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REPORT
111–68

DISMISSING THE ELECTION CONTEST RELATING TO THE OFFICE OF REPRESENTATIVE FROM THE FIRST CONGRESSIONAL DISTRICT OF HAWAII

MARCH 31, 2009.—Referred to the House Calendar and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

[To accompany H. Res. 303]

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest relating to the office of Representative from the First Congressional District of Hawaii, report the same to the House with the recommendation that the resolution be agreed to.

DISMISSING THE ELECTION CONTEST IN THE FIRST CONGRESSIONAL DISTRICT OF HAWAII

The Committee on House Administration, having had under consideration an original resolution dismissing the election contest against Neil Abercrombie, report the same to the House with the recommendation that the resolution be agreed to.

COMMITTEE ACTION

On March 25, 2009, by voice vote, a quorum being present, the Committee agreed to a motion to report the resolution favorably to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT ON BUDGET AUTHORITY AND RELATED ITEMS

The resolution does not provide new budget authority, new spending authority, new credit authority or an increase or decrease in revenues or tax expenditures. Thus, clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and the provisions of section 308(a)(1) of the Congressional Budget Act of 1974 are not applicable.

STATEMENT OF FACTS

On January 16, 2009, Steve Tataii ("Contestant") filed a Notice of Contest with the Clerk of the House of Representatives pursuant to the Federal Contested Elections Act (FCEA).[1] Contestant ran as the nominee of the Republican Party for the office of Representative to the United States Congress representing the First Congressional District of the State of Hawaii in the November 4, 2008 general election. The other principal candidate for the First Congressional District was incumbent Democrat Neil Abercrombie ("Contestee"). On November 24, 2008, the Office of Elections for the State of Hawaii certified the results of the November 4th election: Contestee received 154,208 votes (70.6%) and Contestant received 38,115 votes (17.4%), a margin of 116,093 votes. Contestant filed this Notice of Contest on January 16, 2009. In addition to the Notice of Contest, Contestant also filed an elections contest in the Supreme Court of Hawaii on November 24, 2008.

BASIS OF CONTEST

In his Notice of Contest, Contestant alleges that the official election results for the First Congressional District of Hawaii should be invalidated because Contestee deliberately avoided a debate with Contestant, thus depriving the voters in the First Congressional District of their right to watch a debate between the two candidates. Contestant alleges that, but for Contestee's alleged refusal to debate Contestant, Contestant would have won the November 4, 2008 election for the First Congressional District.

STANDING

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.[2] Contestant was the Republican nominee and his name appeared as a candidate for the First Congressional District on the official ballot for the November 4, 2008 general election, thereby satisfying the standing requirement.

TIMING/NOTICE

The Notice of Contest has been served upon Contestee and was filed with the Clerk of the House of Representatives on January 16, 2009.

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[1] 2 U.S.C. Sec. 381–96.
[2] 2 U.S.C. Sec. 382(a).

ANALYSIS

On a threshold matter, the Contestant's Notice of Contest was filed untimely with the Clerk of the House of Representatives. The FCEA states that:

> "Whoever, having been a candidate for election in the last preceding election and claiming a right to such office, intends to contest the election of a Member of the House of Representatives, shall, **within thirty days after the result of such election shall have been declared by the officer or Board of Canvassers authorized by law to declare such result**, file with the Clerk and serve upon the contestee written notice of his intention to contest such election."[3] (emphasis added)

In this instance, the State of Hawaii, Office of Elections has the authority to declare elections under state law. The certificates of election were signed by the Chief Election Officer for the State of Hawaii, Kevin B. Cronin, and were dated November 24, 2008.[4] Pursuant to Section 382(a) of FCEA, Contestant would have had to file his Notice of Contest by December 24, 2008 in order to be timely. Contestant filed his Notice of Contest with the Clerk on January 16, 2009. Contestant did file an elections contest in the Supreme Court of Hawaii in an attempt to exhaust his remedies, and accordingly, under Hawaii state law, the certificate of election for the First Congressional District was not *delivered* by the Office of Elections to the U.S. House of Representatives until a final determination was made in state court on the contest (December 16, 2008).[5] While the certificates of election were not delivered to the House of Representatives until December 16, 2008, FCEA expressly states that a Notice of Contest must be filed within thirty days of the election results being declared. Contestant's Notice of Contest was therefore untimely. However, it is acknowledged that the Contestant may have received inaccurate advice on exhausting his remedies and timely filing. Therefore, the Committee will evaluate Contestant's claims on their merits.

The Committee further finds that Contestant has failed to make a credible and specific claim that he is entitled to office. To mount a successful challenge, Contestant must proffer allegations that, if proven, would have altered the election outcome. In his Notice of Contest, Contestant's sole allegation supporting his contest is that, but for Contestee's refusal to debate him, Contestant would have won election to the First Congressional District. Contestant surmises that Contestee refused to debate him to avoid having to answer Contestee's alleged conduct prior to the 2002 primary election that Contestant alleges was false and misleading and deprived Contestant of a primary election victory, and consequently, election to the Second Congressional District in the 2002 general election. Contestee was elected to represent the First Congressional District of Hawaii in November 2008 by a margin of 116,093 votes. Contest-

[3] 2 U.S.C. Sec. 382(a).

[4] Hawaii Rev. Stat. 11–155 states that "On receipt of certified tabulations from the elections officials concerned, the chief elections officer or county clerk in county elections shall compile, certify, and release the election results after the expiration of time for bringing an election contest. The deadline to file an election contest for the November 4, 2008 general election was November 24, 2008. HRS § 11–174.5.

[5] HRS § 11–156.

ant has failed to provide any information demonstrating that a public debate was necessary to communicate with the voters in the First Congressional District; in fact, his attached evidence to his Notice of Contest demonstrates that he was able to assert his allegations against Contestee publicly and openly in on-line media. Contestant has proffered no evidence that a public debate would have altered the outcome of the November 4th election. Contestant's allegations are no more than unsupported speculation and his claims do not cast sufficient doubt on the results of the election to merit further investigation. For the Committee to come to any other conclusion would be to remove the presumption of regularity that attaches to the state certification of the election results and would make all House elections open to contest and investigation based on mere conjecture or speculation. The Contestant has failed to meet his required burden under the FCEA.[6]

CONCLUSION

For the reasons discussed above, the Committee concludes that this contest should be dismissed.

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[6] 2 U.S.C. Sec. 385.