise a presumption of fraud or irregularities. Moreover, the panel found that the minor discrepancies in the number of unused ballots returned were either explicable or normal. Thus, the ad hoc panel concluded that the allegations were unfounded and that there was insufficient evidence to overcome the contestee's motion to dismiss.

Disposition of the contest—The Committee unanimously recommended that the House adopt H.Res. 825, dismissing the election contest. The House passed the measure on October 27, 1977.

Moreau v. Tonry (No report filed; contestee resigned), 1st District of Louisiana[24]

96th Congress

Perkins v. Byron (H.Rept. 96-78), 6th District of Maryland

Nature of the contest—In the general election, contestee Byron was elected by a majority vote of 122,374 to 14,276. Contestant Perkins filed a notice of contest under the FCEA claiming that the contestee was improperly selected to replace her late husband, who had been nominated for reelection, as the Democratic nominee. He also claimed that a special election should have been held to fill the unexpired term. The contestee filed three separate motions to dismiss.

An ad hoc panel of the House Administration Committee recommended that the first motion be granted based on the fact that the contestant failed to provide documented proof of service of the notice of contest on the contestee. The ad hoc panel also found that the contestant failed to provide any documentary evidence supporting his allegations and that he failed to demonstrate that the allegations, if true, would have changed the outcome of the election. The ad hoc panel did not deem it necessary to reach the question of whether the contestant failed to claim a right to the contestee's seat.

Disposition of the contest—The Committee unanimously adopted a motion to report H.Res. 189, dismissing the election contest. The House passed the measure on March 29, 1979.

Hanania-Freeman v. Mitchell (H.Rept. 96-226), 7th District of Maryland

Nature of the contest—The official canvass showed that contestee Mitchell received 51,996 votes and contestant Hanania-Freeman received 6,626 votes. The contestant first filed a petition in the Superior Court of Baltimore City for a writ of mandamus and a preliminary injunction. The court denied the contestant's petition based on its finding that no irregularity or fraud existed in the election. Thereafter, the contestant filed a notice of intention to contest under the FCEA. Here, the contestant alleged inadequate and insufficient police protection of voting machines, conspiracy between the contestee and election officials, malfunction of voting machines due to tampering, improper and illegal certification of the contestee, and various acts of fraud, violence, intimidation, assault, theft, extortion, and "dirty tricks." The contestee made a motion to dismiss.

The ad hoc panel of the Committee determined that the contestant had failed to demonstrate by documentary evidence or otherwise, that the fraud, violence, intimidation, assault, theft, extortion, or "dirty tricks," as alleged to have been involved in the conduct of the election, would have changed the results of the election. The panel further concluded that the contestant had failed to meet her burden on a motion to dismiss. Thus, the panel unanimously voted to recommend that the contest be dismissed.

[24] Reversing a lower appellate court decision, the Supreme Court of Louisiana reinstated a district court judgment dismissing plaintiff Moreau's suit. The court found that, although illegal or fraudulent votes had been cast in favor of the defendant opponent, the votes were insufficient to change the outcome of the election and therefore, as required by the applicable Louisiana contested elections statute, the election could not be nullified. Moreau v. Tonry, 339 So. 2d 3, 5 (La. 1976), *rev'g*, 338 So. 2d 791 (La. 1976).

Disposition of the contest—The Committee adopted by unanimous vote a motion to report H.Res. 198, dismissing the election contest. The House passed the measure on June 12, 1979.

Rayner v. Stewart (H.Rept. 96-316), 1st District of Illinois

Nature of the contest—The general election resulted in the contestee, Stewart, being elected by a majority vote of 47,581 to 33,540, a margin of 14,041 votes. The contestant, Rayner, originally filed a civil suit claiming that there had been errors, irregularities, fraud and mistakes which impaired his right to vote and the right to have his vote counted. The court granted the defendant's motion to dismiss based on the fact that the House of Representatives has exclusive jurisdiction of the matter. Thereafter, the contestant filed a complaint under the FCEA, making the same allegations as in the civil suit and further alleging irregularities in the vote totals displayed on the backs of the voting machines, instances of illegal assistance of voters in casting their votes, the exclusion of the contestant's vote-watchers from polling places, numerous counting errors, and electioneering. The contestee filed a motion to dismiss.

The ad hoc panel of the Committee recommended that the motion be granted because the contestant failed to timely file the contest; failed to name the proper party to the contest; failed to include a statement in the notice of contest that the contestee had 30 days in which to file an answer; failed to serve the contestee properly; and failed to state grounds sufficient to change the results of the election.

Disposition of the contest—The Committee unanimously voted that H.Res. 344, dismissing the election contest, be adopted by the House. The House passed the measure on June 28, 1979.

Wilson v. Leach (H.Rept. 96-784), 4th District of Louisiana

Nature of the contest—The official canvass showed that the contestee, Leach, received 65,583 votes and the contestant, Wilson, received 65,317 votes. The contestee's majority was 266 votes. The contestant filed a notice of contest under the FCEA. The contestee followed with a motion to dismiss. The ad hoc panel delayed action on the motion to dismiss pending the outcome of a criminal investigation. Pursuant to a Federal grand jury investigation, the contestee was indicted on one count of conspiracy to pay voters in order to secure his election and ten counts of paying voters. The contestee was later acquitted of these charges.

After reviewing information presented by the Department of Justice, the ad hoc panel of the House Administration Committee found that fraud and irregularities were involved in the election. However, there was no finding of involvement by the contestee in any such activities. Moreover, the contestant failed to demonstrate that the fraud was of sufficient magnitude to have changed the result of the election. Based on this conclusion, the panel voted, 2 to 1, to recommend dismissing the contest.

Disposition of the contest—By a vote of 11 to 8, the Committee adopted a motion to report H.Res. 575, dismissing the election contest. On March 4, 1980, the House adopted the measure.

Thorsness v. Daschle (H.Rept. 96-785), 1st District of South Dakota

Nature of the contest—The results of the general election returned 64,661 votes for contestee Daschle and 64,647 votes for contestant Thorsness, a margin of 14 votes. A recount increased the

contestee's election margin to 105 votes. The contestant, followed by the contestee, filed writs with the state court. The court conducted a post-election review of 1,084 contested ballots and determined that the contestee won the election by 110 votes. Following this decision, the contestant filed a notice of contest under the FCEA. The contestant alleged that a review of more than 2,000 contested ballots would prove that he had received a plurality of the vote and that representatives of the contestee fraudulently and illegally conducted training sessions for members of the recount board. The contestee filed a motion to dismiss. Upon stipulations by both parties the second charge was dismissed.

An ad hoc panel of the House Administration Committee, upon unanimous vote, determined that the first count should also be dismissed because the panel was satisfied with the recount performed by the South Dakota Supreme Court. Moreover, the panel found that the contestant failed to state grounds sufficient to change the result of the election.

Disposition of the case—The Committee unanimously adopted a motion to report H.Res. 576, dismissing the election contest. On March 4, 1980, the House adopted the measure.

97th Congress

No election contests.

98th Congress

Archer v. Packard (H.Rept. 98-452), 43rd District of California

Nature of the contest—The election results showed that contestee Packard received 66,444 votes, that contestant Archer received 57,995 votes, and another candidate received 56,297 votes. This gave the contestee a plurality of 8,449 votes. The contestant initiated an election contest in both state court and in the House of Representatives, alleging a variety of inadequacies in the conduct of the election itself and in the conduct of the officials charged with overseeing the election. He also claimed that he obtained the highest number of legally cast votes. The court dismissed the case after concluding that the evidence was insufficient to show improprieties which would have changed the election. (An investigation by the San Diego District Attorney's office concluded that no criminal prosecution should be instituted in this case).

The Committee found that the contestant did not demonstrate with sufficient evidence that any of the alleged irregularities affected the outcome of the election. The Committee also found that, with the exception of the defacement of some voting machines, there were no criminal violations involved. The Committee's conclusion was based on the opinion of the superior court and the district attorney's report.

Disposition of the contest—The Committee adopted a motion to report H.Res. 305, dismissing the election contest. The House passed the measure on November 15, 1983.

Hendon v. Clarke (H.Rept. 98-453), 11th District of North Carolina

Nature of the contest—The official vote count showed that the contestee, Clarke, received 85,410 votes and the contestant, Hendon, received 84,085 votes. The contestant filed a request for

a recount with five county boards of elections and the state board of elections, claiming that the ballots in these counties were ambiguous and that certain laws governing the election were unconstitutional. This request was denied. The contestant then filed suit in U.S. District Court for the Western District of North Carolina requesting a recount. The court ruled against the contestant. The U.S. Court of Appeals for the Fourth Circuit, although agreeing that parts of the law governing the election were unconstitutional, refused to order a recount or invalidate the outcome of the election. The contestant then filed a notice of contest under the FCEA, claiming that the program used to tabulate the computer-counted ballots violated the equal protection clause of the 14th Amendment of the Constitution and that had not votes been erroneously counted for the contestee the election result would have been different. The contestant sought either a recount or invalidation of the vote. The contestee filed a motion to dismiss.

The House Administration Committee recommended dismissal on two grounds. First, the contestant's evidence was too speculative to meet the burden of demonstrating that the outcome of the election was affected by the manner in which the five counties counted ambiguously marked ballots. Second, the Committee found that a recount was an unwarranted remedy. Moreover, invalidation of the election would be improper because the contestant failed to challenge the ambiguities of the ballots in court prior to the election in question. The Committee considered the rationale of the Court of Appeals in making its determinations.

Disposition of the contest—The Committee adopted a motion to report H.Res. 304, dismissing the election contest. The House passed the measure on November 15, 1983.

99th Congress

McCloskey and McIntyre (H.Rept. 99-58), 8th District of Indiana

Nature of the contest—The election of November 6, 1984 ended with Democratic incumbent McCloskey ahead by 72 votes over Republican challenger McIntyre. Following a recount, however, on December 14, 1984, the Indiana Secretary of State certified McIntyre the winner by 34 votes.[25]

On the first day of the new Congress, Member-elect Wright objected to the oath of office being administered to McIntyre based "upon facts and statements which I consider to be reliable." The Speaker then stated that challenged Member-elect McIntyre "will be seated," and "the remaining Members will take the oath of office (131 Cong. Rec. 380 (January 3, 1985)). Subsequently, the Speaker administered the oath collectively to the other Members and Delegates-elect and Resident Commissioner.

On February 6, 1985, the Committee on House Administration organized a Task Force to investigate the election.[26] After finding that Indiana's election process and recount procedure were unreliable, the Task Force met to develop counting rules to be applied in a House recount.[27]

[25] This vote margin was based on an ongoing recount. The final state recount gave McIntyre a 418 vote margin of victory over McCloskey.

[26] This is one of the rare instances in which the House initiated its own investigation into the results of an election. In the last sixty years the House has only done so on three other occasions: (1) Kemp v. Saunders, H.Rept. 73-334; (2) In re Dale Alford, H.Rept. 86-1172; and (3) Roush or Chambers, H.Rept. 87-513.

[27] The Task Force rejected the option of voiding the election. H.Rept. 99-58.

Pursuant to these rules, with the assistance of the General Accounting Office, the Task Force recounted the votes from the November 6, 1984 election. This recount gave McCloskey a 4 vote margin of victory over McIntyre. On May 1, 1985, McCloskey was sworn in as a Member of the House of Representatives.

Disposition of the contest—Immediately after the Speaker collectively administered the oath to the other Members-elect on the first day of the new Congress, the House considered H. Res 1, providing that the question of the right of McCloskey or McIntyre to a seat be referred to the Committee on House Administration and that neither McCloskey nor McIntyre "shall be sworn until the Committee on House Administration reports upon and the House decides such question." The resolution further provided that for each day, beginning with the day of the resolution's adoption until the day the House decides the question, both McCloskey and McIntrye shall be paid from "the contingent fund" as a Member of the House, and that the Clerk of the House is directed to provide clerical assistants and full administrative functions with respect to the Eighth Congressional District (131 Cong. Rec. 381 (January 3, 1985)). Following debate on the resolution, the House adopted H.Res. 1, by a vote of 238 yeas, 177 nays, and 11 not voting.

On May 1, 1985, the House adopted H.Res. 146, which had been reported by the Committee on House Administration, dismissing the election contest.

Won Pat v. Blaz (H.Rept. 99-220), Guam

Nature of the contest—The Guam Election Commission (the "Commission") reported the results as 15,725 for contestee Blaz, and 15,402 for contestant Won Pat. Due to a disparity in the vote total, the Commission ordered a recount which resulted in 15,839 votes for the contestee and 15,485 votes for the contestant. A similar disparity caused another recount which gave the contestee 15,853 votes and the contestant 15,498 votes. The contestant filed a notice of contest under the FCEA claiming (1) that the contestee did not win the election because he did not receive a majority of the votes cast as required by law and (2) that the election results should be rejected because the Commission failed to comply with the requirements of the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act.

The Committee, agreeing with the Commission's decision not to include blank ballots in the vote total, found that the contestee did receive a majority of the votes cast. The Committee also determined that the Commission did not violate either of the statutes cited by the contestant.

Disposition of the contest—The Committee unanimously adopted a motion to report H.Res. 229, dismissing the election contest. The House passed the measure on July 24, 1985.

Hansen v. Stallings (H.Rept. 99-290), 2nd District of Idaho

Nature of the contest—The official canvass of votes showed that contestee Stallings received 101,266 votes and contestant Hansen received 101,133 votes. A recount of approximately 10% of the district was conducted in those precincts requested by the contestant. After the partial recount, the official vote tally gave the contestee 101,287 votes and the contestant 101,117 votes. The contestant then filed a notice of contest under the FCEA, claiming that illegal votes had been cast by persons not properly registered, which, if removed, would have changed the outcome of the election. He also maintained that he was denied a full recount, which, if conducted, would have changed the outcome of the election.

On the first day of the new Congress, Member-elect Myers objected to the oath of office being administered to Stallings based "upon statements and information which I deem reliable." The Speaker then stated that challenged Member-elect Stallings "will be seated," and administered the oath collectively to the remaining Members-elect. (131 Cong. Rec. 380 (January 3, 1985)).

Relying upon results of an investigation by the Idaho Attorney General concluding that there were no instances in which an unqualified person voted, the Committee found that voters were registered in accordance with Idaho law. Hence, the Committee determined that there was no basis for finding that the election was tainted by illegal votes. The Committee also found that the Idaho Attorney General and the Idaho Supreme Court denied contestant's request for a full recount because the partial recount did not reveal sufficient material differences in the result, when projected district-wide, to change the result of the election.

Disposition of the contest—After the Speaker collectively administered the oath to the other Members-elect on the first day of the new Congress, the House adopted H. Res 2, directing and authorizing the Speaker to administer the oath of office to Stallings. In a statement on the floor, Myers stated that he asked for Stallings to "stand aside" because "even though it is not required by statute to do this, historically we have asked seats in question to stand aside, and then be sworn in without prejudice" (131 Cong. Rec. 388 (January 3, 1985)). The Speaker then administered the oath of office to Member-elect Stallings (131 Cong. Rec. 392 (January 3, 1985)).

By a vote of 12 to 1, the Committee on House Administration adopted a motion to report H.Res. 272, dismissing the election contest. On October 2, 1985, the House passed the measure.

100th Congress

No election contests.

101st Congress

No election contests.

102nd Congress

No election contests.

103rd Congress

McCuen v. Dickey (H.Rept. 103-109), 4th District of Arkansas

Nature of the contest—An unofficial canvass of votes showed that the contestee Dickey received 113,004 votes and contestant McCuen received 102,911 votes. The certifying credentials issued by the Governor gave the contestee 113,009 votes and the contestant 102,918 votes. Thereafter, the contestant filed a complaint in circuit court seeking a protective order regarding the voting machines used in the election. The court granted the order and, subsequently, ordered several inspections of these machines. The court later dismissed the complaint, citing lack of jurisdiction, but retained jurisdiction over the voting machines. The contestant then filed a notice

of contest under the FCEA claiming that the ballots and voting machines misled voters and that defective voting machines produced inaccurate totals.

The Committee dismissed the first allegation, finding that no irregularity sufficient to change the result of the election could reasonably be inferred from the design of the voting apparatus. The Committee also heard testimony concerning past problems with the programming of voting machines, although the expert who testified did not find that such problems existed in this election. Consequently, the Committee found that there was no merit to the contestant's second allegation.

Disposition of the contest—The Committee adopted a motion to report H.Res. 182, dismissing the election contest and on May 25, 1993, the House passed the measure.

104th Congress

Anderson v. Rose (H.Rept. 104-852), 7th District of North Carolina

Nature of the contest—The official election returns showed that the contestee Rose received 62,670 votes and contestant Anderson received 58,849 votes. The contestant filed a complaint with the North Carolina Board of Elections and a notice of contest with the House of Representatives alleging election irregularities and fraud. Moreover, the contestant claimed that the contestee was not a resident of the 7th District of North Carolina (the Committee left this determination to North Carolina authorities). Although the contestant presented credible allegations highlighting serious and potentially criminal violations of election laws, if proven, they were insufficient to change the outcome of the election. Thus, the contestant's evidence was not able to overcome the motion to dismiss filed by the contestee.

Disposition of the contest—The Committee adopted a motion to report H.Res. 538, dismissing the election contest and on September 26, 1996, the House passed the measure.

Haas v. Bass (H.Rept. 104-853), 2nd District of New Hampshire

Nature of the contest—The contestant filed a notice of contest under the FCEA claiming that the contestee failed to file an affidavit attesting to the fact that he was not a subversive person as defined by New Hampshire law. The contestant further claims right to the office because he was the only qualified candidate who submitted such an affidavit.

The Committee on House Administration found that the law relied upon by the contestant had been declared unconstitutional by the U.S. Supreme Court and that it had been repealed by the New Hampshire legislature prior to the election.

Disposition of the contest—The Committee adopted a motion to report H.Res. 539, dismissing the election contest, and on September 26, 1996, the House passed the measure.

Munster v. Gejdenson (No report filed), 2nd District of Connecticut

Nature of the contest—After two recounts, contestee Gejdenson was declared the winner by 21 votes. The contestant filed a notice of contest claiming that errors of judgment were made by the vote counters. Without alleging fraud, the contestant claimed that 1,200 residents had been added

improperly to the voting polls. The House Oversight Task Force voted 2 to 1 against dismissing the contest. One month later the contestant withdrew his challenge.

Disposition of the contest—Challenge withdrawn by the contestant.

Brooks v. Harman (No report filed), 36th District of California

Nature of the contest—Contestant Brooks had been the apparent winner on election night, with 82,415 to 82,322 votes. However, after mail-in votes were counted, the result showed that the contestee Harman had won by 93,939 to 93,127 votes. The contestant then filed a notice of contest under the FCEA, claiming that the 812-vote margin of victory was based on illegal ballots, including votes from nonresidents, minors and voters illegally registered at abandoned buildings and commercial addresses. The contestee filed a motion to dismiss, claiming that the contestant filed her notice of contest after the statutory period had expired. After deciding that the challenge merited further investigation, the task force voted, 2 to 1, to request for more information. The contestant withdrew her challenge two weeks after the task force held a field hearing.

Disposition of the contest—Challenge withdrawn by the contestant.

105th Congress

Dornan v. Sanchez (H.Rept. 105-416), 46th District of California

Nature of the contest—On November 22, 1996, the Orange County Registrar of Voters certified contestee Sanchez the winner by 984 votes. Subsequently, contestant Dornan requested a recount. On December 9, 1997, as a result of the recount, Sanchez's margin of victory was reduced to 979 votes. On December 26, 1996, the contestant filed a notice of contest. This notice, amended on April 19, 1997, alleged non-citizen voting and voting irregularities, such as improper delivery of absentee ballots, double voting and phantom voting.

The Task Force on Elections made a comparison between the Orange County voters' registration files and INS databases. The Task Force reported its findings as follows:

> The Task Force was able to clearly and convincingly document that 624 persons had illegally registered and thus were not eligible to cast ballots in the November 1996 election. In addition, the Task Force discovered 196 instances where there was a circumstantial indication that a voter registered illegally. Further, the Orange County Registrar of voters voided 124 improper absentee ballots. In total, the Task Force found clear and convincing evidence that 748 invalid votes were cast in this election. However, the number of ballots for which the Task Force and Committee has clear and convincing evidence that they were cast improperly by individuals not eligible to vote in the November 1996 election is less than the 979-vote margin in this election.

Disposition of the contest—The Committee adopted a motion to report H.Res. 355, dismissing the election contest, and on February 12, 1998, the House passed the resolution.

106th Congress

No election contests.

107th Congress

No election contests.

108th Congress

Tataii v. Case (H.Rept. 108-207), 2nd District of Hawaii

Nature of the contest—The contestant filed a notice of contest under the FCEA asserting that when the contestant challenged the late Representative Patsy Mink in the 2002 Democrat primary, where he received 15% of the vote, Representative Mink should have been disqualified as a primary candidate because she was seriously ill at the time of the primary election and passed away one week later. Contestant argued that he should have been declared the Democrat nominee by default and that as the nominee, he therefore would have been the inevitable winner of the general election.

The Committee found that the FCEA does not contemplate considering notices of contest that are based on the conduct of primary elections. Therefore, the Committee concluded that the basis for the contestant's notice of contest was outside the scope of the FCEA, and voted to dismiss as a frivolous election contest.

Disposition of the contest—The Committee adopted a motion to report H.Res. 317, dismissing the election contest, and on July 15, 2003, the House passed the measure.

Lyons v. Gordon (H.Rept. 108-208), 6th District of Tennessee

Nature of the contest—The contestant filed a notice of contest under the FCEA alleging that contestee Gordon committed violations of the Constitution amounting to acts of insurrection because contestee, as an incumbent Member of Congress, did not resign his seat prior to seeking re-election, and because as an inactive member of the Tennessee Bar, contestee violated the separation of powers principle in the U.S. Constitution by remaining a "Judicial Officer of the Courts of Tennessee" while serving as a "Legislative Officer of the United States." The contestant made no allegations of irregularities, fraud, or wrongdoing with respect to the election.

The Committee on House Administration announced that in order to have standing under the FCEA, a contestant must have been a candidate for election to the House of Representatives in the last preceding election and claim a right to the contestee's seat. The Committee found that the contestant met the first prong of the two-part test. With regard to the second prong, the Committee found that by claiming a right to the contestee's seat because the contestee was ineligible/not qualified to appear on the November 5, 2003 ballot, the contestant "fails to explain the logical connection between the contestee's alleged ineligibility and the contestant's entitlement to the contestee's congressional seat." However, the Committee chose not to resolve the issue of whether failure to explain the nexus between the alleged election deficiencies and the contestant's right to the seat is sufficient to establish standing. Instead, the Committee stated that

as a threshold matter, it would proceed to consider a notice of contest only if the notice states grounds sufficient to change the result of the election. That is, the Committee found that a contestant must allege irregularities, fraud, or wrongdoing that, if proven, would likely overturn the original election outcome. Due to the fact that the contestant did not advance allegations of irregularity or fraud or objections to the accuracy of the vote totals, which showed him receiving 2% of the vote and the contestee receiving 66%, the Committee voted to dismiss as a frivolous election contest.

Disposition of the contest—The Committee adopted a motion to report H.Res. 318, dismissing the election contest, and on July 15, 2003, the House passed the measure.

109th Congress[28]

No election contests.

[28] During the 109th Congress, one case came before the House, Lyons v. Gordon, (H.Rept. 109-57) 6th District of Tennessee, which is not included in this synopsis because it presented a question of qualification rather than a question of who was duly elected. In summary, in a "virtually identical" notice of contest to the one filed and dismissed during the 108th Congress, the contestant filed under the FCEA, asserting that contestee Gordon committed violations of the Constitution amounting to acts of insurrection because, as an incumbent Member of Congress, the contestee did not resign his seat prior to seeking re-election and because, as an inactive member of the Tennessee Bar, the contestee violated the separation of powers principle in the U.S. Constitution by remaining a "Judicial Officer of the Courts of Tennessee" while serving as a "Legislative Officer of the United States." The contestant made no allegations of irregularities, fraud, or wrongdoing with respect to the election. Similar to its finding during the 108th Congress contest, the Committee found that it would proceed to consider a notice of contest only if the notice stated grounds sufficient to change the result of an election, that is, allegations of irregularities, fraud, or wrongdoing with respect to an election that, if proven, would likely overturn the original election outcome. Absent that, it would recommend dismissal of the contest. In this case, the Committee determined that challenges to the *qualifications* of a Member-elect to serve in the Congress generally fell outside the purview of the FCEA, which was designed to consider allegations relating to the actual conduct of an election. The Committee further noted that nothing in the contestant's notice persuaded the Committee to reconsider this established interpretation of the statute. The Committee adopted a motion to report H.Res. 239, dismissing the election contest, and on April 27, 2005, the House passed the measure.

110th Congress[29]

Jennings v. Buchanan (H.Rept. 110-528), 13th District of Florida

Nature of the contest—Of the 238,249 votes cast in the election, the contestant received 118,737 and the contestee received 119,105, a margin of 368 votes. The election results generated controversy due to one county in the district—Sarasota County—reporting that of the 123,901 ballots cast, approximately 18,000 did not indicate that a vote was cast for any congressional candidate, resulting in an undervote of almost 15%. In comparison with other counties in the district, this undervote percentage was unusually high. The contestant filed a contested election suit in the Florida courts arguing that Florida's certified vote totals excluded thousands of legally cast votes due to malfunctioning electronic voting equipment. While pursuing state remedies, the contestant also filed a notice of contest under the FCEA alleging widespread voting machine irregularities. In response, the contestee filed a motion to dismiss arguing that the contest was based on conjecture and speculation. While awaiting a timely state resolution of the case, the Committee on House Administration deferred acting on the contest for five months. With no state resolution forthcoming, the Committee initiated an investigation on May 5, 2007.

Enlisting assistance from the Government Accountability Office (GAO), the Committee's investigation focused on whether voting machine malfunction in Sarasota County caused the unusually large number of undervotes. In February 2007, GAO reported its findings to the Committee, concluding that voting machine malfunction did not contribute to the undervote in Sarasota County. While acknowledging that it is the "Constitutional duty of the House of Representatives to investigate a valid election contest," the Committee noted that "only clear and convincing evidence can provide the basis to overcome the presumption of the regularity accorded a State's certified results." Without such evidence, the Committee concluded that Florida's certification of the election results in the 13th District must be confirmed by the House. Therefore, the Committee voted to dismiss the contest.

Disposition of the contest—On February 12, 2008, the Committee unanimously voted to dismiss the contest and on February 14, reported as an original resolution H.Res. 989. On February 25, the House passed the measure.

Gonzalez v. Diaz-Balart (H.Rept. 110-175), 21st District of Florida

Nature of the contest—The contestant maintained that the official election results were incorrect because of irregularities associated with the electronic voting machines. Specifically, the contestant alleged that the electronic voting machines did not accurately record votes cast, producing unreliable and incorrect results, based on the theory that the machines were hacked or

[29] During the 110th Congress, one additional case came before the House, Cox v. McCrery, which is not included in this synopsis because it presented a question of qualification rather than a question of who was duly elected. In brief summary, Cox v. McCrery (H.Rept. 110-177), 4th District of Louisiana, involved the contestant alleging that the contestee was not, when elected on November 7, 2006, an inhabitant of the state of Louisiana within the meaning of the Qualifications Clause, Article 1, Section 2, clause 2 of the Constitution. In response, the contestee maintained that he fully satisfied the inhabitancy requirement, and provided an affidavit from the owner of the property attesting to the fact that he maintained a residence in Shreveport. On June 6, 2007, the Committee on House Administration found that the contest should not have been brought before the House under the FCEA and should be dismissed, reporting H.Rept. 110-177. On June 12, the House passed H.Res. 462, dismissing the contest.

had their data tabulations altered by electronic means, and that an accurate recount of the votes could never be conducted because the electronic voting machines were not equipped with a verified voter paper audit trail. The contestant further argued that the vote totals were unreliable because the supervisor of elections failed to comply with certain testing and fielding requirements for electronic voting machines, pursuant to Florida law. In response, the contestee filed a motion to dismiss the contest based on the contestant's failure to file a timely notice of contest with the Clerk of the House, pursuant to the FCEA filing requirements.

The Committee on House Administration determined that in order to survive a motion to dismiss, a contestant must proffer allegations that, if proven, would have altered the outcome of the election. In his notice of contest, the contestant relied on affidavits from voters in a precinct holding an election for another congressional district indicating a discrepancy in vote totals. The Committee concluded that the contestant's reliance on allegations of electronic voting machine error in another congressional district is irrelevant and not persuasive, and even if proven true, did not establish that the electronic voting machines used in the contestant's race are inherently unreliable and failed to record votes accurately.

Disposition of the contest—On June 12, 2007, the House passed H.Res. 459, dismissing the contest.

Curtis v. Feeney (H.Rept. 110-176), 24th District of Florida

Nature of the contest—The contestant maintained that the official election results were incorrect due to alleged irregularities associated with electronic voting machines. Specifically, the contestant asserted that the software of the electronic voting machines was manipulated and the machines hacked, and due to the fact that the machines did not produce a verified voter paper audit trail, an accurate count could never be discerned. The contestant further argued that the election results were also compromised by the failure of the local boards of election to impose necessary procedural safeguards. In response, the contestee filed a motion to dismiss the contest because the contestant failed to claim a right to the office and to support the claim of voting irregularities with specific credible allegations of irregularities or fraud that if proven true, would be sufficient to change the result of the election.

The Committee on House Administration found that the contestant had failed to make a credible and specific claim that he was entitled to the office, and that his claims were conjecture and speculation, unsupported by specific and credible allegations of irregularity sufficient to put into doubt the outcome of the election.

Disposition of the contest—On May 8, 2007, the Committee on House Administration agreed to a motion to report H.Res. 461, dismissing the contest, and on June 12, the House passed the measure.

Russell v. Brown-Waite (H.Rept. 110-178), 5th District of Florida

Nature of the contest—The contestant alleged that the official election results were incorrect due to purported irregularities associated with electronic voting machines. Specifically, the contestant asserted that the electronic voting machines produced unreliable and incorrect results based on a theory that the machines were hacked or had their data tabulations altered by electronic means. The contestant further argued that an accurate recount of the votes could never be discerned

because the electronic voting machines were not equipped with a verified paper audit trail. In response, the contestee filed a motion to dismiss the contest based on the contestant's failure to file a timely notice of contest with the Clerk of the House, pursuant to the FCEA filing requirements.

The Committee on House Administration determined that in order to survive a motion to dismiss, a contestant must proffer allegations that, if proven, would have altered the outcome of the election. In his notice of contest, the contestant relied on affidavits from voters indicating a discrepancy of 6 votes between the contestant and the contestee, and therefore argued that there was sufficient evidence to place into doubt the overall results. The Committee concluded that because the contestee was certified as the winner by 53,462 votes, far exceeding the 6 vote differential proffered by the contestant, that his allegations were unsubstantiated speculation, insufficient to change the results of the election.

Disposition of the contest—On June 12, 2007, the House passed H.Res. 463, dismissing the contest.

111th Congress

Tataii v. Abercrombie (H.Rept. 111-68), 1st District of Hawaii

Nature of the contest—The contestant filed a notice of contest under the FCEA alleging that the official election results should be invalidated because the contestee deliberately avoided a debate with the contestant and that but for the contestee's alleged refusal to debate, the contestant would have won the election.

The Committee on House Administration found that the certificates of election were signed by Hawaii's chief election officer on November 24, 2008; therefore, in order to be timely pursuant to Section 382(a) of the FCEA, the contestant would have had to file a notice of contest by December 24, 2008. The contestant filed a notice of contest on January 16, 2009. The committee noted that due to an elections contest filed by the contestant in the Supreme Court of Hawaii, the certificate of election was not delivered by the state to the U.S. House of Representatives until December 16, 2008, when the court made a final determination. Noting that the FCEA expressly provides that a notice of contest must be filed within 30 days of elections results being declared, the committee announced that the contestant's notice of contest was untimely. Nonetheless, acknowledging that the contestant may have received inaccurate advice on timely filing, the committee decided to evaluate the contestant's claims on the merits.

The committee determined that the contestant failed to make a credible and specific claim that he was entitled to the office because in order to prevail, a contestant must proffer allegations that, if proven, would have altered the election outcome. According to the committee, the contestant failed to provide any information demonstrating that a public debate would have altered the election outcome and submitted unsupported speculation that did not cast sufficient doubt on the election results to merit further investigation. Drawing any other conclusion, the committee announced, would remove the presumption of regularity that attaches to the state certification of election results. Accordingly, the committee found that the contestant failed to meet the required burden under the FCEA.

Disposition of the contest—On March 31, 2009, the House passed H.Res. 303, dismissing the contest.

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