

CRS Report for Congress

Received through the CRS Web

House Contested Election Cases: 1933 to 2005

Updated October 26, 2006

L. Paige Whitaker
Legislative Attorney
American Law Division

House Contested Election Cases: 1933 to 2005

Summary

This report provides a summary of contested election cases from the 73rd Congress through the 109th Congress, 1933 to 2005. The descriptions primarily provide information concerning the nature of the action and the disposition of the case. The summary is limited to only those cases that were considered by the House of Representatives; cases decided at the state level are beyond the scope of this report.

In the period from 1933 to 2005, the House of Representatives considered 105 contested election cases. Many of these cases involved an allegation of fraud and other election improprieties. Of these cases, a vast majority were resolved in favor of the contestee (typically, the candidate who was originally declared the victor). Since enactment of the Federal Contested Elections Act of 1969 (FCEA), most cases have been dismissed because the contestant failed to sustain the burden of proof necessary to overcome a motion to dismiss.

Contents

73rd Congress	1
<i>Bowles v. Dingell</i> (H.Rept. 695), 15th District of Michigan	1
<i>Shanahan v. Beck</i> (H.Rept. 694), 2nd District of Pennsylvania	1
<i>Reese v. Ellzey</i> (H.Rept. 696), 8th District of Mississippi	1
<i>Brewster v. Utterback</i> (H.Rept. 1725), 3rd District of Maine	2
<i>Casey v. Turpin</i> (H.Rept. 930), 12th District of Pennsylvania	2
<i>Gormley v. Goss</i> (H.Rept. 893), 5th District of Connecticut	2
<i>Chandler v. Burnham</i> (H.Rept. 1278), 20th District of California	3
<i>Ellis v. Thurston</i> (H.Rept. 1305), 5th District of Iowa	4
<i>Felix v. Muldowney</i> (No report filed), 82nd District of Pennsylvania	5
<i>Fox v. Higgins</i> (H.Rept. 894), 2nd District of Connecticut	5
<i>Estep v. Ellenbogen</i> (H.Rept. 1341), 33rd District of Pennsylvania	5
<i>Sanders v. Kemp</i> (H.Rept. 334), 6th District of Louisiana	5
<i>LaGuardia v. Lanzetta</i> (No report filed), 20th District of New York	6
<i>Lovette v. Reece</i> (H.Rept. 1306), 1st District of Tennessee	6
<i>McAndrews v. Britten</i> (H.Rept. 1298), 9th District of Illinois	6
<i>Weber v. Simpson</i> (H.Rept. 1494), 10th District of Illinois	7
<i>Francis H. Shoemaker</i> (No report filed), of Minnesota	7
74th Congress	7
<i>Lanzetta v. Marcantonio</i> (H.Rept. 3084), 20th District of New York	7
<i>McCandless v. King</i> (H.Rept. 2736), Delegate from Hawaii	8
<i>Miller v. Cooper</i> (H.Rept. 2131), 19th District of Ohio	8
75th Congress	8
<i>Roy v. Jenks</i> (H.Rept. 1521), 1st District of New Hampshire	8
<i>Rutherford v. Taylor</i> (No report filed), 2nd District of Tennessee	9
<i>William v. Maas</i> (No report filed), 4th District of Minnesota	10
76th Congress	10
<i>Smith v. Polk</i> (No report filed), 6th District of Ohio	10
<i>Swanson v. Harrington</i> (H.Rept. 1722), 9th District of Iowa	10
<i>Scott v. Eaton</i> (H.Rept. 1783), 10th District of California	10
<i>Neal v. Kefauver</i> (H.Rept. 2609), 3rd District of Tennessee	11
77th Congress	11
<i>Miller v. Kirwan</i> (No report filed), 19th District of Ohio	11
78th Congress	11
<i>Clark v. Nichols</i> (H.Rept. 1120), 2nd District of Oklahoma	11
<i>Moreland v. Schuetz</i> (H.Rept. 1158), 7th District of Illinois	12
<i>McEvoy v. Peterson</i> (H.Rept. 1423), 1st District of Georgia	13
<i>Schufert v. Wasielewski</i> (H.Rept. 1300), 4th District of Wisconsin	13
<i>Thill v. McMurray</i> (H.Rept. 1032), 5th District of Wisconsin	13
<i>Sullivan v. Miller</i> (H.Rept. 180), 11th District of Missouri	14

79th Congress	14
<i>Hicks v. Dondero</i> (H.Rept. 1404), 17th District of Michigan	14
80th Congress	15
<i>Mankin v. Davis</i> (H.Rept. 1822), 5th District of Georgia	15
<i>Lowe v. Davis</i> (H.Rept. 1823), 5th District of Georgia	15
<i>Michael v. Smith</i> (H.Rept. 1106), 8th District of Virginia	15
<i>Roberts v. Douglas</i> (H.Rept. 1106), 14th District of California	15
<i>Woodward v. O'Brien</i> (No report available), 6th District of Illinois	16
<i>Wilson v. Granger</i> (H.Rept. 2418), 1st District of Utah	16
81st Congress	16
<i>Thierry v. Feighan</i> (H.Rept. 1252), 20th District of Ohio	16
<i>Stevens v. Blackney</i> (H.Rept. 1735), 6th District of Michigan	16
<i>Fuller v. Davies</i> , (H.Rept. 1252), 35th District of New York	16
<i>Browner v. Cunningham</i> (H.Rept. 1252), 5th District of Iowa	17
82nd Congress	17
<i>Macy v. Greenwood</i> (H.Rept. 1599), 1st District of New York	17
<i>Karst v. Curtis</i> (H.Rept. 905), 12th District of Missouri	17
<i>Huber v. Ayres</i> (H.Rept. 986), 14th District of Ohio	17
<i>Lowe v. Davis</i> (H.Rept. 904), 5th District of Georgia	18
<i>Osser v. Scott</i> (H.Rept. 1598), 3rd District of Pennsylvania	18
83rd Congress	18
84th Congress	18
85th Congress	18
<i>Dolliver v. Coad</i> (Report not available), 6th District of Iowa	18
<i>Carter v. LeCompte</i> (H.Rept. 1626), 4th District of Iowa	19
<i>Oliver v. Hale</i> (H.Rept. 2482), 1st District of Maine	19
86th Congress	19
<i>Dale Alford</i> (H.Rept. 1172), 5th District of Arkansas	19
<i>Maloney v. Smith</i> (H.Rept. 1409), 6th District of Kansas	20
<i>Meyers v. Springer</i> (Report unavailable), 22d District of Illinois	20
<i>Ron Taylor</i> (Report unavailable), 12th District of North Carolina	20
87th Congress	21
<i>Morgan M. Moulder</i> (Report unavailable), 11th District of Missouri	21
<i>Victor Wickersham</i> (Report unavailable), 6th District of Oklahoma	21
<i>Roush v. Chambers</i> (H.Rept. 513), 5th District of Indiana	21
88th Congress	22
<i>Odegard v. Olson</i> (Report unavailable), 6th District of Minnesota	22
89th Congress	22
<i>Frankenberry v. Ottinger</i> (Report not filed), 25th District of New York	22
<i>Wheadon v. Abernethy</i> (H.Rept. 1008), 1st District of Mississippi	
<i>Hamer v. Whitten</i> (H.Rept. 1008), 2nd District of Mississippi	
<i>Cosey, Wilson, and Johnson v. Williams</i> (H.Rept. 1008), 3rd District of Mississippi	

<i>Devine v. Walker</i> (H.Rept. 1008), 4th District of Mississippi	
<i>Jackson v. Colmer</i> (H.Rept. 1008), 5th District of Mississippi	23
<i>Peter v. Gross</i> (H.Rept. 1127), 3rd District of Iowa	25
90th Congress	26
<i>Mackay v. Blackburn</i> (H.Rept. 366), 4th District of Georgia	26
<i>Lowe v. Thompson</i> (H.Rept. 365), 5th District of Georgia	27
91st Congress	28
<i>Lowe v. Thompson</i> (H.Rept. 159), 5th District of Georgia	28
92nd Congress	28
<i>Tunno v. Veysey</i> (H.Rept. 627), 38th District of California	28
The Case of <i>William Conover</i> (H.Rept. 1091), 27th District of Pennsylvania	29
93rd Congress	29
94th Congress	29
<i>Young v. Mikva</i> (H.Rept. 759), 10th District of Illinois	29
<i>Kyros v. Emery</i> (H.Rept. 760), 1st District of Maine	30
<i>Wilson v. Hinsh</i> (H.Rept. 761), 40th District of California	30
<i>Mack v. Stokes</i> (H.Rept. 762), 21st District of Ohio	31
<i>Ziebarth v. Smith</i> (H.Rept. 763), 3rd District of Nebraska	31
95th Congress	32
<i>Saunders v. Kelly</i> (H.Rept. 242), 5th District of Florida	32
<i>Paul v. Gammage</i> (H.Rept. 243), 22nd District of Texas	32
<i>Young v. Mikva</i> (H.Rept. 244), 10th District of Illinois	32
<i>Pierce v. Pursell</i> (H.Rept. 245), 2nd District of Michigan	33
<i>Dehr v. Leggett</i> (H.Rept. 654), 4th District of California	33
<i>Hill and Panasigui v. Clay</i> (H.Rept. 723), 1st District of Missouri	33
<i>Lowe v. Fowler</i> (H.Rept. 724), 5th District of Georgia	34
<i>Moreau v. Tonry</i> (No report filed - contestee resigned), 1st District of Louisiana	34
96th Congress	34
<i>Perkins v. Byron</i> (H.Rept. 78), 6th District of Maryland	34
<i>Hanania-Freeman v. Mitchell</i> (H.Rept. 226), 7th District of Maryland . . .	35
<i>Rayner v. Stewart</i> (H.Rept. 316), 1st District of Illinois	35
<i>Wilson v. Leach</i> (H.Rept. 784), 4th District of Louisiana	36
<i>Thorsness v. Daschle</i> (H.Rept. 785), 1st District of South Dakota	36
97th Congress	37
98th Congress	37
<i>Archer v. Packard</i> (H.Rept. 452), 43rd District of California	37
<i>Hendon v. Clarke</i> (H.Rept. 453), 11th District of North Carolina	37
99th Congress	38
<i>McCloskey and McIntyre</i> (H.Rept. 58), 8th District of Indiana	38
<i>Won Pat v. Blaz</i> (H.Rept. 220), Guam	38

<i>Hansen v. Stallings</i> (H.Rept. 290), 2nd District of Idaho	39
100th Congress	39
101st Congress	39
102nd Congress	40
103rd Congress	40
<i>McCuen v. Dickey</i> (H.Rept. 109), 4th District of Arkansas	40
104th Congress	40
<i>Anderson v. Rose</i> (H.Rept. 852), 7th District of North Carolina	40
<i>Haas v. Bass</i> (H.Rept. 853), 2nd District of New Hampshire	41
<i>Munster v. Gejdenson</i> (No report filed), 2nd District of Connecticut	41
<i>Brooks v. Harman</i> (No report filed), 36th District of California	41
105th Congress	41
<i>Dornan v. Sanchez</i> (H.Rept. 416), 46th District of California	41
106 th Congress	42
107 th Congress	42
108 th Congress	42
<i>Tataii v. Case</i> (H.Rept. 207), 2 nd District of Hawaii	42
<i>Lyons v. Gordon</i> (H.Rept. 208), 6 th District of Tennessee	43
109 th Congress	43
<i>Lyons v. Gordon</i> (H.Rept. 57), 6 th District of Tennessee	43

House Contested Election Cases: 1933 to 2005

The following compilation provides a synopsis of House of Representatives' contested election cases since March 1933, with particular reference to the nature of the contest and the disposition of the case. The information herein solely represents the findings of the reporting congressional committee. No independent analysis was conducted by CRS to make any of the findings in this report.

73rd Congress

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

Nature of contest - Unknown. There was no notice of contest ever filed in this matter and consequently the Committee on Elections dismissed it and recommended (H.Rept. 695, February 9, 1934) H.Res. 260, that Charles Bowles, the contestant, was not entitled to a seat and that John D. Dingell, the contestee, was.

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

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

Nature of contest - Unknown. 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 before the Committee on Elections and no briefs were filed. The Committee dismissed the contest (H.Rept. 694, February 9, 1934) 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 John J. Shanahan, the contestant, was not entitled to a seat and that James M. Beck, the contestee was. This was passed by the House, February 24, 1934, (see, 78 Cong. Rec. 2282, 2292,3165).

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

Nature of contest - Contestant, the regular Republican candidate for Congress in the 8th District of Mississippi complained of infractions of the Mississippi election laws, in 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" (see H.Rept. 696).

Disposition of the contest - The contestant, Reese, filed a letter with the House Elections Committee on May 6, 1933, withdrawing from the contest (H.Rept. 696). The Committee recommended the adoption of H.Res. 261, declaring that L.G. Reese was not entitled to the seat and that Russell Ellzey was. On February 24, 1934, the House adopted H.Res. 261 (see 78 Cong. Rec. 2282, 3165).

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

Nature of the contest - Contestee, John C. Utterback, was returned by a majority of 294 votes (34,520 to 34,226). Contestant, Ralph O. Brewster, charged: (1) illegal or insufficient returns, (2) illegal and fraudulent registrations, (3) illegal and fraudulent marking of ballots (H.Rept. 1725). Also the Governor of Maine sent the tabulation with a statement that Mr. Utterback was “apparently elected” (77 Cong. Rec. 71, March 9, 1933). The Elections Committee majority voted that there had been some election irregularities in some of the precincts in the District, but stated, “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” (*Id.*).

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 the returns from two of the precincts should be thrown out for failure of the election officials to carry out certain statutory duties. With these returns out, contestee had a majority of 74 votes. The Committee held hearings on the returns from the 14 precincts and concluded 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.” (*Id.*)

A minority report was filed.

Disposition of the contest - The Committee recommended H.Res. 390, denying that contestant Brewster was entitled to the seat and awarding it to contestee Utterback. The resolution was adopted by the House on May 28, 1934, (see 78 Cong. Rec. 3874, 9259, 9760).

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

Nature of the contest - Unknown. The contestant failed to transmit evidence taken in the matter, to the Clerk of the House. The Elections Committee, having no evidence before it, dismissed the case and recommended that John J. Casey, the contestant, was not entitled to the seat and that C. Murray Turpin, the contestee, was (H.Rept. 930).

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

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

Nature of the contest - Contestee received 42,132 votes and contestant, 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 centered around the voting at one voting booth in one precinct in the city of Waterbury (H.Rept. 893).

The Elections Committee recognized that the allegations of the contestant were general and were vague and uncertain as to necessary particulars, and, that while they did not meet the statutory requirements, the Committee would, nevertheless, "pierce the veil." (*Id.*)

The Committee set forth certain guiding postulates:

"(1) The official returns are the 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." (*Id.*)

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." (*Id.*)

The Committee consequently held that the contestant failed to establish his case by a "fair preponderance of the evidence," and that the contestee, Goss (a Republican) was duly elected (*Id.*)

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

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

Nature of the contest - Contestee received a plurality of 518 votes in the official returns. Contestant charged that he had received a majority of the lawful votes cast; that in many of the election districts he was deprived of the rightful count by reason of the fact that many of the election officers rejected ballots in favor of him on the ground of their being void, spoiled, mutilated, or marked; that in many of the election districts, the unused ballots, together with the stubs of the used ballots, exceeded the number of ballots delivered to the precincts; that in many of the election precincts the unused ballots together with the stubs of the used ballots, were less than the number of ballots delivered; that, in many of the election precincts many used ballots were missing from the ballot boxes and were unaccounted for (H.Rept. 1278).

The Elections Committee again reiterated its warning about vague charges and pointed out that the statute required the notice of contest to contain particulars (*Id.*)

The Committee, in addition to the three general guidelines for judging contested elections cases which it set forth in *Gormley v. Goss, supra*, prescribed two more:

"(4) That fraud is never presumed, but must be proven.

(5) That the mere closeness of the result of an election raises no presumption of fraud, irregularities or dishonesty.” (*Id.*)

The Committee declared 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, and 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 none did in others, the Committee stated (p. 4):

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.” (*Supra*, p. 4)

Holding that the contestant’s claims that votes from certain precincts should be rejected because the boards were not sworn in would not vitiate an election, since such boards were acting under color of office, the Committee concluded that the contestant had failed to establish his allegations of fraud, etc. (*Id.*)

Disposition of the contest - H.Res. 386, declaring the contestee, Burnham, to have been duly elected, was passed by the House on May 15, 1934, (see 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, and on a recount agreed to by the parties a 619 majority, and on a split of disputed ballots a majority of 194 (H.Rept. 1305). The main question was whether ballots voted 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 Committee decided against such an assumption and found that the contestee, Thurston, had been duly elected (*supra*).

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

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

Nature of the contest - Unknown. A letter from the Clerk of the House submitting the papers in the case can be found in 78 Cong. Rec. 4500 (March 14, 1934), but there was no further action after that.

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

Nature of the contest - Contestant, Fox claimed that contestee, Higgins, induced a person named Rollo to run as a "Wet" Party candidate for Congress in the District; 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 they should be counted as Democratic or Republican ballots and if so counted would produce a majority for the contestant (H.Rept. 894). The Elections Committee found no evidence of any collusion between the contestee, Higgins, 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. There was no reason to change the result of the election (*Id.*)

Disposition of the contest - H.Res. 296, declining to seat Mr. Fox and awarding the seat to the contestee, Mr. Higgins, was passed by the House, May 28, 1934 (see 78 Cong. Rec. 4185, 4223, 9760).

Estep v. Ellenbogen (H.Rept. 1341), 33rd District of Pennsylvania

Nature of the contest - Contestant, Estep, was not a candidate, but a former member who challenged the qualifications of contestee Ellenbogen on the ground that he had not been a citizen for 7 years at the date of election (6 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 (78 Cong. Rec. II). The Committee held that he 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.Rept. 1431). It also equated the situation with that of Members-elect holding incompatible offices at the time of election who later divest themselves thereof.

Disposition of the contest - 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, June 16, 1934, (see 78 Cong. Rec. 7873, 7876, 12193).

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

Nature of the contest - The elected Congressman, 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 was not in conformity with Louisiana 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, Mr. Sanders was elected, (H.Rept. 334). 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 (*Id.*).

Disposition of the contest - H.Res. 202, under which neither party would be seated until the Elections Committee could investigate and report and the House decide, was agreed to on January 3, 1934 (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 passed by the House after some debate (78 Cong. Rec. 1513-1521; see also pp. 1513-1521; see also pp. 1108, 1034, 1035, 1107, 1206, 1208, 1510).

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

Nature of the contest - Unknown. The letter of the Clerk of the House to the Speaker about the case, on 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, B. Carroll Reece. Contestant, Lovette, alleged general charges of fraud. However, he offered no specific evidence at hearings held by the Committee. Amended charges by the contestant, Lovette, also alleged general charges of fraud and at hearings no specific evidence was ascertained. Furthermore, amended charges by the contestant provided no additional evidence (H.Rept. 1306). The Committee concluded that the evidence failed "utterly" to substantiate the charges (*Id.*)

Disposition of the contest - H.Res. 358, declining the seat to contestant Lovette, and awarding it to contestee Reece, was passed by the House, 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, which the Election Committee concluded were unsubstantiated (H.Rept. 1298). Contestant also attempted to show corruption because the split votes cast for the contestee, Britten, were disproportionate to the straight votes cast for him. The Committee found this inconclusive (*Id.*)

Disposition of the contest - H.Res. 362, declaring that McAndrews was not elected and that the contestee, Britten was elected, was adopted by the House, after debate, on April 26, 1934 (see 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 some 201,500. Contestant, after an examination of the tally sheets in all the precincts in the District revealed mistakes in 128 precincts which lowered contestee's majority to 920 votes, asked for a recount (H.Rept. 1494). The Elections Committee concluded there was no evidence of fraud or irregularities, and that the contestant had failed to overcome the prime facie case for the contestee. It declined to undertake the recount (*Id.*)

Disposition of the contest - H.Res. 374, awarding the seat to contestee, Simpson, was reported from the Elections Committee on May 4, 1934 (see 78 Cong. Rec. 760-61, 8085, 8122). No record of its being called up for passage was found.

Francis H. Shoemaker (No report filed), of Minnesota

Nature of contest - On opening day, March 9, 1933, Mr. Shoemaker was asked to stand aside at the general swearing in (77 Cong. Rec. 71). House Resolution 6, was introduced, alleging that he was ineligible, 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 he had been indicted and convicted in 1930 and had served a sentence for a felony, mailing libelous matter. Debate began on the resolution and was continued on March 10, 1933, when a substitute resolution was offered authorizing the Speaker to administer the oath to Mr. Shoemaker and have the question of the permanent right referred to the Elections Committee (77 Cong. Rec. 132). After extended debate (77 Cong. Rec. 131-139), the substitute resolution was agreed to, and the preamble of the original resolution alleging Mr. Shoemaker's ineligibility was stricken (77 Cong. Rec. 139).

Disposition of the contest - There is no indication that the matter was considered by the Committee.

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." (H.Rept. 3084). 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, however, still considered it, finding that the volume was such that it could not properly decide the contest without taking further testimony, which, because of the nearness of adjournment, was impossible. (*Id.*)

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

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 (1) intimidation and coercion of the voters by the contestee, and (2) excessive campaign expenditures and other violations of the Corrupt Practices Act (H.Rept. 2736). Contestee charged lack of timely notice by the contestant (*Id.*). The Elections Committee concluded that all of the charges should be dismissed: the first, because it was concluded that such acts did not occur; the second, because the peculiar circumstances of the case influenced the Committee's decision. The contestee had failed to fully file, and the Committee stated that it might "feel constrained to hold that the contestee's failure to comply with the Corrupt Practices Act was sufficient grounds to recommend the forfeiture of his seat," (*supra*, p.3) but the contestee's full disclosure to the Committee plus lack of evidence that funds were used improperly or illegally to influence the election, and that contestee's failure in no way affected the rights of the contestant, were mitigating factors. (*Id.*). A third contention by the contestant was dismissed upon an examination of the laws of Hawaii. (*Id.*).

Disposition of the contest - H.Res. 521, declaring that McCandless, the contestant, was not elected, and that King, the contestee, was, was passed by the House on June 2, 1936 (80 Cong. Rec. 7765, 8705).

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

Nature of the contest - The contestee, Cooper, received a plurality of 4,177 votes, from three counties in the District. Contestant charged irregularities in one county, and the Committee, after investigation, concluded that although there was some evidence of destruction of ballots and vote tabulations in one county, there was no connection of these acts to the contestee. Furthermore, if the votes of the one county were to be excluded, contestee would still win by 2,000 votes (H.Rept. 2131).

Disposition of the contest - H.Res. 438, declaring Miller, the contestant, not entitled to the seat, and Cooper, that contestee, elected to the seat, was passed by the House on March 11, 1936, (*see* 88 Cong. Rec. 98, 3337, 3740).

75th Congress

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

Nature of the contest - Contestee, Jenks, received a plurality of 550 votes of the official returns. Contestant, Roy, sought a recount by the New Hampshire Secretary of State pursuant to New Hampshire law, and the result of this was a tie. Both candidates appealed to the State ballot-law commission, which considered 108 controversial ballots. It decided that Mr. Roy, the contestant, had a majority of 17 votes. Before the Governor issued an election certificate to Mr. Roy, Mr. Jenks disclosed 34 or 36 missing ballots in one precinct. The ballot-law commission held hearings on the missing ballots and heard witnesses, and concluded that all 34 were cast for Mr. Jenks, and that he was the final winner by 10 votes (H.Rept. 1521). A

certificate of election was issued by the Secretary of State to Mr. Jenks. The issue revolved around the missing 34 ballots and the probative force of the recounts and determinations in view of the fact that the ballot boxes might have been tampered with. (*Id.*).

Upon examination, the majority of the Committee concluded that the contestant, Mr. Roy, was the winner by a majority of 20 votes and so recommended. (*Id.*). A minority report disagreed.

Disposition of the contest - The majority of the Committee reported H.Res. 309, declaring that the contestee, Jenks, was not entitled to the seat and that the contestant, Roy, was. (81 Cong. Rec. 8842-8846, August 13, 1937). After further debate, (pp. 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 of the 34 missing ballots.

The length of the contest influenced a ruling by the Speaker, on August 13, 1937, 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, the Committee, after hearings, reported H.Res. 482, recommending that Mr. 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, Mr. Roy, was the winner by 20 votes (H.Rept. 2255).

On June 9, 1938, the House, after debate, on a division of H.Rept. 482, adopted the first part of the resolution that Mr. Jenks was not entitled to the seat (214 - 122), and then adopted the second part, that Mr. Roy, the contestant, was entitled to the seat (227 - 109) (*see* 83 Cong. Rec. 5960-61, 8642-8660, 8661, and Appx, p. 2613).

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

Nature of the contest - Contestant charged that because of the “influence” of 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, thus 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 - Failure of the contestant to proceed apparently abated the contest (see above).

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

Nature of the contest - Unknown. Letter from Clerk of the House announcing withdrawal of contestant placed in 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 - Unknown. 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 (8th Cong. Rec. 2761, 2794).

Disposition of the contest - H.Res. 156, declaring the election of the contestee, Polk, was passed by the House, April 10, 1939 (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 alleged fraud, misconduct, and illegality, (H.Rept. 1722), claiming more specifically that 70 votes cast by WPA workers temporarily in the District were illegal, and, that the contestant gained through an informal recount in one county in connection with a race for sheriff, sufficient votes, which, when added to the 70 illegal votes cast, would give him a plurality of 5 votes (*Id.*).

The Committee determined that contestant had not exhausted his remedy in the courts of the State for a recount under State law (*Id.*). It concluded that the 70 WPA workers' votes were illegal and should be disregarded, although such action would not affect the final result (*Id.*). It noted 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." (*supra*, p. 3).

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 (*Id.*)

Disposition of the contest - H.Res. 419, declaring that contestant Swanson was not entitled to the seat and that contestee, Harrington, was, was passed by the House, March 11, 1940 (see 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 raised questions as to violation of the Federal and State Corrupt Practices Acts (H.Rept. 1783). The Elections Committee concluded that contestant had failed

to meet the burden of proving by a fair preponderance of the evidence the issues raised (*Id.*).

Disposition of the contest - H.Res. 427, declaring that contestant Scott was not elected to the seat and that contestee Eaton was, was reported from the Elections Committee on March 14, 1940 (86 Cong. Rec. 2885; see also 86 Cong. Rec. 6, 15). There is no indication that any action was taken on the resolution.

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

Nature of the contest - Unknown. The Elections Committee dismissed the contest because the contestant had failed to take evidence as required by law and there was no evidence or briefs for the Committee to consider (H.Rept. 2609).

Disposition of the contest - H.Res. 534, declaring the 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 - Unknown.

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 charged fraud and irregularities, and violations and disregard of the State election laws by election officials, to the extent that he was deprived of votes that would have given him the election (H.Rept. 1120). The Elections Committee concluded 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 (*Id.*).

Some irregularities did occur such as not keeping registration books in some of the precincts as prescribed by Oklahoma law, but the Committee concluded, "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” (*supra*, p. 2).

The guiding principle, as enunciated in earlier cases, is the application of the mandatory or directory concept to the law alleged to have been violated (*Id.*). The Committee concluded that while the constitution and laws of Oklahoma required registration books to be kept in the precincts, that such requirement not complied with, 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” (*supra*, p. 2). Under Oklahoma law the maintenance of the registration book was held to be directory. “It 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” (*supra*, p. 2).

The Committee concluded that the claim that there were irregularities sufficient to constitute a claim of fraud was not sustained, and that the claim that the irregularities were of such nature as to invalidate the election was not tenable since the provisions of law governing the alleged irregularities were directory and not mandatory (*Id.*).

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” (H.Rept. 1158), but the question at issue was whether the Elections Committee should conduct a full recount of the ballots. Contestant and contestee entered into an agreement for a recount, which was commenced. It 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 (*Id.*).

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

Disposition of the contest - On April 6, 1943, the House passed a resolution extending the time for taking testimony in the case (see 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. 1834; see 90 Cong. Rec. 1833-34, 1871).

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

Nature of the contest - Unclear. The Contestant attempted to run as an independent Republican though there was no such political party in Georgia, and that his name did not appear on any ballots and that he received no votes whatsoever. The Committee also 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 make out a prima facie case (H.Rept. 1423).

Disposition of the contest - H.Res. 534, dismissing the contest against contestee, Peterson, was passed by the House, May 5, 1944 (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 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; that contestee violated the laws of Wisconsin by publishing false and improper statements about the contestant (H. Doc. 282; H.Rept. 1300). The Committee concluded that the amounts of expenditures shown on the reports filed by contestee were in excess of the Wisconsin and Federal limitations, but that most of such expenditures were by a campaign committee which was not limited by the law of either jurisdiction in its expenditures (*Id.*). It also concluded that the funds expended by the campaign committee were not disbursed with contestee's knowledge, consent, and approval (*Id.*). 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. The irregularity was not enough to thwart the will of the electorate and deny the contestee his seat (*Id.*).

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 (H. Doc. 284; H.Rept. 1032). The Elections Committee concluded that while there was spent on contestant's behalf some \$7,300, it was all spent by two campaign committees and not by contestee. Consequently there was no violation of Wisconsin or Federal law. (*Id.*). 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 for leave to bring a special investigation and had been turned down (*Id.*). 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 because of irregularities in accounting (*Id.*).

Disposition of the contest - H.Res. 426, dismissing the contest against contestee McMurray was passed by the House, January 31, 1944 (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 at 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 (H. Doc. 58, H.Rept. 180) on the ground that 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 this purpose of procuring evidence for the use of the parties to the contest (H.Rept. 180). 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, the House, on February 23, 1943 passed H.Res. 137 denying the joint application (89 Cong. Rec. 1324).

The parties then proceeded to file in accordance with law and requested an extension of time for taking testimony (H. Doc. 122, 89 Cong. Rec. 1473, 1499, March 2, 1943). H.Res. 240, granting the request was passed by the House, May 17, 1943 (H.Rept. 454, 89 Cong. Rec. 4529).

Meanwhile, 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 entered into a stipulation in which both parties agreed to dismiss their claims (H.Rept. 887).

Disposition of the contest - H.Res. 368, dismissing the contest against contestee Miller, was passed by the House, November 24, 1943 (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" (H.Rept. 1404). 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* as respects the contestee and was "incompetent as proof of any issues urged by the contestant". (*Id.*).

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

80th Congress

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

Nature of the contest - Unknown. H.Rept. 1822, merely states that, “the aforementioned contest be dismissed as lacking in merit.”

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

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

Nature of the contest - Unknown. H.Rept. 1823 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, April 27, 1948 (94 Cong. Rec. 4902, 4922; see also 93 Cong. Rec. 10613).

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

Nature of the contest - Unknown. H.Rept. 1106 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” (*Id.*).

Disposition of the contest - The contestee, Mr. Smith, filed a motion to dismiss (see, H. Doc. 418; 93 Cong. Rec. 10268, 10522; see also, H. Doc. 213, 93 Cong. Rec. 3827, 3000).

H.Res. 345, dismissing the contest against contestee Smith and declaring Mr. Smith to be entitled to the seat, was passed by the House, July 26, 1947 (93 Cong. Rec. 10445, 10523).

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

Nature of the contest - Unknown. See H.Rept. 1106, *Michael v. Smith, supra*.

Disposition of the contest - The contestee, Mrs. Douglas, filed a motion to dismiss the contest, on July 24, 1947 (H. Doc. 416, 93 Cong. Rec. 10211, 10203). H.Res. 345, dismissing the contest and declaring the contestee, Mrs. Douglas, 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 - No information.

Disposition of the contest - On July 26, 1947, the House adopted H.Res. 345, 80th Congress, dismissing the contest of Mr. Woodward and declaring that Mr. O'Brien was entitled to his seat (93 Congressional Rec. 10445).

***Wilson v. Granger* (H.Rept. 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, such as illegal appointment of registration officers, the manner of registration, the failure to enter all required information upon the official register, etc.

Disposition of the contest - The Committee on House Administration found, H.Rept. 2418, 80th Congress, that there had been numerous and widespread irregularities and errors which revealed lack of knowledge and failure to enforce the statutes relating to registration but that the true results of the election had not been affected by such practices. The House adopted H.Res. 692, 80th Congress on June 19, 1948 to dismiss the contest and seat Mr. Granger. (94 Cong. Rec. 9184).

81st Congress

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

Nature of the contest - Unknown.

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, by H.Rept. 1252, 81st Congress, recommended adoption of H.Res. 324, 81st Congress, declaring Mr. Feighan to be entitled to his seat. This resolution was passed on August 11, 1949 (95 Congressional Rec. 11294).

***Stevens v. Blackney* (H.Rept. 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, H.Rept. 1735, 81st Congress, that the evidence had not established the allegations in the notice of contest. It recommended, and the House adopted, on May 23, 1950, H.Res. 503, 81st Congress, declaring Mr. Blackney elected. (96 Congressional Rec. 7544).

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

Nature of the contest - Unknown.

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, by H.Rept. 1252, 81st Congress, recommended adoption of H.Res. 324, 81st Congress, declaring Mr. Feighan to be entitled to his seat. This resolution was passed on August 11, 1949 (95 Congressional Rec. 11294).

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

Nature of the contest - No information.

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, By H.Rept. 1252, 81st Congress, recommended adoption of H.Res. 324, 81st Congress, declaring Mr. Cunningham to be entitled to his seat. This resolution was passed on August 11, 1949 (95 Congressional Rec. 11294).

82nd Congress

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

Nature of contest - W. Kingsley 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 in H. Report 1599, 82nd Congress, that the evidence was insufficient to support the contestant's charges, and recommended the adoption of H.Res. 580, 82nd Congress, declaring Mr. Greenwood elected. This resolution passed the House March 19, 1952 (98 Congressional Rec. 2517).

Karst v. Curtis (H.Rept. 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, Mr. Karst requested that it be dismissed. (H.Rept. No. 905, 82nd Congress). On August 21, 1951, the House passed H.Res. 399, 82nd Congress, dismissing the contest (97 Congressional Rec. 18479).

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

Nature of the contest - Mr. Huber contested the election of Wm. H. 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 Mr. Huber had an adequate remedy under State law prior to election, and that the results of the election should not be overturned because of such a pre-election irregularity. (H.Rept. No. 986, 82d Congress). The House adopted H.Res. 400, 82d Congress, declaring Mr. Ayres legally elected on August 21, 1951 (97 Cong. Rec. 18479).

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

Nature of the contest - M. 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 which 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 (H.Rept. No. 904, 82d Congress). The House passed H.Res. 398, 82d Congress, dismissing the contest on August 21, 1951 (97 Cong. Rec. 10479).

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

Nature of the contest - Mr. 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 - H.Rept. 1598, 82d Congress 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 Mr. Scott had been duly elected. The House adopted H.Res. 579, 82d Congress, declaring Mr. 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, Mr. Coad addressed a letter to the Clerk of the House of Representatives stating that he had received information that Mr. 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 Mr. Dolliver was not a sufficient notice under the statute because it did not bear the written signature of Mr. Dolliver or that of his counsel. (H. Doc. No. 343, 85th Congress (1957)). On April 11, 1957 the House adopted H.Res. 230, 85th Congress declaring that the unsigned paper was not the notice required by statute (103 Congressional Rec. 5502).

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

Nature of the contest - Mr. 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, H.Rept. No. 1626, 85th Congress, page 22, 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 Mr. LeCompte had been elected. The House adopted H.Res. 353, 85th Congress, declaring Mr. LeCompte elected on June 17, 1958 (104 Congressional Rec. 11512-11517).

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

Nature of the contest - Mr 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 Mr. Hale had been elected by a plurality of the votes cast. (H.Rept. No. 2482, 85th Congress). It recommended and the House adopted, on August 12, 1958, H.Res. 676, 95th Congress, declaring Mr. Hale to have been duly elected (104 Congressional Rec. 17119).

86th Congress

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

Nature of the contest - The defeated candidate did not institute a contest. However, a Member of the House objected to the seating of Mr. Alford. The House then directed the Committee on House Administration to investigate his right to his

seat. Various irregularities and violations of law relating to the use of unsigned circulars, campaign expenditures, write-in ballots, etc., had been charged.

Disposition of the contest - After recounting the ballots and investigating all complaints, the Committee found that Mr. Alford had been duly elected. (H.Rept. No. 1172, 86th Congress). The House adopted H.Res. 380, 86th Congress, declaring Mr. Alford to have been duly elected on September 8, 1959 (105 Congressional Rec. 18610-18611).

Maloney v. Smith (H.Rept. 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.

Disposition of the contest - The Committee on House Administration concluded that the evidence did not support the charges made and recommended a resolution declaring Mr. Smith to have been duly elected. (H.Rept. 1409, 86th Congress). A resolution to this effect, H.Res. 482, 86th Congress was passed on March 24, 1960 (106 Congressional Rec. 6523).

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

Nature of the contest - Mr. 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 get out of the country until after the election (H. Doc. 123, 86th Congress).

Disposition of the contest - A subcommittee of the House Committee on Administration held a hearing on May 18, 1959 and on that date denied the petition to inaugurate a contest (Final Calendar, 86th Congress, House Committee on Administration, page 30 (1960)).

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

Nature of the contest - Not disclosed by record. On August 18, 1960, Mr. Taylor addressed a letter to the Clerk of the House stating that he had received a letter from Heinz 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. Mr. Taylor requested a resolution stating whether there was any notice of contest he was required by law to answer (H. Doc. No. 450, 86th Congress).

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 Congress, Committee on House Administration, page 31 (1960)).

87th Congress

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

Nature of the contest - Not available.

Disposition of the contest - See below.

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

See above, re: Representative Moulder. After having been asked to stand aside, Mr. Wickersham took the oath subsequent to the adoption of H.Res. 3, permitting him to do so (107 Cong. Rec. 23, 25).

***Roush v. Chambers* (H.Rept. 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 (H.Rept. 513). The Secretary of State, on the basis of corrected returns to November 15, 1960, certified that contestee Chambers had a plurality of 12 votes over contestant Roush (*supra*, p.3). The issue involved a recount by the Committee on House Administration since the laws of Indiana do not provide for recounts for a legislative office (*supra*, p.4). The question revolved around the rules to be applied by the Committee in the determination of which ballots were correctly marked and were to be counted and which were not. The Committee adopted a set of rules for determining the validity or invalidity of questionable ballots (*supra*, pp. 21-23). At the conclusion of the recount, the Committee determined that contestant Roush was the winner by 99 votes (*supra*, p. 2).

Disposition of the contest - On opening day, January 23, 1961, Representative Davis of Tennessee objected to the administration of the oath to Mr. Chambers (107 Cong. Rec. 23). Representative Davis offered a resolution (H.Res. 1) that the question of the election be referred to the Committee on House Administration, and that “until such committee shall report upon and the House decide the question of the right of either J. Edward Roush or George O. Chambers to a seat in the 87th Congress, neither shall be sworn” (107 Cong. Rec. 24). The resolution passed by a vote of 205-95 (107 Cong. Rec. 24).

A dissent, in part, was filed to H.Rept. 513, wherein issue was taken at the failure to follow precedent and to swear in a Member-elect for whom credentials had been received by the Clerk of the House with a later investigation by a House Committee (*supra*, pp. 66-67).

On June 14, 1961, the House passed, after considerable debate, H.Res. 339, declaring that the contestant Roush was duly elected (107 Cong. Rec. 10377-10391, 10160, 10186). Debate discussed the failure to swear in Mr. 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.

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. Doc. 62), and contestee Olson asked that the contest be dismissed (*Id.*). The House Committee held a hearing on February 26, 1963 (Committee on House Administration, Calendar of Business, 88th Congress, 1st Session, December 30, 1963, p. 28).

Disposition of the contest - The Committee dismissed the case on November 20, 1963 (Committee Calendar, *supra*, p. 28).

89th Congress

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

Nature of contest - This case involved a question of the standing to proceed under the House contested election statute (2 U.S.C. §§ 201-226) by a person who had not been a candidate for the House seat at the general election.

Contestant, head of a campaign committee for the defeated incumbent, Representative Robert L. Barry, filed a notice of contest under the statute on December 19, 1964. The contestant alleged that some \$187,000 had been spent on the campaign by the contestee, of which some \$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 limits a contribution by an individual during a calendar year to a candidate for election to federal office, to \$5,000. Contestant also alleged that the laws of New York State had been violated in that some 34 campaign committees had been created, only one of which had been registered in accordance with New York requirements, to which the contributions from contestee's mother and sister had been donated. Contestant alleged that the purpose of the creation of the committees was so that the contributions from contestee's mother and sister could be so distributed as to enable them superficially to be within individual contribution limitations, and gift tax limitations.

Contestant further alleged that the same person was listed as assistant treasurer of almost all of the campaign committees (111 Congressional Rec. 41-45, January 4, 1965).

Disposition of the contest - The Committee on House Administration issued no report on the contest, but reported out H.Res. 126, on January 19, 1965, which

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: under the statute, he would not be able, if he were successful, 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, 245-102 (111 Congressional 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 Congressional 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 would enable those without a serious interest in the actual determination of the election to carry on numerous, spurious contests (see Congressional Rec., supra).

***Wheadon v. Abernethy* (H.Rept. 1008), 1st District of Mississippi**

***Hamer v. Whitten* (H.Rept. 1008), 2nd District of Mississippi
Cosey, Wilson, and Johnson v. Williams (H.Rept. 1008), 3rd District of Mississippi**

***Devine v. Walker* (H.Rept. 1008), 4th District of Mississippi
Jackson v. Colmer (H.Rept. 1008), 5th District of Mississippi**

Nature of Contests - All these contests were considered simultaneously. The questions involved failure of the contestants to avail themselves of the legal steps (1) to challenge alleged discrimination among voters prior to the election and (2) to 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 contested elections statute (2 U.S.C. §§ 201-226).

The contestees had been elected at the November, 1964, general election. The contestants had been selected at an unofficial "election" held by persons in Mississippi from October 30 through November 2, 1964, in which 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 laws of the United States and 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.

Hearings were held by the Subcommittee on Elections of the Committee on House Administration, on September 13 and 14, 1965. The Committee issued a report, H.Rept. 1008, 89th Congress, 1st Session, on September 15, 1965.

The report noted that the contestees had been sworn in by vote of the House on January 4, 1965, after they had been asked to step aside. This 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 the courts, the alleged exclusion of Negroes from the ballot nor the issuance of the certificates of election to the contestees.

It noted 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.

It noted (1) that there had 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 (2) that at the same election, presidential electors and a U.S. Senator had been elected without question.

It noted, however, that a case challenging the Mississippi registration and voter laws was progressing through the United States Courts and that the question of the constitutionality of the statutes was a proper one for the courts. The report noted also that the House was the judge of the elections of its Members and 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 House, in following its rules and procedures, should dismiss the cases, the report concluded, 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 Federal 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.

The report recommended dismissing the cases.

A minority view recommended consideration of the cases on their merits rather than on the grounds of status of the contestants because under the laws in the State in 1964, the claimants could not have become candidates to avail themselves of the contested elections act.

Disposition of the contest - The House considered H.Res. 585, dismissing the contests and declaring the contestees to be entitled to their seats, on September 15,

1965 (111 Congressional 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 Congressional Rec. 24290). The resolution was adopted by a vote of 228- 143 (111 Congressional Rec. 24291).

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

Nature of contest - This case involved alleged violations of State elections law. Contestee was certified to have received 83,455 votes, and contestant, 83,036 votes at the November, 1964, election. Contestant filed a notice of contest on December 31, 1964, alleging violations of the laws of Iowa, including burning of some ballots 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.

The Subcommittee on Elections of the Committee on House Administration held hearings on the case on September 28, 1965. It issued a report, H.Rept. No. 1127, 89th Congress, 1st Session, on October 8, 1965. The Committee found that the proof presented did not sustain the charges brought and recommended dismissal of the contest.

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 held that the matter had no effect on the jurisdiction of the Committee; that the Committee would proceed to a recount if some 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, the evidence did not justify a recount since 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 - House Res. 602, dismissing the contest, was reported by the Committee on House Administration, on October 8, 1965 (H.Rept.

1127). The resolution was considered in the House on October 11, 1965 (111 Congressional Rec. 26499-26504), and was adopted.

90th Congress

***Mackay v. Blackburn* (H.Rept. 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 what they construed to be 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 then also punched out the scored block for the Congressional candidate of the opposing party. While the contested election case was under consideration, a law suit was instituted in the Georgia courts concerning the interpretation of the Georgia statutes relating to the canvassing of punch card votes. The litigation was terminated on March 30, 1967, by the Georgia Supreme Court’s denial of a writ of certiorari to the Georgia Court of Appeals which, on January 25, 1967, had held in favor of the interpretation by the election officials (*Blackburn v. Hall, et al.*, Georgia Court of Appeals, case No. 42505, decided January 25, 1967, rehearing denied February 17, 1967, certiorari denied, Supreme Court of Georgia, March 30, 1967). The judicial decision, in effect, sustained the election of the contestee.

On April 13, 1967, contestant notified the House of the withdrawal of his notice of contest.

The Committee on House Administration issued a report on June 14, 1967 (H.Rept. No. 366, 90th Congress, 1st Session), in conjunction with H.Res. 542, which provided that the contestee was the duly elected Representative from the 4th Congressional District of Georgia and was entitled to his seat.

The resolution was considered by the House on July 11, 1967, and adopted Congressional Rec., daily ed., July 11, 1967, pp. H. 8465-H. 8466).

During the debate there was brought out the fact that some difficulties had occurred in counting and handling the punch card ballots and in voter use of them in the “automatic” voting machines.

They were not deemed, however, to be crucial turning points in the determination of the case.

Disposition of the contest - At the swearing in of Members-elect to the 90th Congress on January 10, 1967, the contestee had been asked to stand aside. The House then proceeded to adopt a resolution (H.Res. 2) authorizing the oath to be administered to the contestee and providing that the question of the final right of the contest to the seat be referred to the Committee on House Administration (Congressional Rec., daily ed., January 10, 1967, pp. H 16-17). The resolution

adopted on July 11, 1967 merely declared that the contestee had been duly elected and was entitled to his seat.

Lowe v. Thompson (H.Rept. 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 (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 H.Rept. No. 365, 90th Congress, 1st Session, on the case, on June 14, 1967. The report declared that, based on precedent, since 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.

The Committee, however, acting pursuant to the authority granted to it by House Rule XI, §9 (k) (House Rules Manual, 90th Congress; House Document No. 529, 89th Congress, 2d Session) to consider questions of the election of Members of Congress, did consider the petition filed with the House by the "contestant" concerning the case, 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 "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 from this 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 pointed to what it deemed the "potential danger" in declaring an election void because of a finding of an unlawful nomination of losing candidate, since the door would be opened 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 in passing that a suit in the Georgia Court brought by the “contestant” seeking a special primary had been dismissed.

“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 withdraw from the race several days prior to the general election. The Committee declared that the “contestant” had not been a candidate on election day.

It recommended that the case be dismissed.

Disposition of the contest - On July 11, 1967, the House adopted H.Res. 541, 90th Congress, 1st Session, dismissing the contest and denying the petition of Mr. Lowe (Congressional Rec., daily ed., July 11, 1967,8464-8465).

91st Congress

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

Nature of contest - The case involved allegations of malconduct, irregularity and fraud by poll officers in some 40 precincts in the Democratic primary in which the “contestant” had unsuccessfully sought the nomination, losing to Charles Weltner. Mr. Thompson, the winner of the general election, was the candidate of the Republican party. The major issue 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 Mr. Thompson, nor did they directly involve his opponent. Additionally, the Committee found that House precedents would deny Lowe standing to contest under the statute since the “contestant” was not a candidate in the general election (H.Rept. 159).

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. 627), 38th District of California

Nature of Contest - Contestant alleged that the affidavits of registration of some 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 (H.Rept. 627, 92d Cong., 1st Sess.).

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. 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, H.Rept. 1091, 92d Cong., 2d Sess.). At a hearing held on the resolution the plaintiff in the suit acknowledged that he was not claiming the seat or alleging fraud. (H.Rept. 1091).

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

93rd Congress

No election contests.

94th Congress

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

Nature of the contest - On December 23, 1974, Mr. Samuel H. Young served Mr. Abner J. Mikva and the Clerk of the House of Representatives with notice of his intention to contest the election of Mr. Mikva. The contestant alleged that votes were obtained by fraud and through widespread violations of the law. Specifically the contestant alleged (1) that the contestant disseminated false information about the contestee prior to the election, and (2) that the contestee accepted and failed to report a campaign contribution in violation of Federal Elections Campaign Act of 1971. (H.Rept. 94-759).

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. There is a full discussion in H.Rept. 94-759 of the House precedents on (1) the contestant's burden of proof, (2)

the assumption of regularity of the returns, and (3) 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 of 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, since 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. (H.Rept. 759). On December 19, 1975, the House passed House Resolution 894 which dismissed the contest (121 Cong Rec.H 13055, daily ed., December 19, 1975).

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

Nature of the contest - By 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 half of 1% or less; the voting in the Emery/Kyros election fell within those requirements. Mr. 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, Mr. 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* to determine the validity of ballots. Further, where State law was certain, the Subcommittee would have been guided by those state laws only if it had 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* to evaluate ballots (House Rept. 760, 94th Congress, 1st Session).

Disposition of the Case - The contestant withdrew from the case in the middle of the Subcommittee's review of the ballots, and the House dismissed the election contest on December 19, 1975 (121 Congressional Rec. H. 13055, daily ed., December 19, 1975).

Wilson v. Hinsh (H.Rept. 761), 40th District of California

Nature of the contest - On January 6, 1975, Mr. Roderick J. Wilson delivered a Notice of Intent to Contest to the Clerk of the House of Representatives. The grounds of contest were numerous, such as, alleged violations of the Federal Election

Campaign Act of 1971 (P.L. 92-225) (receipt of contributions by Federal Government contractors), campaign funds violation, 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 (H.Rept. 761, 94th Congress, 1st Session). The Committee stated 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 Congressional Rec. H. 13055, daily ed., December 19, 1975).

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

Nature of the contest - On December 10, 1974, Mr. William (Bill) Mack delivered a Notice of Intention to Contest to the Clerk of the House of Representatives. The ground of contest he stated questioned the qualifications of Mr. Louis A. Stokes to be a Representative, rather than specific objections to the manner in which the campaign was conducted. The Notice alleged generally that Mr. 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. (H.Rept. 762, 94th Congress, 1st Session). On December 19, 1975, the House dismissed *Mack v. Stokes* in House Resolution 897 (121 Congressional Rec. H 13056, daily ed., December 19, 1975).

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

Nature of the Contest - On December 30, 1974, Mr. Wayne 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." (H.Rept. 763, 94th Congress, 1st Session, p. 6).

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. (H.Rept. 763, 94th Congress, 1st Session). The House, on December 19, 1975, adopted House Resolution 898 which dismissed the *Ziebarth v. Smith* case (121 Cong. Rec. H 13056, daily ed., December 19, 1975).

95th Congress

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

Nature of the Contest - Contestee, Kelly, received a majority of 42,111 votes. The contestant, Saunders, contested 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 her eventual defeat. The contestee filed a motion to dismiss. The Committee on House Administration, concluding that the contestant failed to meet the burden of proof, by particularized pleadings and evidence, that would warrant a conclusion that continuation of the contest would result in the award of the seat to her, granted the motion to dismiss.

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

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

Nature of the contest - The result of the November 2, 1976 election gave the contestee, Gammage, a 236-vote majority. A recount of the vote, based on Texas law, resulted in a 268-vote majority for the contestee. 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. A panel of the Committee met to consider a motion to dismiss. The panel concluded 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 - The Committee, by a 16 to 6 vote, adopted a motion to report H.Res. 526. The House passed the measure on May 9, 1977.

***Young v. Mikva* (H.Rept. 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. The 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. The contestant responded with a motion to dismiss. An ad hoc panel of the Committee convened to hear testimony on the motion. The panel concluded, by a 2 to 1 vote, that the contestant failed to provide sufficient and specific allegations, documents, affidavits of competent witnesses, or other materials which would enable the 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. The House passed the measure on May 9, 1977.

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

Nature of the contest - The official canvass reported that the contestee, Pursell, received 95,397 votes and the contestant, Pierce, received 95,053 votes. The contestant's majority was 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. The House passed the measure on May 9, 1977.

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

Nature of the contest - The official returns showed that the contestee, Leggett, received 75,866 votes and that the 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. The contestant filed a notice of contest, under FCEA, claiming that 14 precincts were improperly counted. The ad hoc panel examined the allegation and concluded that there were no errors involving the ballots that would support the contestant's claim. Thus, the ad hoc panel recommended 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. 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 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. 724), 5th District of Georgia

Nature of the contest - In a special election, the contestee, Fowler, received 29,898 votes and the contestant, Lowe, received 276 votes. In a runoff election, which did not include the contestant, the contestee received 54,378 votes and Lewis, a non-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 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 do 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

96th Congress

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

Nature of the contest - In the general election the contestee, Byron was elected by a majority vote of 122,374 to 14,276. The 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. The ad hoc panel 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. 226), 7th District of Maryland

Nature of the contest - The official canvass showed that the contestee, Mitchell, received 51,996 votes and the 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 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.

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. 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 recommended that the motion be granted since 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. 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. The ad hoc panel, after reviewing information collected by the Department of Justice, did find 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 - The Committee adopted by a vote of 11 to 8, a motion to report H.Res. 575, dismissing the election contest. The House passed the measure on March 4, 1980.

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

Nature of the contest - The results of the general election returned 64,661 votes for the contestee, Daschle, and 64,647 votes for the 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. The ad hoc panel, upon unanimous vote, determined that the first count should also be dismissed because it 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. The House passed the measure on March 4, 1980.

97th Congress

No election contests.

98th Congress

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

Nature of the contest - The election results showed that the contestee, Packard, received 66,444 votes, the 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. 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. Appeals Court 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 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. 58), 8th District of Indiana

Nature of the contest - The election of November 6, 1984 in the eighth congressional district of Indiana was between Democratic incumbent Frank McCloskey and Republican challenger Richard D. McIntyre. The election ended with McCloskey ahead by 72 votes. However, after a recount the Indiana Secretary of State, on December 14, 1984, certified McIntyre the winner by 34 votes.¹ On February 6, 1985, the Committee on House Administration organized a Task Force to investigate the election.²

The Task Force, after finding that Indiana's election process and recount procedure were unreliable, met to develop counting rules which would be applied in a House recount.³ Pursuant to these rules the Task Force, with the assistance of the General Accounting Office, recounted the votes from the November 6, 1984 election. This recount gave McCloskey a four-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 - The Committee adopted a motion to report H.Res. 146, dismissing the election contest. The House passed the measure on May 1, 1985.

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

Nature of the contest - The Guam Election Commission (the "Commission") reported the results as 15,725 for the contestee, Blaz, and 15,402 for the contestant, Won Pat. Due to a disparity in the vote total, the Commission ordered a recount

¹ This vote margin was based on an ongoing recount. The final state recount gave McIntyre a 418-vote margin of victory over McCloskey.

² 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. 334, 73rd Cong., 1934; (2) In re Dale Alford, H.Rept. 1172, 86th Cong., 1959; and (3) Roush v. Chambers, H.Rept. 513, 87th Cong., 1961.

³ The Task Force rejected the option of voiding the election. H.Rept. 58, 99th Cong., 1985.

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 June 24, 1985.

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

Nature of the contest - The official canvass of votes showed that the contestee, Stallings, received 101,266 votes and the contestant, Hansen, received 101,133 votes. A recount of approximately 10% of the District was conducted in all the precincts requested by the contestant. The official vote tally after the partial recount 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, and that he was denied a full recount, which would have changed the outcome of the election. The Committee found that voters were registered in accordance with Idaho law. Moreover, the Committee relied the results of an investigation by the Idaho Attorney General which concluded that there were no instances in which an unqualified person voted. Consequently, the Committee determined that there was no basis for finding that the election was tainted by illegal votes. The Committee also found the second allegation to be without foundation. In this respect, the Committee once again relied on decisions made by state officials. Both the Idaho Attorney General and the Idaho Supreme Court denied the 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 - The Committee adopted by a vote of 12 to 1, a motion to report H.Res. 272, dismissing the election contest. The House passed the measure on October 2, 1985.

100th Congress

No election contests.

101st Congress

No election contests.

102nd Congress

No election contests.

103rd Congress

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

Nature of the contest - An unofficial canvass of votes showed that the contestee, Dickey, received 113,004 votes and the 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 the 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 by the design of the voting apparatus. The Committee also heard testimony concerning past problems with the programming of voting machines. However, the expert that 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. The House passed the measure on May 25, 1993.

104th Congress

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

Nature of the contest - The official election returns showed that the contestee, Rose, received 62,670 votes and the contestant, Anderson, received 58,849 votes. The contestant filed a complaint with the North Carolina State 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 that spotlighted serious and potentially criminal violations of election laws, they were not sufficient to change the outcome of the election if proven true. 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. The House passed the measure on September 26, 1996.

Haas v. Bass (H.Rept. 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 since he was the only qualified candidate who submitted such an affidavit. The Committee 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. The House passed the measure on September 26, 1996.

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

Nature of the contest - After two recounts, the 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. However, without alleging fraud, the contestant did claim 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. A 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 - The 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. 416), 46th District of California***

Nature of the contest - On November 22, 1996 the Orange County Registrar of Voters certified the contestee, Ms. Sanchez, the winner by 984 votes. Subsequently, the contestant, Mr. Dornan, requested a recount. On December 9, 1997, as a result of the recount, Ms. 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. The House passed the resolution on February 12, 1998.

106th Congress

No election contests.

107th Congress

No election contests.

108th Congress

***Tataii v. Case* (H.Rept. 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 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. The House passed the measure on July 15, 2003.

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

Nature of the contest - The contestant filed a notice of contest under the FCEA alleging that the contestee, Mr. 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 found 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. Since 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. The House passed the measure on July 15, 2003.

109th Congress

Lyons v. Gordon (H.Rept. 57), 6th District of Tennessee

Nature of the contest - In a “virtually identical” notice of contest to the one filed and dismissed during the 108th Congress, the contestant filed a notice of contest, under the FCEA, asserting that the contestee, Mr. 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 will proceed to consider a notice of contest only if the notice states 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, the Committee noted, it will recommend dismissal of the contest. In this contest, the Committee determined that challenges to the qualifications of a Member-elect to serve in the Congress generally fall 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.

Disposition of the contest - The Committee adopted a motion to report H.Res. 239, dismissing the election contest. The House passed the measure on April 27, 2005.