

Election Contests and Disputes

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Research References

- 1 Hinds §§ 634–755
- 6 Cannon §§ 90–189
- 2 Deschler Ch 9
- U.S. Const. art. I § 5
- Manual § 680a

§ 1. In General

Contests for seats in the House are governed by the Federal Contested Elections Act. 2 USC §§ 381 *et seq.* This statute, enacted in 1969, sets forth the procedure by which a defeated candidate may have his claim to a seat adjudicated by the House. The act provides for the filing of notice of contest and other proceedings, for the taking of testimony of witnesses, and for a House Oversight committee hearing on the depositions and other papers that have been filed with the Clerk. 2 USC §§ 381–396. Acting on committee reports, the House, by resolution, then disposes of the case. See § 4, *infra*.

The grounds on which an election contest may be based and the defenses available to the contestee, as well as the taking of testimony and other procedures followed in determining the contest in committee, are treated elsewhere. See Deschler Ch 9 and Ch 9 Appendix for complete treatment of contested election cases beginning in the 65th Congress in 1917.

Notwithstanding the availability of the statutory election contest procedures discussed herein, some election disputes have been presented directly to the House for consideration and committee investigation. See for example

H. Rept. No. 99–58 (1985). An investigation of a challenged election has been initiated pursuant to:

- Action by the House in directly referring the question of a Member-elect’s right to a seat to the Committee on House Oversight (Deschler Ch 2 § 6).
- A protest filed by an elector of the district concerned (Deschler Ch 9 § 17.1).
- A memorial filed by another person challenging the qualifications of the Member-elect (Deschler Ch 9 § 17.3).

The latter two procedures have been rarely invoked, however, and they preceded the adoption of the modern contested election statute.

The right to a seat in the House may also be affected by House action on a motion to expel, where a sitting Member’s behavior or conduct is at issue. Such motions are discussed elsewhere in this work. See MISCONDUCT; SANCTIONS.

§ 2. Jurisdiction and Powers

Generally

The Constitution authorizes each House to be the judge of the elections, returns, and qualifications of its Members. U.S. Const. art. I § 5. Thus, the House is entitled to judge contested elections involving its seats, and is not bound by agreement of the parties or decisions of state tribunals. 6 Cannon §§ 90–92. The determination by the House as to the right to the seat is final, this being considered a nonjusticiable political question. *Roudebush v Hartke*, 405 US 15 (1972).

Pursuant to the contested election statute, the House acquires jurisdiction of an election contest upon the filing of a notice of contest by a defeated candidate. Deschler Ch 9 § 4.1. Ordinarily, the papers relating to the contest are transmitted by the Clerk to the Committee on House Oversight [formerly House Administration] pursuant to the statute (2 USC § 393(b)), without formal referral or other action by the House (Deschler Ch 9 § 4), that committee having jurisdiction of election contests under the House rules. Rule X clause 1(h)(12). However, the House itself may initiate an election investigation if a Member-elect’s right to take the oath is challenged by another Member, by referring the question to the committee. Deschler Ch 2 § 6. The House may also summarily dismiss a contest by the adoption of a resolution providing therefor. Deschler Ch 9 §§ 4.4, 4.5.

Where two persons claim the same seat from the same district, the House may refuse to permit either candidate to take the oath pending a determination of their rights by the House. Deschler Ch 9 § 4.3.

Election contests may be investigated by a special committee or by subcommittees of the Committee on House Oversight (Deschler Ch 9 §§ 5.2–5.4), or by *ad hoc* panels. See, for example, 95–1, May 9, 1977, p 13953.

Recounts of Votes

To obtain an order from the House for a recount of votes in an election contest, the contestant should show that he has exhausted state court remedies to secure a recount under state law (Deschler Ch 9 § 41.1), and that evidence and testimony have been taken in the matter (Deschler Ch 9 § 41.3). Although the committee with jurisdiction has authority to require a recount of votes for a contested seat in the House, the committee has declined to order such a recount where the highest court of the state has conducted a recount and where the contestant does not demonstrate that a recount would change the result of the election. 96–2, Mar. 4, 1980, pp 4490, 4491.

§ 3. Parties

Under the controlling statute, “a candidate for election” to the House “in the last preceding election” is given the right to initiate a contest by filing the notice required by law. 2 USC § 382a. The statute defines “candidate” to mean one whose name was on the official ballot or who received write-in votes under certain conditions. 2 USC § 381b. Thus, a candidate in the primary whose name was not on the ballot in the general election lacks the requisite standing to initiate a contest, and this was true even under the former contested election statute. Deschler Ch 9 § 19; 90–1, July 11, 1967, p 18290. Similarly, the House has dismissed a contest filed by one who was a candidate in a special election to fill a vacancy but not a candidate in the run-off election. 95–1, Oct. 27, 1977, p 35408.

A lack of standing of contestant to initiate the contest is a defense which may be raised, at the option of the contestee, by motion. 2 USC § 383(b).

§ 4. Consideration and Disposition

Precedence and Privilege

Under the Constitution (art. I § 5) and Rule XI clause 4(a), the consideration of a contested election case is of high privilege (3 Hinds §§ 2579, 2580), and takes precedence over the consideration of veto messages from the President (5 Hinds §§ 6641, 6642), questions of privilege (3 Hinds § 2626), special orders (3 Hinds § 2554), and business in order on Calendar Wednesday (8 Cannon § 2276).

Resolutions and Reports

The House generally disposes of election contests by acting on a resolution which, under the modern practice, is reported from the Committee on House Oversight. See 95–1, May 9, 1977, pp 13953, 13954 (dismissing several cases); 96–2, Mar. 4, 1980, p 4491. A resolution is used to dispose of the case even where dismissal has been agreed to by the parties pursuant to a stipulation. Deschler Ch 9 § 52.5.

Committee reports relating to the right of Members to their seats are privileged and are so reported from the floor. Rule XI clause 4(a); 87–1, June 13, 1961, p 10160; 90–1, June 14, 1967, p 15858. Resolutions disposing of an election contest are also privileged and may be called up any time (Deschler Ch 9 § 42.3; 86–1, Sept. 8, 1959, p 18610; 89–1, Sept. 17, 1965, p 24263), even though not reported from committee (Deschler Ch 9 § 42.4).

The resolution may:

- Declare one of the parties entitled to the seat. Deschler Ch 9 § 42.2; 90–1, July 11, 1967, p 18291; 99–1, Apr. 30, 1985, p 9801.
- Declare one of the parties to be not competent to bring the contest. 89–1, Jan. 19, 1965, pp 951–957.
- Declare that neither party be admitted to the seat pending a committee investigation. Deschler Ch 9 § 42.15; 99–1, Jan. 3, 1985, p 381.
- Declare the seat vacant. Deschler Ch 9 §§ 42.11, 42.12.
- Dismiss the contest. See § 5, *infra*.
- Provide for payment or reimbursement from the contingent fund for costs incurred in the contest or its investigation. Deschler Ch 9 §§ 45.1–45.6; 87–1, June 14, 1961, p 10391. See also 2 USC § 396, permitting the committee to allow any party reimbursement for reasonable expenses in the case.

§ 5. — Dismissal

A motion to dismiss will lie under the Federal Contested Elections Act to permit the contestee to interpose certain defenses to the contestant's claim or notice of contest. 2 USC § 383b. Such a motion is acted on by the House pursuant to a privileged resolution reported from the Committee on House Oversight. See 95–1, May 9, 1977, p 13953; 96–2, Mar. 4, 1980, p 4491.

Under this statute, the burden of proof is on the contestant to present sufficient evidence, even prior to the formal submission of testimony, to overcome the motion to dismiss. Deschler Ch 9 § 35.7; 95–1, May 9, 1977, pp 13953, 13954; 99–1, July 24, 1985, p 20180. A motion to dismiss will lie where the contestant has not adduced evidence or forwarded testimony in the manner prescribed by law (Deschler Ch 9 §§ 25.1–25.5) or fails to demonstrate that there is some documentable basis for his allegations (96–

1, Mar. 29, 1979, pp 6832, 6833). Under the statute, the contestant has the burden of proving sufficient evidence to show that the result of the election would be changed (95–1, May 9, 1977, p 13954), or that the House should conduct a complete recount (99–1, Oct. 2, 1985, p 25665). Evidence that the contestant received more votes than the contestee in a *prior* election is insufficient. 95–1, Oct. 27, 1977, p 35408. Merely suggesting the probability of error in the tabulation of votes, without offering evidence of a change in the election result, is likewise insufficient. 95–1, May 9, 1977, p 13954.

§ 6. — Debate and Voting; Amendment

Generally

Resolutions disposing of election contests have been determined by voice vote and without debate. Deschler Ch 9 § 42.5. Normally, however, debate on the resolution is under the hour rule, with extensions of time permitted by unanimous consent. The debate may be divided among certain Members, with the previous question to be considered as ordered at the conclusion thereof. Deschler Ch 9 § 42.9; 87–1, June 14, 1961, p 10371. The Member supporting the recommendation of the committee majority in the contest is entitled to close debate. Deschler Ch 9 § 42.8.

The resolution may be subject to demand for a division of the question if its form permits (Deschler Ch 9 § 42.14) and to a motion to recommit with instructions (Deschler Ch 9 § 42.16). If the manager of the resolution yields for an amendment, he loses the floor to the proponent of the amendment. 89–1, Sept. 17, 1965, p 24290. The resolution is not subject to a substitute amendment therefor unless the Member controlling the time for debate yields for that purpose or unless the previous question is voted down. Deschler Ch 9 § 42.17.

Participation by the Parties

The parties to an election contest may be permitted on the floor (under Rule XXXII) during the consideration of the case in the House. Deschler Ch 9 § 42.6; 89–1, Sept. 17, 1965, p 24267.

A contestee, as a sitting Member, may participate in debate on the resolution disposing of the contest (Deschler Ch 9 § 42.7) or insert remarks in the Record (89–1, Sept. 17, 1965, p 24285), and he may vote on the resolution (99–1, Oct. 2, 1985, p 25670).