Our constitutional mandate compels that we act. The role of the judge that this House must assume is not an easy one. But it entails getting the full facts of this case by conducting a recount or, alternatively, declaring this seat vacant and ordering a new election. I strongly urge the House to examine the facts of this case objectively and to reject House Resolution 304.

Mr. Speaker, I have no further requests for time, and I reserve the balance of my time.

Mr. BATES. Mr. Speaker, I would just like to commend the gentleman from California (Mr. BADHAM) on the fine way that he has handled this issue. I think certainly his position is not without merit, but I think on balance the committee and the task force have made the right decision.

Mr. Speaker, I have no further requests for time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 20. Ninety–ninth Congress, 1985–1986

§ 20.1 McCloskey v McIntyre

The general election for the office of Representative to Congress from the Eighth District of Indiana was conducted on November 6, 1984.(1) The general election candidates were Frank McCloskey (the Democratic candidate), Richard D. McIntyre (the Republican candidate), and Michael J. Fallahay (the Libertarian candidate). The initial vote count indicated that Mr. McCloskey had received 116,841 votes, Mr. McIntyre had received 116,769 votes, and Mr. Fallahay had received 769 votes.

Under Indiana law, the county clerk from each country certifies the results from that county to the Indiana Secretary of State. Initial certifications from all counties were received on November 13, 1984. On November 19 and November 26, two counties submitted corrected returns. Mr. McIntyre, however, alleged that one additional county (Gibson County) had incorrect initial vote totals, and that a new count would show a swing of 111 votes in favor of Mr. McIntyre, thus reversing the outcome of the election. The county clerk disagreed with this assessment and did not certify new totals to the Indiana Secretary of State. The Secretary of State, however, declined to certify a winner until new vote totals had been produced by Gibson County.

Mr. McIntyre filed suit with the Indiana Supreme Court seeking to compel Gibson County to submit corrected vote totals to the Secretary of State.

1. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 99–58, 99th Cong. 1st Sess.

The Indiana Supreme Court ordered all precincts in Gibson County recounted, and instructed the county clerk to certify new totals to the Indiana Secretary of State. The recount was conducted between December 3 and December 7, 1984. Under the new totals, Mr. McIntyre obtained a margin of victory of 34 votes. On December 14, 1984, the Indiana Secretary of State certified Mr. McIntyre as the winner of the election.

Prior to this certification, both candidates had requested recounts of other counties and precincts pursuant to state law. This state recount ultimately reached all precincts in 14 of the 15 counties, and 53 of the 157 precincts in the remaining county.

On November 27, 1984, Mr. McCloskey filed suit in the U.S. District Court in the Southern District of Indiana (Evansville Division), seeking to direct the Indiana Secretary of State to certify Mr. McCloskey as the winner of the election. The suit also attempted to enjoin the ongoing state recounts. On December 7, 1984, the court denied Mr. McCloskey's requests, stating that the Federal Contested Elections Act (FCEA) did not pre–empt recounts pursued under state law.

Recounts were thus continued throughout December 1984, and into January 1985. Under state law, a county circuit judge appointed three–member commissions to conduct the recounts in each county. Following the recount, the new vote totals showed that Mr. McIntyre's lead had increased to 418 votes. On February 6, 1985, the Indiana Secretary of State then informed the Clerk of the House of the new vote totals and reaffirmed the original certification of Mr. McIntyre as the winner.

As the state recount continued, Mr. McIntyre appeared on opening day of the 99th Congress with his credentials and prepared to take the oath of office with other Members–elect. However, a challenge was made to the seating of Mr. McIntyre by the Majority Leader (Rep. Jim Wright of Texas).[2] Following the swearing–in of other Members, Rep. Wright then offered a privileged resolution to address the issue of the election to the Eighth District of Indiana. That resolution provided that neither Mr. McIntyre nor Mr. McCloskey would be seated at that time, and the question of the final right to the seat would be referred to the Committee on House Administration. The resolution also authorized salary expenditures from the contingent fund of the House to both candidates during the period of the contest. The House adopted the resolution by a recorded vote of 238 yeas, 177 nays, and 11 not voting.[3]

Neither candidate in this contest attempted to file a notice of contest under the FCEA. Thus, the proceedings of this election contest did not take place under the rubric of the statute.

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2. See Precedents (Wickham) Ch. 2 § 4.1.

3. *Id.*

On February 6, 1985,[4] the Minority Leader addressed the House, and read the letter from the Indiana Secretary of State to the Clerk of the House, indicating that Mr. McIntyre had been elected by a vote of 114,278 for McIntyre to 113,860 for Mr. McCloskey. The original certificate of election was thus reaffirmed. The next day,[5] the Minority Leader offered a resolution raised as a question of the privileges of the House to permit the Speaker to administer the oath of office to Mr. McIntyre and to refer the final right to the seat to the Committee on House Administration. The House did not adopt the resolution, but instead referred it to the Committee on House Administration by a vote of 221 yeas, 180 nays, one answering "present," and 30 not voting:

PRIVILEGES OF THE HOUSE—RESOLUTION TO SEAT RICHARD D. MCINTYRE AS A MEMBER OF THE HOUSE

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 52) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 52

Whereas, Richard D. McIntyre won the November 6, 1984, election in the Eighth Congressional District of Indiana by 34 votes according to the certificates of election filed by the county clerks from the District's 15 counties; and

Whereas, the Indiana Secretary of State, Edwin J. Simcox, acting in accordance with his duties as set forth in the Indiana Code (Ann. Sec. 3–1–26–9), certified Richard D. McIntyre as the Representative from Indiana's Eighth Congressional District; and

Whereas the Clerk of the House stated on January 3, 1985 in opening the 99th Congress that he had ''prepared the official roll of the Representatives-elect'' which included McIntyre's name. The Clerk stated: ''Certificates of election covering the 435 seats in the 99th Congress have been received by the Clerk of the House of Representatives, and the names of these persons whose credentials show that they were regularly elected as Representatives in accordance with the laws of their respective States and of the United States will be called.'' McIntyre's name was called and he cast his vote for Robert H. Michel as Speaker of the House of Representatives; and

Whereas the majority of the House of Representatives on January 3, 1985 voted in House Resolution 1 not to seat Richard D. McIntyre as Representative from Indiana's Eighth Congressional District despite has certificate of election issued pursuant to the laws of Indiana; and

Whereas House Resolution 1 is contrary to the precedents of the House of Representatives in that the holder of a certificate of election not tainted by fraud or irregularities has previously been granted a prima facie right to a seat with the final right being referred to the Committee on House Administration; and

Whereas Richard D. McIntyre received 418 votes more than Francis X. McCloskey in a recount of the ballots cast in Indiana's Eighth Congressional District pursuant to Indiana Code (Ann. Sec. 3–1–27 et seq.); Now, therefore be it

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Indiana, Mr. Richard D. McIntyre.

Resolved, That the question of the final right of Mr. McIntyre to a seat in the 99th Congress is referred to the Committee on House Administration.

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4. 131 CONG. REC. 1844, 99th Cong. 1st Sess.

5. 131 CONG. REC. 2220–31, 99th Cong. 1st Sess. (Feb. 7, 1985). The minority party made two similar attempts to seat Mr. McIntyre. See H. Res. 97, 131 CONG. REC. 4277–89, 99th Cong. 1st Sess. (Mar. 4, 1985); and H. Res. 121, 131 CONG. REC. 7118–28, 99th Cong. 1st Sess. (Apr. 2, 1985).

The SPEAKER.(6) The Chair has examined the resolution offered by the gentleman from Illinois. In the opinion of the Chair, the resolution constitutes a question of the privileges of the House under article I, section 5 of the Constitution and under rule IX.

MOTION OFFERED BY MR. WRIGHT

Mr. [James] WRIGHT [of Texas]. Mr. Speaker, I offer a motion to refer.

The SPEAKER. The Clerk will report the motion.

The Clerk read as follows:

Mr. WRIGHT moves to refer the resolution to the Committee on House Administration.

The SPEAKER. The gentleman from Texas [Mr. WRIGHT] is recognized for 1 hour.

Mr. WRIGHT. Mr. Speaker, for purposes of debate only I yield 30 minutes to the gentleman from Minnesota [Mr. FRENZEL] or his designees, and pending that I yield myself such time as I may consume.

Mr. Speaker, this motion involves a disputed election between Mr. McCloskey, the Democratic candidate, and Mr. McIntyre, the Republican candidate in the Eighth District of Indiana.

On January 3, exercising its constitutional responsibility to be the judge of elections, returns, and qualifications of its own Members, the House voted to seat neither of the contested candidates and to refer the matter to the Committee on House Administration, in order that an entire, thorough, complete inquiry might be made.

Attempt now is being made to overturn that action of the House. My motion would simply refer this motion of the gentleman from Illinois to that committee which already is moving to act in a responsible way on this contest.

To do otherwise would be to express a lack of confidence in the duly constituted committees of this House. There is no reason whatsoever, Mr. Speaker, for any Member of this House to question the integrity or the intentions of the Committee on House Administration.

That committee, exercising its jurisdiction, has on numerous occasions undertaken careful and exhaustive inquiries into elections that were contested. Never once so far as I know, certainly not in my memory, has that committee been accused of having acted in a partisan way or in any way contrary to the facts.

As a matter of fact, in the last Congress a subcommittee chaired by the gentlewoman from Ohio [Ms. OAKAR] heard the case involving the gentleman from California [Mr. PACKARD] and ruled in favor of the gentleman from California [Mr. PACKARD] a Republican Member of the House.

The committee ruled on the basis of fact, and that is how the committee will rule this year, if given that privilege. The House has referred this matter to its own House committee. To take it away from the committee now would be to express disfavor of the committee, to express our lack of confidence in the integrity of the committee and in the integrity of the House procedures.

For those reasons and for reasons which will be further elucidated, I believe this matter should be returned to that committee, this motion referred to the committee, and the committee given the opportunity to act.

The chairman of that committee has given public assurances that the committee will act expeditiously. There is no intention to delay; the intention is precisely the opposite.

6. Thomas O'Neill (MA).

We intend to act soon but not sooner than the facts are in, the votes are counted, and qualified voters are given the privilege of having their votes taken into account.

Mr. [Frank] ANNUNZIO [of Illinois]. Mr. Speaker, will the majority leader yield?

Mr. WRIGHT. I yield to the gentleman from Illinois.

Mr. ANNUNZIO. I appreciate the distinguished majority leader yielding to me.

Mr. Speaker, the Committee on House Administration is well aware of its heavy responsibility in this matter. As chairman, I have absolutely no preconceived judgments about the issues that have been raised in this contested election, or about its likely outcome.

I want to assure the Members I feel confident that I speak for the other members of the committee, as well as myself, in saying that our minds are open and will remain so until all the facts are in.

To gather these facts, I am informing the House that I have already appointed a task force, with Mr. PANETTA, of California, as chairman; BILL CLAY, of Missouri, a member; and BILL THOMAS representing the minority side on this task force.

They are prepared to move as quickly as possible toward a resolution of this unfortunate situation. For my part, I want to completely assure all of my colleagues, both sides of the aisle, the citizens of the Eighth Congressional District in Indiana, that the Committee on House Administration will conduct its investigation in a manner that is thorough, complete, fair and impartial like we have done all of these years when election matters have been referred to the House Administration Committee.

I again want to pledge to you our best efforts to uphold the trust that has been placed upon us.

Mr. WRIGHT. I defer at this time to the gentleman from Minnesota [Mr. FRENZEL] for purposes of debate only.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I yield such time as he many consume to the distinguished minority leader, the gentleman from Illinois [Mr. MICHEL].

Mr. MICHEL. Mr. Speaker and my colleagues, I am offering this resolution to seat Rick McIntyre, the duly certified Congressman from the Eighth District of Indiana.

The resolution is conditional, pending a final outcome of the House Administration Committee's involvement in this matter.

Before I get to the specifics of the case, allow me to dwell for just a moment on some facts that put it in historic context. Our Library of Congress found that from 1920 to 1974, there were 11 occasions when a House race was won by fewer than 100 votes. Oddly enough, this is not the first time that the Eighth District of Indiana has been involved in a close race.

In a curious, historic irony, in 1930 incumbent Albert Vestall of the Indiana Eighth District, beat challenger Claude Bell by nine votes.

That is right. Nine votes out of 88,397 cast. Do you know what happened when Congressman Vestall won by such a tiny margin? Why his election was not even contested. But, my, how times have changed.

In the election of 1984, the people of the Eighth District of Indiana voted in another close House election. A certificate of election, based on final election night results, and the correction of two tabulating errors, was issued to Mr. McIntyre. He has since won a recount all in conformance with Indiana law, not by 9 votes, not by a count less than 100, but by 418 votes.

Mr. McIntyre is, in the eyes of the people of Indiana, a duly elected and certified representative to this House. But he is not representing the people of Indiana because this

House has barred him from doing so in an unprecedented display of raw legislative power.

The people of the Eighth District of Indiana have been summarily disenfranchised.

I am therefore introducing this resolution for two reasons: First, because what is happening to the people of the Eighth District of Indiana is wrong. It is unprecedented, it is unconstitutional and it is unjust.

Second, if the majority persists in this course, the reputation of this institution will be severely damaged,

Representative Rick McIntyre, with the certificate of election given to him by the people of Indiana, has a prima facie right to take this seat.

The House Administration Committee can pursue any line of inquiries it so desires. And I do not question the integrity of that committee or any member thereof. But while this is going on Rick McIntyre is entitled to be seated by tradition, by precedent and by law. The facts dictate that Representative Rick McIntyre should be seated. Justice demands that Representative Rick McIntyre be seated.

Mr. Speaker, we cannot content ourselves, nor can the people out in the Eighth District of Indiana be content or satisfied with the caliber of their representation, simply because House Resolution No. 1 on opening day provided for a staffed office in Washington. So what. Roughly 500,000 people have no voice or vote in the 99th Congress. They have no one to speak for them like I am speaking today. Instead they have two men clamoring to speak for them. This is not representation. It is a tragedy.

I have no quarrel with that provision of House Resolution No. 1 which directed the House Administration Committee to examine this election and report its findings to the House. That is consistent with the precedents of this great body. In fact, my resolution would defer to the Committee on House Administration to make a final determination.

Specifically, the last paragraph reads:

> *Resolved*, That the question of the final right of Mr. McIntyre to a seat in the 99th Congress is referred to the Committee on House Administration.

The language is totally consistent with section 5 of the Constitution and all of our precedents. It sets out clearly that this body can decide the final right to representation based on election results.

We also have a law—the contested elections law—which provides the mechanism by which a candidate can question the results of an election. If there is cause for questioning an election—I mean real cause, not closeness, we have had close elections, but real cause—then Mr. McCloskey could have filed a grievance under this law.

Mr. McCloskey did not file. One has to ask why?

One final point. The same law has another purpose: To ensure that the citizens of Indiana or any other State are represented in this body while a contested election is being resolved by the House Administration Committee. Here again, the law is being ignored. You cannot get away from that fact. There is a void here, a vacuum, no representation.

We always have provided heretofore that there is representation here while the House Administration Committee follows its course.

We have had an official recount. Are we now going to be told this afternoon that that recount is invalid? When will this ever cease to happen? When will we go back to Judging these issues by procedures rather than by politics?

Back in my hometown of Peoria, a former Member of this body, Abe Lincoln, once said:

> No man is good enough to govern another man without the other's consent.

And it can be applied to the case before us.

The majority is, in effect, seeking to govern the people of the Eight District of Indiana and of the State of Indiana without their consent.

I would ask Members of the majority to reconsider while there is still time and while the reputation of this House can still recover.

Mr. Speaker, I would ask that Members cast a "no" vote on the motion offered by the gentleman from Texas [Mr. WRIGHT].

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Texas [Mr. SAM B. HALL, JR.].

Mr. SAM B. HALL, JR. [of Texas]. Mr. Speaker, let me say at the outset I do not like at all to be placed in the position that I am today with my party. I am doing this because I think what we are being asked to do today is not right. I have no feeling against either one of these gentlemen. I do not know them. I know that the House Administration Committee will do a fine job in what it is constitutionally appointed to do.

My only thought Is this. I wish my colleagues to listen to me for just a moment on some dates.

This election was held on November 6. Between November 8 and November 21, Mr. McIntyre filed a petition to recount votes in eight counties. On November 27, Mr. McCloskey filed a suit to enjoin Mr. McIntyre from having a recount on the basis that the House of Representatives had the exclusive right to determine its membership and that the State of Indiana did not have the right to declare an election contest. Also, the second count in that petition was that the secretary of state be ordered to certify him, Mr. McCloskey, as a winner.

Now, this was a Federal court case. It was filed in November 1984. Judge Brooks wrote an opinion on December 7, 1984. Here is what he said. He refused to grant the relief sought by Mr. McCloskey against Mr. McIntyre. He said that he could not find any reading in the statute which gave the right of the Congress to take over the right of a contested election contest in a State. He said it in this opinion.

He also stated that he was not going to mandate that the secretary of state certify a winner. Although he did say rightfully so, that the secretary of state had a continuing obligation.

He says:

> In my reading of the Statute, it says that he has a continuing duty to recertify at any time the totals that are given to him, I think, he has a duty to recertify those totals, whatever the outcome may be.

Now, no one is questioning—certainly I am not—we are not questioning the right of the House Administration Committee to do what it is constitutionally mandated to do.

The only position I am taking here today is that we, in my opinion, do not have the right to refuse to seat Mr. McIntyre. He has been certified. He has been certified twice by the secretary of state as the winner. I do not know whether he is the winner or whether he is not. That is not the point.

We had the same type of situation, Adam Clayton Powell. Many of you are familiar with that case. The Supreme Court of the United States reversed a lower court and a circuit court, which held that we had the right to eliminate or expunge him from the membership in this body. The Supreme Court held we did not have that right and mandated that we put him back, which we did.

Mr. [Andrew] JACOBS [of Indiana]. Mr. Speaker, will the gentleman yield on that point?

Mr. SAM B. HALL, JR. Let me finish, please.

Mr. JACOBS. The gentleman is misstating the case. Will the gentleman yield on that point?

Mr. SAM B. HALL, JR. No, sir; I am not misstating. You read it.

Mr. JACOBS. I wrote a book about it. The gentleman is misstating the case.

Mr. SAM B. HALL, JR. Mr. Speaker, in the case that we have here today, we have language by this judge dealing with this specific point, and I read it. I am reading on page 3 of his opinion:

> So, they updated that. They mention specifically—

Talking about the Federal Contested Election Act, which was passed in 1969—

> That it completely overhauls and modernizes election contest procedures in the House. But nowhere does it refer to any change in the intent to preempt the States from holding their own recounts.

That has been decided.

I think the gentleman from Virginia, Mr. Abbitt, It was his testimony, and he is the one who introduced it, said that it is:

> Pure and simple, they are prescribing a procedural framework for the prosecution, defense, and disposition of contested election cases patterned upon the Federal Rules of Civil Procedure.

Now, listen to this next sentence:

> One of the other Congressmen says that a question occurs to me as to whether the Committee has dealt with the question of whether or not the certified winner of a general election would be seated pending the outcome of the contest.

That is the question we have got here today.

Here is what the judge said:

> I think Mr. Abbitt says, ''We did not intend to change any basic rule of law. This is purely and simply a procedural matter * * *

The SPEAKER. The time of the gentleman from Texas has expired.

Mr. SAM B. HALL, JR. May I have an additional 1 minute?

Mr. FRENZEL. I yield the gentleman 30 seconds.

Mr. SAM B. HALL, JR. Now, when you go back to the basic rule of law, that is that this Congress has a mandate to seat a person if he has been certified as the winner.

It is up to the House Administration Committee to make a determination as to whether or not in the future that he is or is not the winner.

I would say that if this were reversed, if Mr. McCloskey were in the same shape that Mr. McIntyre is in, he would have the same right to be seated while the House Administration Committee works its will.

I certainly think that this gentleman should be seated.

Mr. WRIGHT. May I have a statement of the time, Mr. Speaker?

The SPEAKER. The gentleman from Texas [Mr. WRIGHT] has 24 minutes remaining; the gentleman from Minnesota [Mr. FRENZEL] has 17 1/2 minutes remaining.

Mr. WRIGHT. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio [Ms. OAKAR] the chairman of a subcommittee of the Committee on House Administration.

Ms. [Mary Rose] OAKAR [of Ohio]. I thank the majority leader for yielding.

Mr. Speaker, I subscribe to the fact that this is an issue that transcends this election. This is an issue that, in my judgment, directly points to whether or not the House Administration Committee has the integrity to be fair. We voted to send the results of this election to the House Administration Committee, and our chairman is very distinguished.

Now, in the last session I had the dubious task, believe me—it is not the kind of task one seeks—to chair a task force on a contested election. It was already mentioned. The gentleman from California, a Republican Member, was being challenged in terms of whether or not the election was fair. On the committee we had the gentleman from Washington, who is a Democrat, and we had the gentleman from California [Mr. THOMAS] who was also from California and Republican. No one challenged the makeup of the committee, no one challenged whether or not we would be fair. And this election was called the most serious election violation—in southern California—in the history of that area of the State.

Mr. [Robert] WALKER [of Pennsylvania]. Mr. Speaker, will the gentlewoman yield?

Ms. OAKAR. I only have 3 minutes. If the gentleman would like to give me some time, I would be happy to extend to him that courtesy.

We had very, very serious allegations. There was the allegation that there was a mass conspiracy to deface voting booklets because one of the candidates was a write-in candidate. Fraud, theft were also alleged.

Now, we worked on this election for many, many hours. We sent our legal staff to California directly to look at the evidence, In fact. They came back with massive amounts of reading material that I personally read, and, believe me, I had better things to do with my time. And I personally, after having an extensive hearing, made the recommendation—and I am as partisan as anybody in this House—that the Republican Member continued to be certified. And that was the recommendation I initiated to my committee members.

Now, there was not one Democrat on that House Administration Committee—and, by the way, the chairman at the time was a Democrat from California, who voted against our recommendation. The House Administration has been distinguished by its fairness.

Now, I want to say to my colleagues that we are not only dealing with a contested election here.

The SPEAKER. The gentlewoman's time has expired.

Ms. OAKAR. We are dealing with the view that——

May I have 30 seconds, Mr. Majority Leader?

Mr. WRIGHT. I yield 30 seconds additionally.

Ms. OAKAR. What we are dealing with is the integrity of a committee that is objective. And that also should be counted in your vote. Do you trust the House Administration Committee to be fair?

And I suggest to you that it has always been fair and will continue to remain so and can be objective in this election, in discussing and deciding the results of the McCloskey/McIntyre contested election.

Mr. [James] PICKLE [of Texas]. Mr. Speaker, will the gentlewoman yield to me?

Ms. OAKAR. I do not know if I have further time.

Mr. PICKLE. Would the gentleman yield the gentlewoman 1 extra minute?

Mr. WRIGHT. I yield the gentlewoman an extra minute for the purpose of yielding to the gentleman from Texas.

Ms. OAKAR. I yield to the gentleman from Texas.

Mr. PICKLE. I see nothing wrong about referring this to the House Administration Committee. It is a serious question. And most of us are not familiar with all of the facts and have difficulty in passing judgment with some finality.

I am concerned, though, that if you refer this to the House Administration that it might be interpreted as a final act and a final delay, and the people, then, of Indiana, it would seem to me, from the district would be entitled to some representation.

Would the gentlewoman tell me, the chairman of the subcommittee, would she promise the House that that subcommittee would have a report back to us within 30 days, within 40 days, within some specific time? If we could have that assurance, I would say that it is perfectly proper for us to look into it. But without that assurance, I have grave doubts that we are proceeding in the right channel.

Can the gentlewoman tell us she would report to the House?

Ms. OAKAR. I am not on the task force at this time. I think that is a question for the chairman of the Committee on House Administration. But I can tell you this, that the individuals on that task force will proceed as expeditiously as possible, knowing how important it is to the House.

Mr. PICKLE. From this Member's standpoint, I see nothing would keep us from giving a report of finality within 30 or 40 days, and I would expect that if some motion were made at that time, we ought to look at it again.

Ms. OAKAR. That might be possible.

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Indiana [Mr. MYERS].

Mr. [John] MYERS of Indiana. Mr. Speaker, the more I read the more I understand why the opponents of self-government don't like us to bring up the case of Adam Clayton Powell.

The U.S. Supreme Court ruled in Powell versus McCormack that "he House is without power to exclude any Member-elect who meets the Constitution's requirements for membership." How did the Court arrive at this landmark decision? By studying the history that made this rule an essential part of the Constitution.

First, the Court studied John Wilkes, the Englishman who kept getting elected by his constituents to the House of Commons, even though the House would not seat him.

As it turns out Wilkes had quite an impact on the American colonists, who sought his advice and took as one of their slogans, "Wilkes and Liberty." Their critics called them Wilkites; they called themselves Sons of Liberty.

In fact, Wilkes and his exclusion from Parliament symbolized to colonial America, King George III's attitude about the thing the colonists craved most: self-government.

What a coincidence, then, that on the same day, John Wilkes argued against the blockade of Boston Harbor, he argued to expunge the record of his exclusion. On the exclusion issue he said:

> If . . . his constituents should differ in opinion from the majority of this House, if they should think him fit to be reelected, he ought to be admitted, because he claims his seat under the same authority by which every member holds the privilege of sitting and voting here, a delegation from the people, their free choice.
>
> . . . They are the fountain of this power. We exercise their right. By their representation only we are a House of Parliament. They have a right of choosing for themselves, not a majority here for them.

> If you can reject those disagreeable to a majority, the House of Commons will be self-created and self-existing. . . . The consequences of such a principle are dangerous in the extreme. A more forcible engine of despotism cannot be put into the hands of a minister.

Convinced that the *Wilkes* case influenced the framing of our Constitution, the Court turned next to the drafting debates, where James Madison argued strongly against giving Congress any power to exclude Representatives chosen by the people. He warned that "artificial distinctions may be devised by the stronger in order to keep out partisans of the weaker faction."

What were those artificial distinctions on January 3 that were devised to keep out Rick McIntyre while the gentleman from Idaho, whose election was formally contested, was seated?

The time of day that McIntyre election certificate was issued;

A Member's opinion that Indiana's ballot validation laws are too complicated; and

The false statement—and we all know it to be false—that the McIntyre certificate was based upon a partially completed recount.

Why weren't you told on January 3, Mr. Speaker, that Mr. McIntyre's certificate was issued when—and not until—the secretary of state had received all 15 original and correct county election certificates, and that the McIntyre certificate had nothing to do with the recount?

Why weren't you told on January 3, Mr. Speaker, that a Federal court in Indiana—with a judge appointed by President Carter—had already ruled that there had never been a basis to declare Mr. McCloskey the winner, and that the secretary of state of Indiana had acted lawfully and properly in withholding a certificate until Gibson County corrected its own arithmetic?

Why weren't you reminded on January 3, Mr. Speaker, about the debate right here in this House on the FCEA? Did you remember the assurance given us—and all Americans—by the manager of the bill? Here it is, Mr. Speaker:

> Mr. BLACKBURN. This action would not be construed as changing the present precedents, which are to the effect that the certified winner will take his seat pending the outcome of the contest?
>
> Mr. ABBITT. It does not affect the basic law one iota. It is merely intended to expedite the hearings so that the matter can be brought to a resolution as quickly as possible.

Is this why former Congressman McCloskey did not file a contest in compliance with the FCEA? Or was it because he had no basis to file?

Speaking of floor debates, a lot of history was made right here in this body relating to Adam Powell on the question of who composes this body, the voters at home or Congress itself. In fact, one of our colleagues thought it was historic enough to write a book about it. It is called "The Powell Affair, Freedom Minus One."

In the opening pages, the author takes us back to the debate on the original resolution to exclude Mr. Powell.

Where can we Americans who still crave self-Government and liberty find protection today, Mr. Speaker? Can we find it in this body?

Mr. Speaker, I ask you and the gentleman from Indiana who wrote this beautiful book to listen to what the author himself said so persuasively in that same debate:

> Mr. Speaker, those who do not study history are ill-equipped to make it. One lesson of history is that those of authority who have made historic decisions on the basis of the emotions of the moment, quite often were the ones who hindered our heritage of freedom . . .

> Mr. Speaker, we of this Select Committee . . . found jealous regard in the Constitution for the fundamental right of the people of a congressional district to choose their own representative without permission from the people of any other congressional district; and we found that in this case the better part of wisdom is to preserve a fundamental right of freedom by not setting aside the choice, wise or unwise, of the people of Mr. Powell's district . . .
>
> Mr. Speaker, we concluded that Mr. Powell is not entitled to the things this House has to give . . .
>
> But, Mr. Speaker, there is one thing that the House cannot give, and that is an appointment to represent the people of the 18th district of New York. This is the one office for which no Congress, no governor, only the governed can make a choice.
>
> In my judgment, the better part of wisdom cries out against tinkering with the fundamental right of the people to choose their representative . . .
>
> Finally, Mr. Speaker, we are not holding a popularity contest.

Mr. JACOBS own reflection on article 1, section 5 appears on page 10:

> Any high school civics student knows that Article 1 of the United States Constitution provides, ''Each House shall be the Judge of the Elections, Returns, and Qualifications of its own members.'' But surely in a constitutional democracy such a provision could not be interpreted . . . to confer upon a legislative body unlimited power to abrogate a decision by the electorate. Or could it?''

He quotes our beloved colleague, the gentleman from Arizona [Mr. UDALL]:

> Mr. Powell appears before us today with a certificate of election which is just as good as yours or mine . . . His people said that they wanted him to be their Congressman . . .
>
> I say that this [issue] is about fair play to the people Adam Powell represents. There are 450,000 people—American citizens—in Manhattan who are represented by this man. They have said that they want him to be their Congressman. You might not have made that choice, and I might not have made it. But they want him . . .
>
> I am prepared to let him sit and vote for them until we have a fair hearing . . .

Our colleague author tells us in his book that he was confronted by a young black who asked him, "Do you believe the Congress of the United States is going to apply a double standard * * * with regard to Adam Clayton Powell?" "I hope not," our author answered. "And I must say, I disagree sharply with the action taken on January 10."

Does the gentleman from Indiana disagree then with the action taken on January 3, 1985? Did the Congress of the United States apply a double standard with regard to Rick McIntyre? Will people—American citizens—from the author's own State be denied a voice in Government because of it?

Toward the end of his book, our author quoted extensively from the debate on a later vote to continue excluding Powell. Hear what he wrote about the speech by a member of Madison's "weaker faction," Mr. Wiggins of California:

> That every American could find protection in the precedent that we recommended [i.e., seating Powell], was underscored by what Chuck Wiggins said next:
>
> ''I might add, Mr. Speaker, that as a member of the minority party, I have good reason to reject the notion that my seat is subject to the whim of the majority of seated members.''

Mr. WRIGHT. Mr. Speaker, I yield 5 minutes to the distinguished dean of the Indiana delegation, the gentleman from Indiana [Mr. HAMILTON].

Mr. [Lee] HAMILTON [of Indiana]. I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in opposition to the Michel resolution.

The question before us is of the highest significance: Who will represent the people of Indiana's Eighth District in Congress? The answer to that question ought not to be decided on partisan grounds.

On January 3, 1985, the House of Representatives voted to seat neither Mr. McIntyre nor Mr. McCloskey until the Committee on House Administration exercised the House's constitutional power and conducted its own review of the eighth district congressional race.

That was not a radical decision, nor was it unprecedented. We did the fair and reasonable thing to protect the voters of the eighth district, and to preserve the integrity of the House and its constitutional prerogatives.

Let me summarize briefly the reasons for our action on January 3:

First, it was impossible on that date to tell who was the winner of the election. The race was simply too close to call. We could have seated one man or the other, only to unseat him later if the final results showed a new winner.

That action indeed would have been radical, and would have served neither the interests of the eighth district residents nor the ideals of regularity and continuity in the electoral process.

Second, it seemed likely on January 3, that the recounts then in progress would do little to help us determine who actually received more votes. The regrettable fact is that the recounts were being conducted under haphazard and inconsistent rules.

Third, article I, section 5 of the U.S. Constitution says that "Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members." This was not an election for a State or county position. We were not bound by rules adopted by State or local recount commissions. This was a Federal election, and the Constitution imposed on us the responsibility to conduct our own investigation and reach our own conclusion.

Fourth, our action on January 3 was based squarely on House precedent. I refer to the *Roush-Chambers* case, which is a clear and controlling precedent. There have been statements that *Roush-Chambers* is distinguishable and should not apply. Those statements are simply not correct. The record of the *Roush-Chambers* debate plainly reveals a strikingly similar set of facts. Mr. Chambers was the only claimant to the seat who had a certificate from the Indiana secretary of state. There are repeated references in the debate to the "duly certified Member from Indiana." Yet, because the outcome of the election was still in doubt, the House refused to seat Mr. Chambers notwithstanding his due certification. The precedent of that case is that the House may scrutinize the certificate of election and, under unusual and compelling circumstances, reject it.

Now we are asked to reverse our decision of January 3. But there is no good reason to do so. In fact, the reasons for waiting until the committee has inquired and reported are more compelling than they were a month ago. Consider them briefly:

We still cannot honestly say whether it was Mr. McIntyre of Mr. McCloskey who received more votes on November 6. Even though they have been completed, recounts conducted under 15 different sets of rules under an Indiana statute that the Republican leadership of the Indiana Senate says is "obsolete" and which the Indiana Legislature is now reforming, should not satisfy us. We do not yet know the winner in this chaotic process which led eventually to the disqualification of nearly 5,000 ballots. And we should not guess.

Some ballots were invalidated in some counties because they did not carry the handwritten initials of poll clerks. In other counties such ballots were counted. Other ballots were thrown out in some counties because they did not have precinct numbers written on them. In other counties such ballots were counted. Still other ballots were canceled merely because of the masking tape on the envelopes in which they were stored. A disproportionate number of all disqualified ballots—about 20 percent—were cast in three predominantly black precincts in the Evansville area.

Ballots were disqualified in nearly every county on the basis of some technical deficiency. There was not even a semblance of uniformity in the application of the disqualifying rules. In case after case after case, ballots were not counted even though they would have been perfectly good had they been cast a few miles away in another county. Such an extraordinary, haphazard, and inconsistent procedure for judging close elections should not be the manner of election to this House, and should not be accepted by this House.

Most of us are not comfortable with any procedure that disenfranchises large numbers of citizens. We are especially uncomfortable when we think that the disenfranchisement may change the outcome of an election. We should not favor election procedures that ignore the clear intent of the voter or otherwise compromise the electoral process.

In my view, there are four guidelines for action that should be recommended to the Committee on House Administration:

First, fair and reasonable recount rules should parallel Indiana law and practice as closely as possible. We should not attempt to get around Indiana law or practice, though we must acknowledge that they are not always clear enough to be determinative.

Second, the rules must be designed to protect against electoral fraud. The authenticity of ballots is basic to the fairness of any election. We must be assured that each ballot was cast properly.

Third, we should do our best to safe-guard the voting franchise and respect, whenever reasonably possible, the participation of voters. The recount rules should include every ballot from which the intent of the voter can reasonably be discerned. The House has traditionally applied principles which serve to give effect to the reasonably discernible intentions of the voters. That precedent should be followed here.

Fourth, the rules must be applied uniformly throughout the counties of the eighth district.

I really do not know how the application of such a set of recount rules would affect the outcome of the eighth district race. Partisanship should be no concern of ours in this case. We ought to be worried about the will of the eighth district voters and the integrity of our own actions.

We should permit the Committee on House Administration to discharge its constitutionally mandated function using fair and reasonable rules of uniform application. Accordingly, I urge you to vote against the Michel resolution.

Mr. MICHEL makes three basic arguments to support his resolution to seat Mr. McIntyre. These arguments are:

First, Mr. McIntyre won the election on election night and was properly certified at that time by the secretary of state;

Second, Mr. McIntyre won the election based on the now-completed recounts, and as a result now holds a valid certificate from Indiana;

Third, there is no House precedent for our refusal to seat Mr. McIntyre.

Let me respond briefly to these arguments:

First, Mr. McIntyre did not win the election on election night. The 15 original certificates, submitted by the 15 county clerks to the Indiana secretary of state, gave Mr. McCloskey a 72-vote margin of victory. The Indiana secretary of state, in violation of Indiana statute, refused to certify Mr. McCloskey. His refusal was based on rumors of error in the returns from one county, Gibson. However, there is nothing improper on the face of that return, and there is nothing legally improper in the return. Indiana law (I.C. 3–

1–26–9) gives the secretary of state no discretion to reject returns from the county clerks. He is not empowered to act on rumors, but is required to certify the election based on the face of the returns. Those fifteen original documents show McCloskey to be the winner.

Several days after the election, Mr. McIntyre requested that the ballots from Gibson be sealed until they could be examined to determine the source of the discrepancy in the vote totals. The ballots were opened and examined by the Gibson County recount commission. Based upon that recount, the Gibson County clerk issued an amended certification. The secretary of state immediately certified Mr. McIntyre the winner on the basis of the recount in Gibson County alone. The secretary of state subsequently refused to change that certification each time new vote totals produced by recounts in other counties showed Mr. McCloskey to be the winner.

Mr. Michel states that a Federal district court judge upheld the secretary of state's action. In fact, the judge stated that the secretary of state frustrated the processes for resolving the election by failing to certify anyone based on the original returns.

Second, The House should not accept the results produced by the county recounts. The regrettable fact is that 15 different county recount commissions adopted and applied their own sets of rules. There is not the slightest semblance of uniformity from county to county in the way these rules were applied. Ballots disqualified in one county would have been perfectly good had they been cast in another county. The effect of this haphazard application of rules is that nearly 5,000 ballots were disqualified districtwide. Such a procedure is improper for judging elections, and we should not accept it.

Mr. MICHEL and Mr. FRENZEL erroneously contend that Indiana law requires such a hodgepodge of rules. But rules relating to punchcard ballots were applied inconsistently in counties which used punchcards, just as the rules were applied inconsistently in the counties which used paper ballots. Indiana law regarding the distinction between punchcard and paper ballots is confusing in any case. As an example of this confusion, the Indiana General Assembly refused to recognize a distinction between the two types of ballots when it recently judged an election to the Indiana House of Representatives.

Mr. MICHEL himself lists instances in which inconsistent rules were applied. He attributes these inconsistencies to partisan actions designed to disqualify votes for Mr. McIntyre. Inconsistent rules were applied to disqualify votes for both Mr. McIntyre and Mr. McCloskey. The House should not be concerned for whom a disqualified ballot was cast. The House should be concerned with protecting voters. We should attempt to give equal worth to the legitimately cast ballots disqualified to Mr. McIntyre's detriment as we do to the legitimately cast ballots disqualified to Mr. McCloskey's detriment.

Third, our action on January 3 was based squarely on House precedent. There is no meaningful distinction between this case and the *Roush-Chambers* case. The record of debate in *Roush-Chambers* plainly reveals a strikingly similar set of facts. The important fact from that case is that Mr. Chambers was the only candidate for the seat who was ever certified by Indiana. There is no mention in the debate of any certificate for Mr. Roush, but there are repeated references to the "duly certified Member of Indiana"(Mr. Chambers). Both Mr. Chambers and Mr. McIntyre were the only claimants who held certificates. Yet the House refused to seat both men until the Committee on House Administration has exercised the House's constitutional power to judge the election, no withstanding their certificates. In compelling situations, the House may refuse to accept a certification from the State. The haphazard disenfranchisement of 5,000 voters is compelling justification.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from Maryland [Mrs. BENTLEY].

Mrs. [Helen] BENTLEY [of Maryland]. Mr. Speaker, as the representative of the Republican freshman class of 1984, I am here to point out that appearances are deceiving in the election contest in Indiana's Eighth Congressional District. A member of our class has been certified twice by his State and yet he is being denied his right to join us as a voting Member on the floor of the House of Representatives.

What may appear to be just a case of a contested seat, with both sides putting forth arguments to support the seating of their candidate, goes much deeper than that. Whatever the momentary advantages to the majority, seating the loser on the cynical basis of sheer force will open a Pandora's box of evils on both the Nation and on the entire Congress.

In recent years, individual Members of the Congress have brought disrepute on this body by their private actions. By seating the candidate who got the few votes, the House will now bring itself into disrepute as an institution for a base political motive.

The other party sheds crocodile tears about fairness until they see an advantage in being unfair. For years they have claimed to be the party of electoral reform, except in this body. What the majority party in this House is attempting here is both to play in the game and to referee it.

Can this be the view of the judicial function to serious people? To judge a matter does not involve being a witness. It does not allow creating facts. It certainly does not imply the creation of rules after the game is over.

The majority cannot base its position on the contested election statute. It cannot base its position on the facts. It cannot base its position on the law in Indiana, and of prime importance, it cannot base its position on the vote results in the Eighth District of Indiana. Its sole recourse is to its presumed power in having the votes to force an also-ran into a seat he had not been given by the voters of his district.

Mr. WRIGHT. Mr. Speaker, I yield 3 minutes to the gentleman from Maryland [Mr. MITCHELL].

Mr. [George] MITCHELL [of Maine]. I thank the gentleman for yielding this time to me.

Mr. Speaker, I listened very carefully to the arguments advanced by the minority leader and they were persuasive. I also listened very carefully to SAM HALL. I have a great deal of respect for both of those gentlemen. However, both failed to mention another dimension in this problem which clearly makes it a compelling issue and, therefore, forces the House to do what it must do. It is because of that compelling dimension, I must vote against your motion Mr. MICHEL, and I would urge my other colleagues to do so.

The compelling dimension for me is what appears to be a flagrant, venal violation of civil rights. Now, argue all you want, but that is an issue for me and it ought to be an issue for you if you care about this country.

The reason I raise this issue is that in Vanderburgh County we have seen some strange rules apply. Some of the ballots were rejected because the poll worker initialed them instead of a judge. Some of them were rejected because the poll worker initialed them at one point and later the judge initialed them before taking them to the election board. But the interesting thing is that of the counties involved, of the five precincts involved, two were concentrated in the black areas in the fourth ward. That is where the area of concentration was.

I would assume that there must be action taken by those local black citizens to protect their right to vote. It strains credulity to assume that these different standards were applied in those areas in Vanderburgh County as opposed to other counties where there are not concentrations of black voters.

That is the compelling reason why I think the House must act as it will act. That is the compelling reason why I cannot support Mr. MICHEL'S or Mr. HALL'S position. We are talking about the most fundamental right in this country, the thing that every President and every Congress and every elected official has urged us to do: Get people to get out and exercise their right to vote.

I suggest to you that anything that trammels or diminishes the right to vote for a given category of people is grossly violative of the principles for which we should stand. So I would urge my colleagues, if for no other issue, to vote for the majority leader's motion on the issue of the compelling problem of civil rights violations.

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Michigan [Mr. VANDER JAGT].

Mr. [Adrian] VANDER JAGT [of Michigan]. I thank the gentleman for yielding this time to me.

Mr. Speaker, the essential facts in this case are very simple, straightforward, and undisputed. Complexity and confusion serve the purpose only of those who would obscure the truth, because I honestly believe that when the truth is known and understood, you will vote to seat Rick McIntyre this afternoon, as we should have January 3.

Of course you are partisan Democrats, even as we are partisan Republicans. Of course you would like to protect one of your own and would reach as far as you reasonably can to do so, even as we would.

But I believe—no, I know that you are Americans first, and I believe when the crunch comes and the facts are known, you will subordinate partisanship to two centuries of precedents in this, the greatest deliberative body that the world has ever seen, noted even more for its fairness than its partisanship. I believe that when the crunch comes, you will vote not to sacrifice truth, justice, and fairness on the altar of partisanship, even though you have the votes to do it once the facts are known, because once the facts were known and understood by a county Democratic judge, by a Democratic Federal district judge, and by a bipartisan Indiana Supreme Court, the judges ruled unanimously in favor of Rick McIntyre, rejecting the arguments that have been raised so eloquently here today, and the ruling was upheld that Rick McIntyre was the duly certified winner In the Eighth Congressional District.

Once the facts were known to recount commissioners on the county level, three-fourths of whom were Democrats, Rick McIntyre was the winner of that recount by 415 votes. In fact, in Vanderburgh County there were 2,500 votes disallowed in predominantly blue-collar white precincts, to which McCloskey made no objection before on the same basis there were 1,000 votes disallowed in the black precincts. As a matter of fact, if you put back in every vote that was disallowed in the recount by counties, 11 out of 15 which were Democratic, McIntyre wins by 34 votes.

No matter how partisan you are, you cannot escape four undisputed simple facts. First, on election night results, Rick McIntyre was the winner.

Fact No. 2: On the basis of completed and corrected totals from the counties, all of them certified to the secretary of state as complete and correct, McIntyre was the winner and was so certified.

Fact No. 3: On the basis of the recount, McIntyre is the winner by 450 votes.

And fact No. 4: For two centuries, in 82 out of 82 cases, when there was a disputed election, the individual who had the due certificate of election from that State was seated pending the resolution of the controversy or of the recount.

Now, the case has been made that there is one exception, and in that exception from Indiana there were two people who showed up, each of them had a certificate of election,

and the House wisely said, "You both stand aside until we can figure out which has the valid certificate of election from that State."

It is a little bit like an umpire in a baseball game calling "Strike three, you're out." No matter how much you might disagree with the call on that pitch, it stands because the umpire is duly authorized to make that call. Now, in elections, unlike in baseball game, there is an appeals process called recount or referral to the House Administration Committee, and that is fine. But the original call by the duly authorized umpire or official of that State stands until such time as there is an overwhelming case to reverse that original decision, a case beyond on testimony, not press releases, on evidence taken under oath, not on charges and claims.

It seems to me that we have a clear-cut case here of whether or not we are going to undo a mistake that was made on January 3 when, for the first time in two centuries, we refused to seat a duly authorized winner.

The majority made the case on January 3 that "We can't seat him because there is a recount that is in process, and it would be premature," and the argument was made very persuasively that we ought to wait until the recount is over. The recount is over, the final count is in, and McIntyre is an even bigger winner. That excuse is gone.

Mr. Speaker, let us seat him as we should do under the Constitution.

Mr. WRIGHT. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana [Mr. JACOBS].

Mr. JACOBS. Mr. Speaker, first I would like to correct the first fact of my friend, the gentleman from Michigan, that on election night the Republican candidate was declared the winner. The fact——

Mr. VANDER JAGT. Mr. Speaker, will the gentleman yield?

Mr. JACOBS. Of course not. I only have 2 minutes.

Mr. VANDER JAGT. You just made a misstatement of fact as to what I said. Could I correct it?

The SPEAKER. The gentleman from Indiana [Mr. JACOBS] controls the time.

Mr. JACOBS. Mr. Speaker, is this the same gentleman who was calling for fairness? I only have 2 minutes.

The fact is that 15 counties certified their votes and Mr. McCloskey was the winner by 72 votes. The fact is that the Republican secretary of state-

Mr. VANDER JAGT. Mr. Speaker, will the gentleman yield?

Mr. JACOBS. Mr. Speaker, could I have regular order, please? I did not badger the gentleman from Michigan when he was stating his facts.

The fact is that the secretary of state waited until a correction was made in one county before certifying. The fact further is that he certified before the recount was done.

Another fact, is that in the Indiana State Legislature right now there is a contested election, and in that contested election the House of Representatives has thrown out the very rules on which this recount relied and counted all the votes and seated the Republican by a majority of Republican votes in the State house of representatives.

The other fact is about Powell versus McCormack. I have great affection for the gentleman from Texas, and I am sure the error was unintentional, but Powell versus McCormack turned on whether the House of Representatives, by a simple majority vote, could refuse to seat a person whose votes were not in contest, whose citizenship of the State from which he was elected was not in contest, and whose citizenship of the United States for 7 years, as provided by the Constitution, was not in controversy. The controversy was

whether he was a good guy or a bad guy, and the U.S. Supreme Court held that the House of Representatives by a simple majority vote could not make that judgment, they would have to do it by a two-thirds vote. The only judgment they could make by a simple majority vote would be who got the most votes and whether the person was qualified in the other two respects I mentioned.

Let me finally say this, Mr. Speaker: I have been disillusioned today. I have always had a profound respect for my Republican friends and their cold efficiency, if nothing else, and to think that they would have to disenfranchise 5,000 of my fellow Hoosiers in order for their man to win by only 400 votes Is disillusioning.

Mr. FRENZEL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from California [Mr. THOMAS].

Mr. [William] THOMAS of California. Mr. Speaker, I feel compelled to take the well as a member of the task force charged under House Resolution 1 to get to the bottom of this election question in Indiana's Eighth District.

On January 3, a prudent person could well have taken a wait-and-see attitude and said, "Give Indiana the benefit of the doubt, let them recount, don't seat anyone for the time being." Today that process is behind us. Indiana has recounted. Today the prudent choice Is to seat Mr. McIntyre conditionally pending the outcome of the task force's investigation, which for me will be guided by a requirement that the political chips will fall where they may.

Mr. Speaker, for me, my personal integrity, this institution's integrity and my oath of office are at stake. If we seat Mr. McIntyre conditionally, this House loses nothing. Our power is absolute in this area. But when you exercise absolute power, you should be absolutely sure.

By voting not to seat today, you repudiate Indiana's recount statutes; you repudiate the citizens of Indiana, white and black, Republican and Democrat, who participated in that recount procedure; you condemn them without a hearing; you reject Indiana's efforts as unfair, corrupt, biased, or prejudiced without letting them present their case.

This is what the task force is supposed to do and will do. Let us examine the facts in an orderly forum under an orderly process. Would you want anything less for your State and your people?

If you know that the election and the recount in Indiana's Eighth Congressional District was so flawed by design or accident as to be repudiated now on this floor, then vote no to seat. But if you do not know with absolute certainty, if you think that an orderly investigation of the facts, at no risk to this institution and its powers, is the very minimum that you would want for your State and your people, then you must vote to seat Mr. McIntyre.

Seat Mr. McIntyre conditionally and let those of us narrowly charged with the awesome duty of protecting our free and fair vote do so in a forum where everyone's rights can be fully exercised. A vote to seat protects all of us. A vote not to seat puts us all at risk individually, institutionally and constitutionally. When you vote, ask yourself, are you absolutely sure.

Mr. WRIGHT. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Illinois [Mrs. COLLINS].

Mrs. [Cardiss] COLLINS [of Illinois]. Mr. Speaker, I am outraged by the disenfranchisement of 5,000 black voters in Indiana during the Indiana election under discussion today. These uncounted votes came from three to four election precincts which were predominantly black. It is obvious which candidate would have gained these votes. Thus, it is equally obvious which party was responsible for not counting them.

I believe that this act of disenfranchisement is more important than even the final disposition of the House seat in question. For it does not matter who serves in Congress if all the people are not permitted their constitutional right to vote.

I am particularly angered by the fact that black votes were singled out as the ones that did not count. This has happened so many times in our history-yet I refuse to accept this injustice.

At best, the inconsistent and contradictory standards applied by some of the 15 counties in the recount were the result of inadvertent mistakes on the part of election officials. At worst, they are a blatant attempt on the part of the Republicans to steal the election.

If House Democrats wanted to be partisan, they could have seated Frank McCloskey on January 3 on the basis of his winning margin on election night. We did not do that. Instead, we referred the matter to the House Administration Committee.

In doing so, the House has simply fulfilled its constitutional responsibility to judge the elections, returns, and qualifications of its own Members. The House is not imposing any additional qualifications on its Members, and is therefore in compliance with the Supreme Court's rulings on this matter.

Instead by referring this matter to committee, the House is attempting to make certain that the election procedures were fair and that the candidate receiving the most votes is seated. I have complete faith that the House Administration Committee will act with speed and integrity to decide which candidate in this contested election actually received the most votes.

Have we returned to the days of poll taxes, property requirements for voting, and other ruses to keep the black community's voice from being heard? Are we back again at the days of Jim Crow?

No, we are not returning to the methods of the past but, just the same, I fear we are going back to the discrimination that has so colored voting rights in this Nation.

Haven't we learned that we cannot take away any citizen's vote without threatening every citizen's vote? If Indiana throws out black votes today who can predict what State will throw out the votes of another group in the next election.

This is truly a frightening precedent that the vote counters in Indiana set back on November 6, 1984. It will not go unnoticed or unchallenged. Black and all other voters will not be disenfranchised for anybody's political advantage.

Listening to this debate, I am greatly disturbed by this unjust attempt to deny Representative McCloskey his seat in Congress. It is the Republicans, not the Democrats, who are distorting the election results and recount process for partisan advantage.

Mr. WRIGHT. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. LAFALCE].

Mr. [Joseph] LAFALCE [of New York]. Mr. Speaker, we must act as judges rather than as partisans in this case. That is why I called up BOB MICHEL'S office and said, "Send me every piece of information you have on this case so I can sit as a judge rather than as a partisan."

There is one issue, and it is not whether we should seat Mr. McIntyre permanently, but whether we should seat him temporarily, and I understand that.

It is my judgment we ought not to. There are precedents going each way, precedents where we have seated individuals temporarily and where we have not.

What are the deciding factors in this case which should lead us not to seat him? I think two.

First of all, the certification in question that we are dealing with, except that Mr. McIntyre won by about 400 votes or so, came after this House voted to give jurisdiction on the issue to the House Administration Committee, and I do not think we should be backtracking.

Second, it is the nature of Indiana's law and practices. The fact of the matter is that they do have approximately 15 different standards. Given the conjunction of those two circumstances that we already assumed jurisdiction prior to this certification and the fact that they used 15 different sets of standards in determining the merit of the various ballots chosen, we ought not to seat temporarily. We ought to wait until the House Administration Committee judiciously renders Its final nonpartisan decision.

Mr. FRENZEL. Mr. Speaker, the minority in this House is accustomed to being kicked around by majority Democrats. In the more than 14 years I've been here, that's been the rule in everything we do.

Republicans who make up 42 percent of the House get only about 20 percent of its committee staff. The majority Democrat caucus has demanded extraordinary majorities on all committees. At one time they required a 2-to-l-plus-1 ratio on conference committees. That meant Republicans who never had less than 35 percent of the House frequently had less than 25 percent representation on conference committees.

This session, the committee ratios have been improved, but the most important committees, Ways and Means, Appropriations, and Rules still have indefensible, distorted committee ratios designed to cheat Republicans out of whatever modest victories they have won in the last election. Yesterday the minority on Judiciary Committee had to walk out of committee to dramatize the spiteful 2-to-1-plus-1 ratio on subcommittees.

Our House procedures are slanted to keep the minority suppressed. Probably alone among parliamentary bodies, the House allows its committees to do business with less than a 50-percent quorum. The minority's right to demand a quorum on the floor has been substantially reduced.

When minority amendments to appropriations bills were occasionally being passed, majority Democrats made such amendments out of order. When other Republican amendments looked attractive, the majority used its 2-to-1-plus-1 majority on the Rules Committee to pass rules foreclosing debate and limiting amendments.

These abuses of majority control are just the way things are here. Most Democrats don't even think about it. They think the minority was created to be abused by the majority. They don't think of their conduct as abusive. They think it is the natural order.

Against this historical background of suppression comes the McIntyre case. I suspect most Members don't know much about it. Democrats who don't understand the facts and fundamentals did, and may again, simply blindly follow their leadership in the mistaken notion that this is just another opportunity to slap down the minority.

But this isn't just another case. It is the ultimate abuse of representative government in our Republic. A member-elect of this House, duly elected and certified under State laws of Indiana-then duly recertified and reaffirmed by a careful recount process under a recent State law-has been denied his seat.

His constituents have been abused and insulted. The State of Indiana has been abused and insulted. This House has been degraded. The Constitution has been defiled.

And to what purpose? Plain and simple, it is to steal an election. The purpose is to take unlawfully a seat in Congress from a Republican who won it, so that the seat can be given to a Democrat who lost the election.

On January 3, I called this a naked abuse of power by an arrogant, ruthless majority. After the completion of the recount, the majority leader's motion seems to make that description a timid one.

Make no mistake about it. That was no procedural vote on January 3. This is no simple procedural vote today, nor is it a little partisan kick at the minority to keep it from acting uppity. It's a supervote, a blockbuster.

It's a vote where each of you can sustain, or overturn, an atrocity, a rape of our fundamental theory of elective government. The vote on January 3 was unprecedented. The new precedent the House set then puts every seat in every State where the election was close in jeopardy.

That vote pitted the House majority Democrats against the people of Indiana, the State of Indiana, and against the very foundations of this Republic. The people, the State, and the Republic lost.

When historians write about this case, it will probably be subtitled, "The House versus the State of Indiana." But, after this precedent, it could be any State, mine or yours. In my judgment, this case should be titled, "House Democrats versus Elective Government."

On January 3, I gave some examples why this case differed markedly from the Roush case. I repeat them now for the record: First, there is a clear certificated winner here; second, there is no question about who won; third, there are no allegations of fraud; fourth, there has been no contest filed under our FCEA; fifth, there is a modern recount law and it has affirmed the McIntyre victory; sixth, the House now has a FCEA.

Derchler's precedents clearly identifies the Roush case (ch. 8-16.2) as one where a certificate of election was contradicted. If anyone believes the Roush case is a reasonable precedent, it can only mean they have not studied either case, or the events which occurred in between.

No amount of partisan sophistry can erode the fact that Congressman-elect McIntyre was elected on November 6—that he received an election certificated from the State of Indiana—and that he should be seated. No other Member of this House has been denied a seat when the certification process has been clear and unchallenged.

Then came the clincher. On February 5, this House was officially notified that a recount, under the laws of the State of Indiana, supervised by judges in each of the 15 counties, conducted by recount commissioners chosen by the courts, has been completed. The secretary of state writes that the recount reaffirms the earlier certification of Congressman-elect McIntyre.

During the debate on January 3, proponents of the resolution to deny McIntyre his seat, said the situation was confused because a recount was in process. I wasn't a bit confused. But, if any other Member was, there ought to be no need for confusion now after the recount.

Having lost the election, having lost the attempt to confuse the election result by claiming victory before corrected county returns were filed, and having lost the recount, election stealers are, of course, still trying to spread more confusion.

They say Republicans controlled and subverted the recount in nefarious ways. That doesn't wash because the county judges appoint recount commissioners. In Vanderburgh County, in which most changes were made in the recount, and in which McCloskey forces allege shenanigans, the Democrat county judge selected 2 Democrats and 1 Republican as recount commissioners.

The most aggressive Democrat commissioner there insisted on strict compliance with Indiana law. Hundreds of ballots, particularly absentee ballots for McIntyre, were declared invalid without a peep out of the McCloskey forces. Later, when several hundred ballots in black precincts were Invalidated because the law requires punch card ballots

to carry precinct numbers, the McCloskey forces wailed that Republicans had done something wrong.

The problem here is that every time the McCloskey crowd cries foul, its allegations are promptly refuted, but it then promptly raises another specious complaint, That's ridiculous. The burden of proof is not on McIntyre. He was elected. He was certified.

The burden of proof Is on the loser. The loser has only blown smoke. He has not put forward convincing proof that the McIntyre certificate and reaffirmation is flawed. He lost first in the election, then in court, and then in the recount. The only place he can win is in this House, and only then if the House majority Democrats are shameless enough to declare a loser the winner.

The district court's response to McCloskey is instructive here. The court said if it looked at all the county reports, McCloskey loses. If it looked at the Gibson recount, he loses. His remedy lies in the Federal Contested Elections Act.

Despite what the court told him, McCloskey did not file a contest under that act. He did not do it because he had no case. Instead, he is now trying to frustrate that act by appealing to his friends in the House majority. The only way he can succeed-through confusion.

It's hard to be unemotional, dispassionate, and calm while being mugged. If I sound emotional, It is because I am. This is not garden variety, minor league suppression of the minority. This is not run-of-the-mill partisan game playing. This is murder.

If you don't understand this vote, please find someone who can explain it to you. Some of you are going to be terribly embarrassed, and not just by the lawsuits that will inevitably follow a vote to deny again the seat legally won by Richard McIntyre.

Please think about what representative government means. Then vote to seat this lawfully elected Congressman.

Mr. [Trent] LOTT [of Mississippi]. Mr. Speaker, in reviewing House precedents, I went back to volume one of Hinds' Precedents which was published in 1907. There you will find in chapter 18 case after case after case in which the precedent is upheld, and I quote, that "The House admits on his prima facie showing and without regard to final right, a Member-elect from a recognized constituency whose credentials are in due form and whose qualifications are unquestioned."

But in reading over those earlier cases, the more human and institutional aspect of this precedent was brought home in the debates of those who have preceded us in this Chamber. Perhaps the most compelling case was an 1871 challenge in which someone objected to the seating of a minority party Member, even though his credentials were in order. A Member of the majority party, Congressman Dawes of Massachusetts, who served on the elections committee, rose in the well to defend the temporary right of his challenged minority party Member to a seat. To quote from Congressman Dawes' remarks:

> Sir, I, as the organ of the Committee on Elections for twelve years, have time and again so stated . . . that the certificate of a Member, where there was no allegation against his eligibility, of his lack of loyalty, or other ineligibility, entitled him to be sworn in.

Mr. Dawes went on, and again I quote:

> It has been the struggle during all these disturbed times of that Committee on Elections to hold to the precedents and to the law against passion and against prejudice, so that if the party should ever fall into a minority, they should have no precedent of their own making to be brought up against them to their own great injury.

My colleagues, what are we doing here? What about the constitutional right of the people of the Eighth District of Indiana, to have a representative in the body? Where will it end? Will winners of close elections summarily not be seated if he or she is of the wrong party? Will it eventually extend to positions taken in campaigns, or primary results? Mr. Speaker, it is wrong not to seat Congressman-elect McIntyre.

And Mr. Dawes concluded his remarks by beseeching his majority party colleagues, and I quote:

> Now, with nothing to be gained, but with everything to be lost, by the precedent now sought to be established, I entreat the House to adhere to the ancient rule.

Mr. Dawes prevailed in that instance as the House voted 42-147 against the motion not to seat the challenged Member.

Mr. FRENZEL. Mr. Speaker, how much time do I have?

The SPEAKER. The gentleman has 2 1/2 minutes remaining.

Mr. FRENZEL. Mr. Speaker, I yield myself the remaining time.

GENERAL LEAVE

Mr. FRENZEL. Mr. Speaker, I ask unanimous consent that all Members may be allowed 5 legislative days in which to revise and extend their remarks on the item of business presently under consideration.

The SPEAKER. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. FRENZEL. Now, Mr. Speaker, there is not time to do everything. First let us talk about the 5,000 invalidated votes that Republicans stole; 96 percent of the invalidated votes in the recount were done by a recount commission appointed with 2-to-1 Democrats, by a Democrat judge, hardly a Republican shenanigan.

With respect to the allegation of the gentleman from Indiana [Mr. HAMILTON] that there are different rules, of course there are different rules. If the gentleman knew his own State law he would know they have rules for paper ballots, punchcards, and machines. Six counties were on punchcards, six were on machines, and three on paper ballots. Of course they were different.

With respect to the disenfranchisement of black voters, the judge, the Democrat judge, instructed the 2-to-1 recount commissioners on Indiana law and on the Supreme Court decisions which related to it.

Punchcards, when they do not have anything on them other than a punch in Indiana have got to be thrown out. That law was followed scrupulously.

Finally let me say that all these items are smoke being blown over the problem by the McCloskey forces. McIntyre has no burden of proof. He won. McCloskey has the burden of proof. He lost the election. He lost in district court and he lost the recount. The only way McCloskey can win is if he confuses his cronies so that they violate the laws of the United States and the State of Indiana and vote him into the Congress.

This is not a procedural vote. It is not a vote on the integrity of any committee. It Is not the usual political squabble. It is not just Democrats picking on Republicans so the suppressed minority will not get uppity.

This is a blockbuster vote. This is murder. This is a rape of a system. The issue is the ultimate abuse of representative government. We have an elected, certified Member.

Mr. WRIGHT. Mr. Speaker——

Mr. FRENZEL. Mr. Speaker, I did not yield to the gentleman. Was he making a point of order?

The SPEAKER. The Chair would probably understand, as does the gentleman, what the gentleman from Texas was doing. He was questioning whether the words should be taken down or not. But no point of order was made.

The gentleman from Minnesota will continue.

Mr. FRENZEL. Mr. Speaker, may I ask the Speaker If I might get an appropriate amount of time extra, as the gentleman from Texas did?

The SPEAKER. The gentleman will continue.

Mr. FRENZEL. I thank the Speaker. If I may continue.

The SPEAKER. The remarks of the gentleman from Texas are not taken out of the time of the gentleman from Minnesota.

Mr. FRENZEL. Mr. Speaker, an elected certified Member of Congress whose certification has been reaffirmed by a recount under the appropriate State law has been voted once in an atrocity perpetrated by this House not to take the seat which he himself won. If we reaffirm that outrage today we are bringing further shame upon the House.

I would ask, I would beg, I would implore every Member of the House to look at the facts. Forget about your partisan inclinations. Think about what representative government means to you. Think about what your constituents think when they cast a vote for you or for your opponent in an election.

Having completed that meditation, I would respectfully request and suggest that every Member of this House vote down the motion to refer and to vote to seat Rick McIntyre, the rightful winner in Indiana's Eighth District election.

The SPEAKER. The time of the gentleman from Minnesota [Mr. FRENZEL] has expired.

The Chair recognizes the gentleman from Texas [Mr. WRIGHT].

Mr. WRIGHT. Mr. Speaker, there has been a veritable rhetorical orgy attempting to portray what is being done here today and what was done on January 3 as the theft of an election or as some surreptitious attempt to seat a Democrat because he is a Democrat. Let us get it real clear.

We are not trying to seat anybody today. We are trying to allow the orderly procedures of the House to be followed. This House voted on January 3 that the matter should be referred to the House Committee on Administration. It was so referred.

Now, lest anybody think that committee, which has an unblemished record for nonpartisanship, plans any delays in its findings, I want to yield to the chairman of that committee or to the gentleman from Washington [Mr. FOLEY] who is a member of that committee to give us assurances that it intends to act and report back if possible within 45 days.

Mr. ANNUNZIO. Mr. Speaker, will the gentleman yield?

Mr. WRIGHT. I yield for that purpose, I do.

Mr. ANNUNZIO. Mr. Speaker, as the gentleman knows, in an earlier statement I have instructed this task force to move as quickly as possible toward a resolution of this unfortunate situation. As chairman of the full committee, I have already consulted with the gentleman from California [Mr. PANETTA], our colleague, who is chairman of the task force, and I have asked him not only to move as quickly as possible toward a resolution of this problem, but to complete its work within 45 days on or before April 30.

Mr. WRIGHT. Mr. Speaker, I thank the gentleman for that assurance.

Mr. [Leon] PANETTA [of California]. Mr. Speaker, will the gentleman yield?

Mr. WRIGHT. I will yield to the gentleman who is the chairman of the subcommittee.

Mr. PANETTA. I thank the gentleman.

Mr. SPEAKER. For what purpose does the gentleman from Indiana rise?

Mr. MYERS of Indiana. Mr. Speaker, I ask for a parliamentary inquiry.

The SPEAKER. Will the gentleman yield for that purpose?

Mr. WRIGHT. I do not yield for that purpose. Mr. Speaker. I have already yielded to the gentleman from California who is chairman of the task force investigating this election contest.

The SPEAKER. The gentleman from California will kindly stand at the microphone and be on his feet.

Mr. PANETTA. I thank the gentleman for yielding. I had not intended to speak on this issue because I have the responsibility on the task force to look at this issue. I consider this one of the most serious responsibilities that I have assumed since becoming a Member of this institution.

It is my approach that this matter will be handled expeditiously and on a bipartisan basis because we do have to set common procedures and determine the vote.

I am in concurrence with the chairman and have indicated to the chairman that it is our intent that within 45 days to attempt to report back to the House, assuming that we have cooperation within the task force.

Mr. WRIGHT. I thank the gentleman for that statement.

Mr. Speaker, I want to address myself in the few remaining moments to the questions that have been raised.

First is a statement on the part of the minority that somehow we are breaking precedent. That, of course, is not true. It is not the first time we have refused to seat either claimant, notwithstanding the possession by one of a certificate.

In 1961, in the contest between Roush and Chambers, it was stated clearly on the House floor by the then minority leader, Mr. Halleck from Indiana, that Mr. Chambers has a certificate of election from the State of Indiana and should be seated. In that case the House wisely chose to seat neither Mr. Chambers and Mr. Roush, and pursuant to the inquiry and the counting of all of the votes, Mr. Roush was declared the due winner.

Citing Deschler's Precedents:

> Thus the adoption of House Resolution 1 automatically nullified the certificate of election which had been issued by the Governor of Indiana.

Further citing Deschler's Precedents, and I think this is vital:

> Although the House of Representatives generally follows State law and the rulings of State courts in resolving election contests, this is not necessarily so with respect to the validity of ballots where the intention of the voter is clear and there is no evidence of fraud.

What is at issue here today is the insistence of the House Administration Committee that all ballots of all qualified voters—Republican, Democrat, or what have you—shall be counted. That is a sacred right.

This is an unusual case. More than 5,000 voters were systematically disenfranchised upon often flimsy technicalities. Now, is it not important that those 5,000 voters shall have their ballots counted? I do not know who the winner will be. I do not think members of the committee know who the winner will be.

The gentleman from Michigan [Mr. VANDER JAGT] has asserted that if all of the ballots are counted then Mr. McIntyre will be the winner. If that is the case, so be it. But let

us have the ballots counted. That is the most sacred thing available in this democracy of ours.

Let me cite some more precedents from law, the very State of Indiana itself. The Indiana Supreme Court has held that a precinct clerk's initials do not need to be inscribed on a ballot; yet many of these uncounted ballots were disallowed on that ground. The Indiana State Legislature, acting very recently, overruled an earlier local election commission ruling in another contest. The legislature held that strict adherence to this requirement was unfair to the voters.

These people have been disenfranchised through no fault of their own, Mr. Speaker. I should like to recite the precedent in Moss versus Rhea, which held in another case that the failure of the clerks to initial the ballots was a mistake of which the voter himself was not a participant, and that the ballots should be counted.

Further, from McCrary, a Treatise on the Law of Elections, 1897:

> Acts of election officials are merely directory and the voter will not be disenfranchised for failure of these officials to perform their duty.

Further, in the case of Taylor versus England, 6 Cannon's Precedents, and this is a critical case:

> The House of Representatives should not consider itself obligated to follow the drastic statute of the State of West Virginia.

Another instance of another State.

> Under the provisions of which all ballots not personally signed by the clerks of election in strict compliance with the manner prescribed had been rejected, but should retain the discretionary right to follow the rules of endeavoring to discover the clear intention of the voter.

That is what is sacred. That is what is at issue. The intent of the voter, and his or her right to be counted.

If we declare a winner today before those votes have been counted, then we will be ratifying decisions which disenfranchised more the 5,000 Indiana voters.

No question has been raised so far as I am able to discern, but that those voters were qualified voters. No question has arisen alleging fraud. The voters came to the polls. They voted. Thousands of their votes were disallowed. That Is the question which requires B, committee investigation and finding.

The SPEAKER. All time has expired.

Mr. WRIGHT. Mr. Speaker, I move the previous question on the motion to refer.

PARLIAMENTARY INQUIRY

Mr. FRENZEL. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. FRENZEL. Mr. Speaker, my inquiry is will the Speaker protect my request to strike the intrusion into my discussion by the distinguished majority leader, the gentleman from Texas [Mr. WRIGHT], under Deschler's Precedents, and this is volume 8, section 24.65, which says that——

> A Member desiring to interrupt another in debate should address the Chair for permission. If the Member having the floor declines to yield, he may strike from the record.

The SPEAKER. As to the remarks of the gentleman from Texas [Mr. WRIGHT], which were not a point of order in view of the fact that the gentleman from Minnesota [Mr.

FRENZEL] had the time and did not yield to the gentleman from Texas [Mr. WRIGHT], the remarks of the gentleman from Texas [Mr. WRIGHT] will not be printed in the RECORD.

Mr. FRENZEL. I thank the Speaker.

The SPEAKER. The question is on ordering the previous question.

The previous question was ordered.

The Clerk will report the motion to refer.

The Clerk read as follows:

Mr. WRIGHT moves to refer the resolution to the Committee on House Administration.

The SPEAKER. The question is on the motion to refer offered by the gentleman from Texas [Mr. WRIGHT].

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 221, nays 180, answered "present" 1, not voting 30, as follows:

[Roll No. 9] . . .

Mr. REGULA changed his vote from "yea" to "nay."

So the motion to refer was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

On February 6, 1985, the Committee on House Administration appointed a task force of three Members to investigate the circumstances of the election. The committee did not impound or subpoena the ballots at issue, but relied on state procedures that ensured the security of the ballots. The task force informed all county clerks that the committee was investigating the matter, and that all documents relating to the election should be safeguarded.

On February 21, 1985, the task force adopted an organizational memorandum outlining the procedures that it would abide by in determining the final right to the seat for the Eighth District of Indiana. Included in this memorandum were ballot counting rules for recounting ballots and resolving issues surrounding disputed ballots. The task force was mindful of two alleged deficiencies with the state recount procedures: (1) that overly–stringent application of ballot counting rules invalidated many legal ballots; and (2) that ballot counting rules varied considerably from county to county.[7]

The committee identified 22 different categories of problematic ballots that, under state law, could be subject to invalidation. The committee studied Indiana's election statutes, the decisions of its courts in election cases,

7. H. Rept. 99–58, 99th Cong. Sess. p. 16.

and the official instruction manuals provided to election officials. After reviewing these sources, the committee concluded that a strict adherence to Indiana law could provide the necessary uniformity across counties and precincts, but at the expense of disenfranchising thousands of Indiana voters for mere technical errors. Rather than cause this potential disenfranchisement, the committee instead opted to "count all the votes where election official error rather than voter error resulted in disenfranchisement."[8]

The committee also reviewed House precedents on election contests to determine their applicability to the case before it. The committee reiterated that state election law may be persuasive to the House (and, indeed, the House has generally shown much deference to state statutes and court decisions) but it is not dispositive. Further, while the House "is not legally bound to follow state law, there are instances where it is in fact bound by justice and equity to deviate from it."[9] The committee also noted that the House has traditionally been reluctant to disenfranchise voters based on technical errors made by election officials. Where the intent of the voter could be ascertained, the general rule has been that the ballot should be counted.[10]

From these considerations, the task force was able to devise a set of counting rules to evaluate each of the 22 different categories of ballots subject to invalidation under Indiana law. The committee determined that "these rules come as close as possible . . . to establishing a fair standard for determining the will of the majority of voters" in this election.[11] The committee then commenced a full recount of all ballots cast in the election.

The majority and minority parties both agreed that James Shumway, an independent election official and future Secretary of State for Arizona, should supervise the recount, assisted by auditors from the General Accounting Office (now the Government Accountability Office). The recount began on March 26, 1985.[12]

During the course of the recount, the auditors discovered tabulation errors in five counties—enough to overcome the vote margin from the state certified results and give Mr. McCloskey a plurality. Nevertheless, the recount continued until all ballots had been examined.

The task force further noted three additional categories of ballots discovered during the recount process that had not been anticipated under the

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8. *Id.* at p. 22.

9. *Id.* at p. 23.

10. See § 12, *supra.*

11. H. Rept. 99–58, 99th Cong. 1st Sess. p. 32.

12. For an announcement by the chair of the task force (Rep. Leon Panetta of California) regarding the status of the recount, see 131 CONG. REC. 6346, 99th Cong. 1st Sess (Mar. 26, 1985).

task force's recount procedure rules. The report filed by the committee included a detailed examination of each category, with an explanation of how the standard used in each case advanced the goal of counting all valid ballots.

When the task force had completed its recount, the final tally indicated that Mr. McCloskey had received 116,645 votes and Mr. McIntyre had received 116,641 votes—a margin of victory of four votes.

Members of the minority party filed a strenuous dissent to accompany the committee's report, calling the recount process a "shameful exercise . . . of partisan political power."[13] The dissent argued that it was contrary to precedent not to seat a Member–elect who appeared with a validly–issued certificate of election, as Mr. McIntyre had done. They cited earlier cases standing for the proposition that the mere closeness of an election does not raise the presumption of fraud or irregularity. They further argued that the House should at least have seated Mr. McIntyre when the results of the state recount were known on February 7, 1985.

The dissent also took issue with Mr. McCloskey's failure to proceed under the FCEA, thus avoiding the need to meet burdens of proof established by the statute. It also argued that the majority had not shown proper deference to state laws, but instead substituted its own procedures for evaluating disputed ballots. The fact that the committee chose to conduct a recount itself was criticized, citing prior cases where the committee demonstrated great reluctance in examining ballots where state recount procedures were already in place.

Finally, the dissent criticized the recount process itself, accusing it of exhibiting the same inconsistencies and potential for disenfranchisement as the state election procedures. It was particularly critical of the categories of ballots that were not initially anticipated by the task force's counting rules, and thus required establishing procedures for evaluating them during the recount itself. The dissent concluded by urging rejection of any resolution to seat Mr. McCloskey.

The committee filed its report on April 29, 1985. On April 30, 1985,[14] a minority party Member (Rep. William Frenzel of Minnesota) offered a resolution as a question of the privileges of the House to declare the seat for the Eighth District of Indiana vacant. The House rejected the resolution, with 200 Members voting yea, 229 voting nay, and four Members not voting.

On May 1, 1985, the chair of the committee's task force (Rep. Leon Panetta of California) offered a privileged resolution to resolve the election contest.[15] The resolution declared that Mr. McCloskey had been duly elected

13. H. Rept. 99–58, 99th Cong. 1st Sess. p. 45.

14. H. Res. 148, 131 CONG. REC. 9801–21, 99th Cong. 1st Sess.

15. H. Res. 146, 131 CONG. REC. 9998–10020, 99th Cong. 1st Sess.

and was entitled to a seat in the 99th Congress. The minority raised the question of consideration against the resolution, which was decided in the affirmative—242 yeas, 185 nays, and six not voting. After debate, the minority offered a motion to recommit the resolution to the Committee on House Administration, with instructions to count "otherwise valid unnotarized absentee ballots" in certain identified counties. The motion to recommit was not adopted. Thereafter, the resolution seating Mr. McCloskey was agreed to by a vote of 236 yeas, 190 nays, two answering "present," and five Members not voting. Mr. McCloskey was then sworn in as a Member of the 99th Congress by the Speaker.

The proceedings of May 1, 1985, are as follows:

RELATING TO ELECTION OF A REPRESENTATIVE FROM THE EIGHTH CONGRESSIONAL DISTRICT OF INDIANA

Mr. [Leon] PANETTA [of California]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 146) relating to election of a Representative from the Eighth Congressional District of Indiana, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 146

Resolved, That, based on a recount of votes in the election of November 6, 1984, conducted pursuant to House Resolution 1, Ninety-ninth Congress, agreed to January 3, 1985, the House of Representatives determines that Frank McCloskey was duly elected to the office of Representative from the Eighth Congressional District of Indiana and is entitled to a seat in the Ninety-ninth Congress.

Mr. [Joe] BARTON of Texas. Mr. Speaker, I raise a question of consideration and demand that the Chair put the question.

The SPEAKER pro tempore [Mr. (James) WRIGHT (of Texas)]. The question is, Will the House now consider House Resolution 146?

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BARTON of Texas. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 242, nays 185, not voting 6, as follows:

[Roll No. 89] . . .

So the House agreed to consider House Resolution 146.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The Chair recognizes the gentleman from California [Mr. PANETTA] for 1 hour.

Mr. PANETTA. Mr. Speaker, I yield 30 minutes to the gentleman from Minnesota [Mr. FRENZEL] for purposes of debate only, and I yield myself 8 minutes.

Mr. Speaker, the privileged resolution that is before you is for seating and it is made pursuant to the action of the House taken on House Resolution 1. It is based on actions

of the task force as well as the recommendation of the full House Administration Committee.

House Resolution 1 was adopted by the House by a vote of 238 to 177. It referred the question of who had the right to the seat in the Eighth District in Indiana to the Committee on House Administration.

Pursuant to that vote, the committee organized and appointed the task force, made up of three Members.

Between February 6 and April 18 the task force adopted a series of procedures, rules and other memoranda to conduct a recount of the election in the Eighth District. That recount was conducted by GAO auditors. The official tally of that recount was presented to the task force on Monday, April 22, by the director of elections.

The full House committee received the official tally on Tuesday, April 23.

The official tally that was presented by the director of elections gave Mr. McCloskey 116,645 votes and Mr. McIntyre 116,641 votes.

Pursuant to the responsibility that was placed on the task force and the House Administration Committee to determine who received the most votes based on the official tally provided by the GAO auditors and the director of elections, it is the recommendation that Mr. McCloskey, therefore, be seated. That was approved by the task force and approved by the full House Administration Committee on April 23.

As you know, a full report based on the actions of the task force, the views of the task force both on the majority and the minority side was prepared and that has been provided now to all Members.

My colleagues, the arguments on this issue are well presented in the report and the backup material. The issue was fully debated yesterday on the House floor, based on the motion to vacate the seat and call for a special election.

I would again ask the Members to please look at the facts that are presented in that report.

There is a great deal of rhetoric and a great deal of charge and countercharge that has been presented here, but what I ask the Members in implementing a very serious responsibility under the Constitution is please look at the facts that are presented in the report. I think the conclusion from that report is that the procedures were indeed fair, that they were developed largely in cooperation with the minority, that the rules were justified by House precedent and they were implemented in line with House precedent all the way down the road, that the GAO auditors and the director of elections conducted a fair and credible recount of all the votes that were presented in the Eighth District, all of the ballots that had been cast, and that the legitimate winner of that election should now be seated.

In summary, let me also personally thank the individuals that were involved in this recount. This was difficult responsibility for all who have been involved. I want to thank in particular the chairman of the full committee for his cooperation and support during this entire effort. I want to thank the ranking minority member, the gentleman from Minnesota [Mr. FRENZEL] for his support during the operations of the task force.

I also want to pay tribute to the members of that task force, both the gentleman from California [Mr. THOMAS] and the gentleman from Missouri [Mr. CLAY], who were always diligent in attending all the task force hearings, both here and in Evansville, IN, and although there were disagreements, they continued to work to see that the process was completed.

I also want to thank all the staff involved on both sides who worked so hard and diligently in trying to complete this very difficult process.

Let me say in conclusion that the House was given a very difficult and uncomfortable responsibility. It is not pleasant to make judgments on issues like this, but under the Constitution, we are to be the final judge of election returns and qualifications of our own Members. That is a very serious responsibility that we have and one that must be exercised carefully.

The task force and the House Administration Committee in implementing that responsibility implemented it fairly, impartially, and honestly. We now present to you the results of the recount that were accomplished by the task force and the auditors.

No one-no one regrets more deeply than I that the final result of counting the votes in the Eighth District in Indiana were am close as they were, no one regrets that more. It would have been far easier had either candidate won by 100 or more votes, but that is not the way it turned out according to the recount.

Should the closeness of that vote, as close as it was, lead to the rejection of all the results, be a justification for rejecting those results, or more importantly, be a basis to reject the voters who cast their votes on election night in the Eighth District? Are they not due some respect by virtue of going to the polls, those that cast valid ballots, are they not to be respected for the votes that they cast on election night?

It seems to me that those votes should be counted, that those votes were cast and that as a result of that, Mr. McCloskey won. We know very well that if Mr. McIntyre won, he would be seated.

I ask us to do the same for Mr. McCloskey.

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Nevada [Mrs. VUCANOVICH], a member of the committee.

Mrs. [Barbara] VUCANOVICH [of Nevada]. Mr. Speaker, I just simply say that I rise in opposition to this resolution.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from California [Mr. THOMAS], the sole Republican member of the 2-to-1 task force.

Mr. [William] THOMAS [of California]. Mr. Speaker, I ask unanimous consent to revise and extend my remarks and to read out of printed material, waiving rule XXX.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. THOMAS of California. Mr. Speaker, I think it is important for us to note we are here today because of the big lie. And that is that there was a question over who the people had chosen in Indiana's Eighth Congressional District election night.

Now, Mr. Speaker, there is no question about who won. Just as I do not believe there is a plot or a conspiracy going on, I think there has just been an amazing series of unintended errors, of inadvertent comments.

From day one in this Congress the Democrats' comments have referred to recount night, not to election night. Just yesterday on this floor the majority leader, in speaking out about what happened, indicated that:

> So the question is, did the House do the right thing in having a recount? Someone said yesterday in debate that the only reason for the constitutional provision that we be the judge of our own elections is to guard against extraordinary circumstances, and this gentleman concluded there had been no extraordinary circumstances in the Indiana case.

The majority leader went on to say:

> Well, I suggest that there was truly and extraordinary circumstance when almost 5,000 American citizens were disenfranchised on technicalities and their votes were not counted.

Mr. Majority Leader, that was the recount, not the election. The certificate was based upon the election, not the recount.

Of the 22 task force rules, every one of them counted ballots that were invalid under Indiana law. When you compare the number of votes election night with the number of votes in the committee report under the task force, and subtract the tabulation errors, the difference is 91 votes. And everyone to the 22 rules of the task force admitted ballots that were illegal under Indiana law. And the difference between election night and the task force's recount after correction for tabulation errors: 191 votes.

Two hundred thirty-three thousand votes were counted election night, 233,000 votes were counted by the task force. Your error has been corrected.

From day one of this Congress there has been a systematic although unintended and inadvertent stream of comments to create the impression that Republicans played games in Indiana. I thought for a few days that the secretary of state's name in Indiana was Mr. Republican, it was so important to underscore the fact that the secretary of state was a Republican and that the Governor was a Republican.

Just yesterday the gentleman from Missouri [Mr. CLAY], said on the floor of this House, and I quote:

> I assume, Mr. Speaker, that those black voters, and that was 20 percent of the total black vote in that District, that were disenfranchised under the recount, the Republican-controlled recount * * *.

Vanderburgh County had a recount commission made up of three individuals, two of them Democrat, one Republican. Nine of the fifteen counties were controlled by Democrats. Error corrected.

There were errors made election night, yes. The county clerk from Gibson County, Mr. Lutz, double counted a precinct. I asked him, "You said you saw the sheet and there were two 20th precincts out of the 37 precincts shown on election night?"

"Mr. Lutz. That is when I knew something—it wasn't perfect. I noticed it."

I said, "Why did you sign your name to a certificate when you knew the count wasn't perfect?"

Mr. Lutz said, "I done just like all the other clerks. You take the summary sheet—that is what the purpose was for. We are in a hurry. We want to find out what people are getting to these votes. You understand what I am saying? The total."

I said, "Does Indiana law require you to submit the very next day a total?

Mr. Lutz said, "No, not the very next day."

That is at page 297 of the transcript. Mr. Lutz admitted that he transmitted an imperfect total. Mr. Lutz is a Democrat.

When it was discovered that that total was incorrect the county judge was asked to order the Democrat county clerk to correct it. The judge refused. The county judge was a Democrat. It was not until the State Supreme Court of Indiana ordered, exhibit in the minority report, the Supreme Court of Indiana determine that an error had occurred in the counting of the votes. "The clerk of Gibson County is ordered within 48 hours of receipt of this order to proceed pursuant to statute to certify the proper results of the election in question of the secretary of state of the State of Indiana." The supreme court had to order the Democrat judge in Gibson County, and the Democrat county clerk to correct the error.

At the same time the State supreme court was ordering Democrats to correct an error Mr. McCloskey was in State court demanding that that court rule that the only way to correct the error was to have a complete recount. While at the same time he was in Federal court arguing that he should be certified as the proper winner in Indiana's Eighth Congressional District based upon the erroneous total of election night.

There were errors election night. Were they corrected? Yes. There was a full accounting of the votes election night! Was there a winner election night? Yes. Was the winner McIntyre? Yes. Did this House honor his valid certificate? No.

We are here today through a series of amazing coincidences. A Democrat clerk forwards the wrong total and refuses to correct it. A Democrat county judge refuses to order the Democrat clerk to correct his total.

Even though the Indiana State Supreme Court orders the error corrected and a true total is forwarded to the secretary of state, and then to the House Clerk, the Democrat leadership is apparently confused, does not understand the difference between election night and the recount and it asks the House not to honor Mr. McIntyre's valid certificate.

And this House, on a straight party vote, 238 Democrats vote to send it to House Administration. A task force is created with a 2-to-1 Democrat majority. Democrats on the task force vote 2-to-1 to quit counting when McCloskey is ahead.

House Administration, by a straight Democrat vote, sends this resolution to the floor.

And soon, with only Democrats voting in favor of seating, Mr. McCloskey will become a Member of the House of Representatives.

That is quite a streak of coincidences, even for you folks.

The SPEAKER pro tempore. The gentleman from California [Mr. THOMAS] has consumed 8 minutes.

Mr. PANETTA. Mr. Speaker, I yield 4 1/2 minutes to the chairman of the House Administration Committee, the gentleman from Illinois [Mr. ANNUNZIO].

Mr. ANNUNZIO. Mr. Speaker, throughout the public debate over deciding the winner in Indiana's Eighth Congressional District, I have not spoken. Certainly as a Democrat, I would hope that Mr. McCloskey would win the seat. But as chairman of the House Administration Committee, my first and only goal was to make certain that the House Administration Committee, your committee, operated in as fair a manner as possible.

During the hearings on the task force report, I made no statements. On the floor yesterday I made no statements. And my statement today is not a partisan one designed to advocate the seating of any candidate.

In January, the House Administration Committee was assigned the task by this body of preparing a report with recommendations on the outcome of Indiana's Eighth Congressional District, it was not a job that I welcomed, but one that you assigned to my committee. That night in reflecting on the assignment, I decided that because of the closeness of the race and the supercharged emotions surrounding it, the committee must operate on the highest ethical plane. When I appointed the task force I gave them no special partisan instructions but rather gave the task force and its chairman, the gentleman from California [Mr. PANETTA], a free rein. I made available to the task force whatever funds and personnel were necessary to conduct the recount.

Some may feel that the task force did not reach the proper conclusion. I am not here to debate that point. I do feel that the task force, dealing with one of the closest political races in our history, operated in an honorable manner. I commend the three members of the task force-the gentleman from California [Mr. PANETTA], the gentleman from Missouri [Mr. CLAY], and the gentleman from California [Mr. THOMAS], as well as the recount director, Mr. Shumway.

While others of us were performing our political duties here in Washington and our constituent duties in our districts, these three gentlemen were forced to spend hundreds of hours of their own time working on the task force report.

Members of Congress have so little free time, and I know the most common complaint in this body is the limited amount of time we have to spend with our families and loved ones. Yet these three gentlemen gave up hundreds of hours of their time to complete a task that I am certain not a single Member of this House would want.

The many staff people who assisted the task force also are due our praise, as are the representatives of the General Accounting Office who assisted the task force. These people worked many hours that they could have spent with their families or in other more enjoyable springtime activities.

Mr. Speaker, I am proud of the job that the Committee on House Administration did on its assignment, and I am particularly proud of the task force.

Before the final vote is taken on the Eighth District Congressional seat, I want to let the members of the task force know that they have performed a valuable service.

It is easy for Members of both sides to criticize specific actions of the task force, but I do not know of a single Member of this body who would have wanted to trade places with a member of the task force. It is a lot harder to go out and do the work and be faced with tough decisions hour after hour. I cannot let this contested election episode draw to a close without letting the members of the task force know of my appreciation for their efforts.

In closing let me make this request. No matter what your feelings are about the Eighth Congressional District's seat, please join me in expressing appreciation of this body for the hard work, long hours, and devotion to duty put forth by Mr. PANETTA, Mr. CLAY, and Mr. THOMAS.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from North Carolina [Mr. COBLE].

Mr. [Howard] COBLE [of North Carolina]. I thank the Speaker.

The 34 votes were enlarged to 418 votes; the secretary of state of Indiana certified the Republican candidate, Mr. McIntyre, as the winner; Mr. McCloskey, the Democrat candidate, did not allege fraud or other illegal activity surrounding the election.

Yet Mr. McIntyre's 418 margin of victory was not enough. Perhaps 500 votes will be insufficient 2 years from now. Perhaps 5,000 will be insufficient 5 years from now.

Some have said, "Why all the fuss over one seat." One seat will not emasculate the Republicans nor appreciably strengthen the Democrats. The one seat, however, Mr. Speaker, is not the main point. The main point is the course that was charted and pursued in the name of fair play and equity. Fair play and equity, indeed; the words fair play and equity were severely tarnished by this Chamber. A dark cloud hangs heavy over this House. And if Mr. Rick McIntyre is denied his seat that cloud will not disappear.

In Biblical times some martyrs who suffered, had to endure pain inflicted by thorns and thistles. Some have proclaimed that Rick McIntyre is plagued by thorns and thistles.

Horns and whistles might be more appropriate. Horns and whistles that are indigenous to the atmosphere of a carnival because I fear those who were the architects of this Indiana fiasco more readily resemble carnival barkers rather than Biblical martyrs.

The ship of fairness is bound for the shoals and reefs to destruction. This disaster can be avoided by not denying Rick McIntyre the seat he won.

I thank the Speaker.

Mr. PANETTA. Mr. Speaker, I yield 6 minutes to the gentleman from Indiana [Mr. JACOBS].

Mr. [Andrew] JACOBS [of Indiana]. Mr. Speaker, in a Bill Mauldin cartoon in 1945, a little boy was giving a report in school and he said, "And so my conclusion is that wars is impossible unless both sides is right."

When you have a very close election as we seldom have in the history of our Republic you are right at the ragged edge of democracy. A great deal of discipline, a great deal of self-restraint is required.

I would like to say a couple of words about the disputed ballots in the Eighth District of Indiana. As I see it, Mr. Speaker, they fall into two categories. The first category of disputed votes are those which were cast by citizens who in every respect met their obligations, did their duties and cast their ballots, but ballots which were thrown out because of errors made by election officials.

Under the Indiana ancient, and, I think, somewhat crazy statute, such errors by election officials, even though they do not call into question the validity of the votes cast by the citizens, under that ancient Indiana law the entire votes of a precinct can be vitiated by a technical error upon the part of the precinct official in that precinct.

Imagine what the literal translation of that law could lead to, if anybody even knew about it. Hardly anybody in Indiana even knew it was still on the books. And, by the way, the Indiana House of Representatives just voted 94 to 6 to repeal it and overruled it, having a similar power as that of the Constitution in the U.S. House, in judging an election contest this very year.

Imagine what the literal application of that law could lead to. Let us take an overwhelmingly Republican precinct where most of the folks vote Republican. Here is a Democratic official at that precinct who would just as soon not have that precinct counted in the final tally. So he or she makes an accidental technical error. Under the literal interpretation of that law all the votes of that precinct could be thrown out.

It could be worked exactly the same way the other way around.

As I understand It, that question is not paramount in this debate today. I think most people do agree that that statute is very bad and that the Indiana Republican majority in the house of representatives there and the Democratic majority in the House of Representatives here did the proper thing in exercising the plenary authority awarded by the constitutions to those respective bodies.

The other category of contested votes, the ones being discussed here today, are absentee ballots. That category of controversy has to do with the duty of the individual citizen. When you go to a precinct to cast your vote you are required, No. 1, to be there on time. If you get there 1 hour late or 5 minutes late you are not permitted to cast the vote. You have not met your duty to be there on time.

No. 2, you are required to sign the polling book in the presence of election officials.

In the case of absentee ballots theoretically the same thing applies. You must be there on time with your ballot, not postmarked but it must be there on election day. That is your responsibility to get it there.

No. 3, you must have signed the equivalent of the polling book in the presence of an official known as a notary public.

In the cases of 32 disputed ballots that was not done. They are intrinsically, not malum prohibitum but malum, in se, they are intrinsically illegal ballots. But were not 10 of those illegal ballots counted? Yes, they were. I tell my friend from California [Mr. PANETTA] I think he was mistaken in supporting the counting of those 10 ballots.

Next question: Once you have counted those 10 illegal ballots, why not count the other 32 illegal ballots? I cannot tell you, during my days as a police officer, how many times I heard that same argument when I was on traffic. "There went three guys going 40 miles an hour. Why are you stopping me?"

"I wasn't able to stop the others," or whatever the reason, it is not Justification for further illegality.

Now, I hear it said that the task force was happy enough to overrule Indiana law in one instance but not in another, and I point out to you that the task force only overruled Indiana law in one instance. It supported Indiana law in a variety of instances, including the law requiring registration of voters, the law requiring presence at the polling place on time, and so on.

Now finally, Mr. Speaker, in all affection for my colleagues, my fellow citizens of the United States, I think history tells us that there is a faction among our Republican friends; I think it could be described best by a faction that hates the word conservative because it sounds too liberal.

A faction which, somehow or another, seems to assert its rightness inevitably, and it may be right; maybe it is right by far, but the remarkable thing about that faction, Mr. Speaker, is that in the entire history of the Republic, it has never lost an election. It has had a few stolen from it, but it has never lost an election-not to the Democrats, not even to other Republicans.

In 1952, that faction lost the Texas primary to Dwight Eisenhower, but it said no, we didn't lose it; Ike stole the election, leading Edward R. Murrow to say to this reporter, "It would seem as traditional a part of the proceedings as for a fight manager to yell 'We was robbed.' "

Now, I want you listen to these words: In our campaigns, no matter how hard fought they may be, no matter how close the election may turn out to be, those who lose accept the verdict and support those who win. Who said that? Richard M. Nixon on January 6, 1961, standing at that podium, announcing that he had lost the election to John F. Kennedy.

However, the faction in 1961 said that Mr. Nixon did not lose the election to John F. Kennedy; they concluded that John F. Kennedy stole it.

Mr. FRENZEL. Mr. Speaker, I yield such time as he may consume to the gentleman from Illinois [Mr. CRANE].

REMOVAL OF NAME MEMBER AS COSPONSOR OF H.R. 75, AND H.R. 1345

Mr. [Philip] CRANE [of Illinois]. Mr. Speaker, I ask unanimous consent that the name of the gentleman from Oregon [Mr. ROBERT F. SMITH] be removed from the list of cosponsors of H.R. 75, H.R. 76, and H.R. 1345 and replaced as of today with Mr. ROBERT C. SMITH of New Hampshire. Mr. ROBERT F. SMITH of Oregon was inadvertently added to that bill instead of the ROBERT C. SMITH of the State of New Hampshire.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. FRENZEL. Mr. Speaker, I yield 1 minutes to the gentleman from Indiana [Mr. MYERS] and following that I yield 1 1/2 minutes to the distinguished gentleman from Indiana [Mr. HILLIS].

Mr. [John] MYERS of Indiana. Mr. Speaker, it has Just been conceded by my colleague from Indiana that there was an error in counting 10 ballots in Indiana. Because of that, I think it is good basis to say that the margin of error of only four votes is good reason that this should not happen today.

The precedents for the counting of those ballots has been used by the House, the task force. In Roush versus Chambers in 1961, the House Administration Committee went out and counted the ballots.

There is one difference. When they came back with their count, there was never a criticism or question about how they counted the ballots in Indiana. It was not questioned. You certainly cannot say that this time.

It is unfair, I think; it is a tragedy, really, to the House of Representatives. It is a sorry day today, but most importantly it is a sorry day for a friend of ours, Frank McCloskey, taking his seat today under this cloud. Because unfortunately, Mr. McCloskey, who is a friend of mine, I have known him longer than any of the rest of you I am sure, but he will be remembered as one Member who was not elected by his constituency but selected by the House, and that is too bad for a fine gentleman like Mr. McCloskey.

I am not going to vote today on this issue. It is a vote that should not be taking place in this House. I have not been a party to illegal acts in the past, and I am not going to be today.

Mr. [Elwood] HILLIS [of Indiana]. Mr. Speaker, we've discussed at length the constitutional implications inherent in this debate over the Eighth District of Indiana. We've also spent considerable time talking about the mechanics of the recount, the ballots which should or should not be counted, and the partisanship which has overshadowed clear and reasoned debate.

I want to speak for a moment on behalf of my home State and more than a half million Hoosiers who have yet to be represented in the 99th Congress.

Mr. Speaker, they are, in a world, disillusioned. They wonder what kind of people's House this is that its Members can vote to deny them their right to elect a Member of Congress who can serve in this body without suspicion.

They wonder why the House insists they be represented by a man who many in this Chamber believe lost the election. They wonder how effective any Representative can be with this sword hanging over his head.

I know I would have great reservations about taking my seat in this House under these conditions. I think many of you would too.

Mr. Speaker, the people of the Eighth District want to make this right. They want another chance to elect their Representative on the same terms by which all of us were elected. I think they deserve that opportunity just as their Representative deserves the right, as we have, to sit in this Chamber as the unchallenged choice of our constituents.

I have always tried, in my 15 years here, to vote my conscience. Sometimes that has meant differing with my party's position on some tough issues. But I have done that and I will do it again if I think it's right.

I turn to my friends on the other side of the aisle and say to them: Here is a clear vote of conscience. Here is a chance to do what all great Democrats have advocated throughout our history. Let the people decide.

It is not too late. Our actions of yesterday can be reversed by defeating the motion on the floor today. But it is our last chance to do what is right.

Please, let us not fail.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. BOULTER].

Mr. [Eldon] BOULTER [of Texas]. Mr. Speaker, I want to express my appreciation to the gentleman from Minnesota [Mr. FRENZEL] for the inspiration you have been to us who believe in this cause so much.

There have been a lot of words exchanged in the House the past few months. Many Members on the Democrat side of the aisle have spent time lamenting and regretting what they call our strident partisanship on this side of the aisle.

Just to those Members who have spoken in that way, let me say that on our side of the aisle, we view your words as purposefully confusing and intent on avoiding the facts.

Yesterday, the chairman of the task force, the gentleman from California [Mr. PANETTA], said that the test which should be applied to the work of the task force is one of reasonableness. I agree, but is the result reasonable? Why, of course, it is not.

Why do I say that? Because when all of the ballots that were cast on election night are counted, McIntyre won by 34 votes. He won a State-supervised recount by 418 votes. Yet, on those occasions you said that it was too close; Indiana law is too confusing; and you said most of all, count all the ballots.

We have Just heard today where 10 ballots were counted and yet 32 more, similarly situated, ballots were not counted; and Mr. Shumway himself said those ballots should have been counted.

Then yesterday, one of the members of the task force on the majority side said that our call for a special election—the Republican call for a special election—could be considered by some as "racist." That is a quote from Mr. CLAY "could be considered by some as racist."

That is sheer, sheer demagoguery. It is untrue, it is dishonest. And you ask how our side can get emotional on this issue.

I think history is going to judge this, and I look forward to history's verdict on this issue.

The mere statement that we are racist shows that you are not really being reasonable. History will judge that the task force recount was not proper; the outcome was not reasonable, and that the majority action was a subterfuge and a deliberate denial of democracy.

POINT OF PERSONAL PRIVILEGE

Mr. [William] CLAY [of Missouri]. Mr. Speaker, I rise to a point of personal privilege.

The gentleman accused me of accusing him of being a racist.

The SPEAKER pro tempore. The gentleman cannot——

Mr. CLAY. The gentleman called my name and accused me of calling him a racist.

The SPEAKER pro tempore. The gentleman cannot——

Mr. CLAY. The gentleman cannot rise to a point of personal privilege while the House is considering a question of privilege of the House.

Mr. PANETTA. Mr. Speaker, I yield 3 minutes to the gentleman from Indiana [Mr. SHARP].

Mr. CLAY. Mr. Speaker, will the gentleman yield?

Mr. [Philip] SHARP [of Indiana]. I yield to the gentleman from Missouri.

Mr. CLAY. Mr. Speaker, a colleague from the other side of the aisle misrepresented my remarks of yesterday when he accused me of calling Republican members "racist."

I did not make that statement and the CONGRESSIONAL RECORD of April 30, 1985, will confirm my position.

Apparently the gentleman is very sensitive to such criticism. I am told that most racists are unable to admit their racism and sometimes even imagine being attacked for their views.

I know not what category, if either, my accuser falls into, but I suggest his conscience should be his guide.

Mr. Speaker, I suffered the thankless ordeal of serving on the election task force to decide the winner in Indiana Eighth Congressional District. I knew from the outset that the eventual outcome would leave some disgruntled, some dissatisfied, some as confused as ever. But respect, concern, appreciation for this institution moved me to join with two other colleagues in this endeavor to determine which candidate received the most votes in the November general election. I wish to commend the other two members of the task force, Mr. PANETTA and Mr. THOMAS, for their diligent, sincere, professional pursuit of the facts in this time-consuming effort. In particular, I wish to compliment our chairman, Mr. PANETTA, for his impartial and fair handling of this very sensitive matter. There were times when partisan, intemperate attacks questioning his integrity would have made lesser men and women retaliate in kind. Mr. PANETTA did not.

Mr. Speaker, after more than 200 hours of debate on the floor of this House, after 100 hours of deliberations and travel by the special task force on elections, after 4 months of partisan wrangling, the moment of truth has arrived. There is no further time for posturing, procrastinating or politicking. In a matter of minutes a vote will be taken to seat the winner of the election in the Eighth District of Indiana. Mr. MCCLOSKEY won that election in a fair but close contest by the slim margin of four votes. When all of the more than 233,000 legitimate votes were counted, as slim as the margin was, he emerged the victor.

Some truly believed that a special election should have been declared because of the closeness of the outcome. Some are not inclined to accept any verdict other than one favoring their candidate. Some wish the entire matter had never developed and look forward to an expeditious resolution of the problem.

To those who still have doubts about the wisdom of seating a person who only won by four votes, I say that happens to be the nature of the Democratic process. Our majority leader, JIM WRIGHT on yesterday, in a brilliant presentation pointed to several Earth shaking incidents in history that have been decided by one vote.

I would like to expand on his discourse to show that even a one-vote margin is justification for seating a Member of this House. The eagle is our national bird, instead of the turkey, because of a one-vote margin in the Continental Congress. I'm sure that some turkeys then also argued that a new vote should be taken. But turkeys, no matter how persuasive their oratory, have never been able to persuade logical thinking eagles or reasonable, intelligent people that a one-vote margin is not credible. If they had, we would be eating eagles on Thanksgiving and those of us who spent so much time and effort in conducting an honest, fair recount might be eating crow today.

Mr. Speaker, a President of the United States, Andrew Johnson, in 1868 was faced with impeachment by an emotionally charged Congress-similar to the present situation. But a one-vote margin in the Senate found him not guilty of the charges. Certainly if this Congress can retain a President by the slim margin of one vote, this House can seat Mr. McCloskey by the landslide margin of four.

Mr. Speaker, even more related to the point, a President of the United States was seated by one vote. In the Hayes-Tilden election, Mr. Samuel Tilden—a Democrat—received

the majority of the popular votes, a majority of the electoral votes on election night and was announced the winner by every newspaper in the country. But disputes arose in several of the States challenging the electors. A law was passed establishing a 15-member commission to decide the validity of the challenges. Five Members of the Senate; three Republicans and two Democrats were chosen; Five Members of the House, three Democrats and two Republicans; five from the Supreme Court, three Republicans and two Democrats. In a straight party line vote, eight Republicans to seven Democrats, all Republican challenges were upheld. The final count of electoral votes was 185 for the Republican, Mr. Hayes, and 184 for the Democrat, Mr. Tilden. If a President of the United States can be seated by the margin of one vote, it's ludicrous to argue that four votes disqualifies Mr. McCloskey from sitting in this Chamber.

Mr. Speaker, I recommend that Mr. McCloskey be seated so that we can get on with the business of the Nation.

On the second and third pages of the minority views of the report filed by House Administration concerning McCloskey-McIntyre election, the Republicans have listed in abbreviated fashion the sins they feel have been perpetrated upon them and their candidate by the majority. I would like to take a moment to respond to those charges.

The first charge is in fact, two assertions. In the interest of understanding I will deal with each assertion separately.

First, "the majority refused on January 3, 1985, to seat the duly certified winner of the election, Richard D. McIntyre, charging inconsistencies in the election."

On behalf of myself I plead guilty, but offer the following by way of mitigating circumstances: Under Indiana law, the secretary of state is not permitted to reject the return of any county which has come into his hands and which has been duly authenticated by the clerk of the circuit court of that county under seal. Yet, believing tabulation errors to have occurred effecting the outcome of the election, the secretary of state refused to certify Prank McCloskey based on official election night returns which showed Mr. McCloskey to have been the winner by 72 votes. Then, after only a partial recount of the district had been done, without waiting for the correction of other tabulation errors, the secretary of state certified the candidate of his party as the winner at the earliest moment that candidate appeared to have a lead. At later points in the recount, when Mr. McCloskey was again ahead, the secretary of state was either absent and his deputy sick or was enjoined by a Republican judge and therefore unable to certify Mr. McCloskey. By January 3, it was evident that the secretary of state was inclined to certify only one candidate regardless of the facts.

On January 3, the recount of five counties—Monroe, Orange, Posey, Vanderburgh, and Warrick—had not been completed. These five counties include more than half of the voters who participated in the election. Further, if one cumulatively figures the margin between Mr. McCloskey and Mr. McIntyre and subtracts those counties where the recount was not completed as of January 3, Mr. McCloskey had a 2-vote margin on Mr. McIntyre. Finally, in an election involving over a quarter million voters, where the election night margin has been reported variously at 72, 39, or 34 votes, and the recount has yet to be completed, the better course of wisdom would seem to be to await a definitive recount of the district.

Second, "as a result, McIntyre is the only person with an unchallenged certificate of election not seated in the last 50 years."

This statement is simply factually inaccurate. I would refer my colleagues on the other side of the aisle to the hearing transcripts of the task force and to Roush or Chambers

(H. Rept. No. 513, 87th Cong., 1961). As Mr. Roush testified before the task force, the only candidate to receive a certificate of election in that contest was Mr. Chambers. Despite this fact, Mr. Chambers was not sworn in on opening day, nor, as events work out, was he ever sworn in. Finally, to make sure the record is correct, there were no allegations of fraud in that election prior to the House's decision to investigate.

Third, "the majority refused on February 7, 1985, to seat the winner of the State of Indiana's recount, McIntyre, charging inconsistencies in the recount."

The recount conducted by the State of Indiana treated the ballots of some voters differently than identical ballots cast by other voters. Yes, I would certainly call that an inconsistency.

Additionally, the recount disenfranchised 4,800 voters on the basis of errors made by election officials, not the voter; and, as indicated earlier, the likelihood of being disenfranchised was as much a matter of geography and race as anything else. Finally, the Indiana recount clearly had a disproportionate impact on black voters, 20 percent of whom were disenfranchised as a result of the recount.

For any one of these reasons it would have been appropriate for this body to investigate that recount. Given all of these reasons, this body would have seriously failed in its duty had it not discounted the results of that recount.

Fourth, "the majority refused to require McCloskey to adhere to the procedures of the Federal Contested Elections Act."

In point of fact, the procedures of the House do not necessarily adhere a candidate to the procedures of the Federal Contested Elections Act. The Federal Contested Elections Act is but one way to bring an election contest before the House. If the minority feels it should be the only way, then legislation to accomplish that end should be pursued. While the method utilized in this instance is unusual, it is neither unprecedented nor illegal. Given what has transpired in Indiana, it is also warranted. Finally, in case there may be a misunderstanding, it was not Mr. McCloskey who brought this case to us in this manner. Only a member of this body may bring a case in such a manner and Mr. McCloskey is not yet a member.

Fifth, "the majority refused to hold hearings for State officials and the candidates before supplanting the State's laws with custom—made rules of its own—a shocking preliminary indication that the conclusion was predetermined."

If the House is indeed bound by State law, it is bound by those laws in their entirety. Not even the minority member of the task force supported that proposition. Had we sought to implement State law we would have disenfranchised thousands of voters.

A conclusion was predetermined. Going in we were determined to adhere to the principles of democracy and determine the will of the citizens of that district as indicated by their votes. Unfortunately, adherence to democratic principles required the supplanting of State law and frankly, little would have been served by having State officials come before us to explain why voters should be disenfranchised. Further, as the minority made plain at the time, the task force was under instructions to proceed as quickly as due diligence would allow.

Finally, our rules were indeed custom made. That is, the proposition that errors or mistakes on the part of election officials should not be allow, to disenfranchise voters is fully supported by the precedents of the House as established by both Republican and Democratic majorities.

Sixth, "the majority voted to vitiate Indiana election laws after McCloskey lost twice and replaced such laws with rules of its own which have no basis in Indiana law."

Since the Eighth District was never recounted in accordance with Indiana law, it is impossible to say whether McCloskey would have lost under that law. For instance, because polling machines in Spencer County were never properly sealed, Indiana law would require that virtually all the votes cast in that county be disallowed. In such circumstance, it is entirely likely that McCloskey would have won the election.

And more importantly, where strict adherence to the law would require that so many voters be disenfranchised that it is no longer possible to determine what the will of the voter, is, this House has both a moral and constitutional duty to "vitiate" that law.

Seventh, "the majority insisted on a House recount after McCloskey lost the State election, his Federal court suit demanding certification and the State recount."

I do not dispute that Mr. McCloskey lost his Federal court suit demanding certification. As the judge un that case noted, this body is fully able to correct an erroneous certification. Nor do I dispute that Mr. McCloskey lost the Indiana recount, by a margin of one-tenth of the number of voters who were disenfranchised in that recount. I am even willing to stipulate that, based upon a partial recount of the district, Mr. McCloskey did not win. However, as the only fair and uniform recount of that election has proved, it was Mr. McCloskey, not Mr. McIntyre who won the election.

Eighth, "the majority suspended its insistence that the House "count all the votes" in the name of enfranchising the voters as soon as McCloskey had a lead of four votes. The majority's change in position disenfranchised 32 voters whose unnotarized absentee ballots were identical to those the task force counted a week earlier."

I appreciate the minority acknowledging It was not until it became apparent that Mr. McIntyre would lose that anyone ever suggested that those unnotarized absentee ballots retained properly by the county clerks should be counted. To correct the record, though at no point did the majority anticipate or expect to count invalid ballots that were retained by the county clerk. Unnotarized absentee ballots are invalid under Indiana law, they are invalid under House precedent, and they are invalid under the rules of the task force. Nevertheless, because some of these ballots had been counted on election night and were not longer distinguishable from valid ballots it would otherwise have rejected. It should be noted that it was Mr. McIntyre, not Mr. McCloskey, who benefited from this exception. Despite the 11th hour insistence of the minority, the task sought to minimize those instances, not to compound the error.

Even granting the minority's view that, because invalid ballots have been treated with a degree of security, they may now be considered countable, presumably no one has ever examined those ballots. Unless the minority happens to know otherwise, there may still be other faults with the ballots.

The record needs to be corrected on another point as well. As the minority member of the task force has himself made clear in the CONGRESSIONAL RECORD, it was never the intent of the task force to "count all the votes." It was not the task force who disenfranchised those 32 voters. Where the ability to ensure the validity of the ballot lies with the voter, the voter must be held accountable for his actions. It is the voter, not anyone else, who is responsible for the fact that those ballots have not been notarized as required by law. In this case, it is the voter who has disenfranchised himself.

Mr. Speaker, the House of Representatives is being asked to seat Frank McCloskey as the Representative of the Eighth Congressional District of Indiana. Because of the partisan nature of the dispute, there are a number of questions which each Member of this body must be able to answer with assurance if they are to vote to seat Mr. McCloskey. As a member of the task force which conducted the recount In Indiana, I have, of

necessity, become intimately familiar with the issues involved. In my view, Mr. McCloskey should be seated as a Member of this body. I will review for the Members the history of this dispute and my reasons for concluding that it was Mr. McCloskey who was chosen by the greatest number of citizens of the Eighth District of Indiana to be their Representative.

MAKEUP OF THE TASK FORCE

Much has been made of the fact that the task force consists of two Democrats and only one Republican. While an evenly divided task force may sound nice as an ideal, it is obviously unworkable as a practical matter. We are elected to Congress to make judgments on the issues before the country, in the case of the task force, we were told to investigate the election in the Eighth Congressional District of Indiana, determine if and how to conduct a recount of that election, and ensure that that recount was conducted. If the task force had an even number of members, evenly divided between the parties, it is very conceivable that on those issues on which the task force divided it would have split evenly. In that circumstances we may still be waiting even to begin the recount. If we are to ensure that the task force is to be able to make those difficult decisions necessary to fulfill its obligations, it is necessary that the task force have an odd number of members. Because the citizens of the county have elected a majority of Democrats to this body, the task force also has a majority of Democrats. To attempt to make an issue of this demonstrates either incredible naivety or, in the worst light, demagoguery.

CERTIFICATION ISSUE

The election returns as originally certified by the county clerks of each of the 15 counties which constitute the Eighth District were as follows: 116,841 for Frank McCloskey and 116,769 for Rick McIntyre. Of 233,610 votes cast, Mr. McCloskey was shown to have won by 72 votes. Under Indiana law, the secretary of state is not permitted to reject the return from any county which has come into his hands and which has been duly authenticated by the Clerk of the Circuit Court of that county under seal. Nevertheless, believing tabulations errors to have occurred which would affect the outcome of the race, Indiana's secretary of state declined to certify Mr. McCloskey as the winner of the congressional election in the Eighth District.

Mr. McIntyre, as permitted by Indiana law and as I would have done, filed to have a recount conducted in various areas of the district of his choosing. Mr. McCloskey consequently cross-petitioned to have recounts conducted. After the completion of the recount in only 1 of the 15 counties the secretary of state certified Mr. McIntyre to be the winner by 34 votes.

There should be no question in anyone's mind that a recount of the results of this election was both appropriate and desirable. Where election night returns show that, in an election in which more than 233,600 voters participated, the difference between the two candidates with the largest numbers of votes is only 72, it is entirely proper that a recount be conducted. Further, prudent observers may wish for the recount to be concluded before saying definitively who won the election.

If this is true, what then are we to make of the actions of the secretary of state? Without provision in law, he refused to certify the winner based upon election night results because of his concern for tabulation errors. Then, after only one county had been recounted, without waiting for the corrections of other tabulation errors in other counties, he certifies one candidate, who coincidentally is a member of his political party, as the

winner, this time by the even closer margin of 34 votes. Given these facts, and given the fact that at the time the outcome of the election in the Eighth District was, indeed, in doubt, the actions of this body of the opening day of the 99th Congress were entirely appropriate.

INDIANA RECOUNT

Now, let us examine the recount conducted by the State of Indiana. In Indiana there is no provision for conducting a single recount according to uniform rules on a district-wide basis. Rather, in each county a recount commission determines its own responsibilities pursuant to instructions from the judge of the circuit court in that county. Each judge is elected in a partisan political campaign. As we have witnessed, the consequence in this case was that 15 different bodies developed 15 different sets of criteria for determining the validity of ballots. In one county, Posey, the recount commission was instructed by the judge to only recount the votes. As a result, that commission did not examine ballots to see if they met the requirements of Indiana law, but limited itself to the correction of election night tabulation errors.

In another county, Vanderburgh, the recount commission was instructed to recount the votes pursuant to Indiana law. That commission determined for itself what the requirements of Indiana law were, based upon interpretations of that law by the Indiana Supreme Court. In Vanderburgh County over 3,000 ballots were disallowed because of errors and omissions committed not by the voter, but by election officials of the State of Indiana. Three thousand votes were disallowed in Vanderburgh County, but had those voters lived in Posey County, their votes would have been counted.

Indiana law allows the candidate requesting the recount to choose those precincts he wishes recounted without substantiating the need for the recount. In the Eighth District, black voters are heavily concentrated in Vanderburgh County. Not surprisingly, Mr. McIntyre requested recounts in those precincts in which minority voters were concentrated. As a result, 20 percent of the black voters of the entire district were disenfranchised in the recount. Further, despite the fact that both candidates had requested recounts in parts of Vanderburgh, other parts of that county, where neither candidate requested a recount, were never recounted by the State of Indiana. Though probably unintended, Indiana law governing recounts may result in subjecting blacks to stricter voting standards than other voters and disproportionately impacting them as a result. Clearly, this was the consequence in the Eighth District of Indiana.

The recount conducted by the State of Indiana treated the ballots of some voters differently in identical ballots of other voters within the district. The result was the disenfranchisement of 4,800 voters. Errors and negligence on the part of election officials were the major causes of voter disenfranchisement. This process disproportionately impacted the minority population of the Eighth District of Indiana. For any one of these reasons, it would have been appropriate for the body to look into that recount. Given all of these reasons, this body would have seriously failed in its duty had it not discounted the results of that recount and determined to conduct its own recount. Finally, there should be no question as to the authority of this body to conduct a recount. That authority is found in the Constitution, itself, in article I, section 5.

HOUSE NOT BOUND BY INDIANA LAW

Having reviewed why it was necessary for us to conduct a recount, I will review the manner in which our recount was conducted. Let me say at the outset that no member

of the task force ever suggested that the recount be conducted strictly according to Indiana law. State law either controls or it does not. If the House felt itself bound by those laws, we are bound by them in their entirety. If the House has the authority to pick and choose among those aspects of the law it approves of, there is no "States right" issue because clearly the House has chosen not to be bound by that law. Assuming Indiana law to be sacrosanct, we would have been bound by the language of those statutes as interpreted by the Supreme Court of Indiana. One of the county recount commissions felt itself so bound and as a result disenfranchised 3,000 voters. Had we applied similar standards, thousands of additional voters would also have been disenfranchised. Such a consequence was unacceptable to the members of the task force and would have been unacceptable to this body. Finally, the constitutional authority of this House to judge for itself the elections of its Members clearly takes precedence over State law.

BALLOTS LACKING INITIALS AND PRECINCT NUMBERS

Being forced to rely upon the precedents of the House and those aspects of Indiana law which commended themselves to us, there was still remarkable unanimity in determining the rules by which votes would be determined to be valid. In developing the counting rules there was only one issue of disagreement, whether to count those nonabsentee paper and punchcard ballots that lacked poll clerks' initials and precinct numbers. When the voter entered the polling area he was to be presented a ballot on the back of which were to be written by the poll clerks the precinct number or designation and the initials of each poll clerk. In addition, the poll clerks were to inform the voter to look for the initials and warn the voter that the ballot would not be counted if both sets of initials were not present. One member of the task force argued that it was essential to ballot security that at least one set of initials or the precinct number appear on the ballot.

First, since the same individuals are responsible for ensuring that both the initials and the precinct number are on the ballot and are also responsible for asking the voter to check for them, it is likely that all three requirements would not be met in the event poll clerks were ignorant of or negligent in their duties. Those requirements do not act as a check on each other. Second, a ballot with only one set of initials and without those of the poll clerk of the opposite party would on its face seem no more secure than a ballot without any initials. Third, poll clerk Initials are but one method of ensuring ballot security. In Indiana, ballots are cast in the presence of two poll clerks representing the two major parties, an election inspector, an election judge, and observers from the political parties. To stuff the ballot box requires not only the possession of the ballots and the secrecy envelopes but the complicity of all the aforementioned individuals. Such a conspiracy would be very difficult to conceal completely and, despite the extreme, partisan emotions this election has raised, there have been no allegations of fraud. Finally, investigation revealed that in many cases poll clerks did not receive instructions before the election and either through Ignorance or negligence ignored the initialing requirement.

Based upon these facts, the task force by a 2-to-1 margin voted to count otherwise valid nonabsentee punchcard and paper ballots lacking poll clerk initials. The task force also voted to count otherwise valid ballots lacking precinct numbers. The reasoning behind this decision was that in the absence of allegations of fraud or irregularity the enfranchisement of the voter would not be forfeited due to the failure of an election official to fulfill his responsibilities under Indiana law. This decision conforms with the precedents of the House as established by both Republican and Democratic majorities and, in my view, gives proper weight to the right of the voter to have his vote counted.

TASK FORCE NEVER DECIDED TO COUNT ALL VOTES

The task force did not conclude that it would count all the ballots. In fact, the task force voted not to count ballots which were mutilated, on which there was an overvote in the congressional race, or on which the voter had placed a distinguishing mark. Finally, all of the task force's counting rules providing exceptions to Indiana law are conditioned by the phrase "an otherwise valid ballot." My own position regarding this issue has been very clear. I feel strongly and have stated that where the intention of the voter is not in doubt, and the honesty of that intention is not in question, the failure of election officials to fulfill their obligations should not be allowed to disenfranchise a voter who has met all of his obligations. If the intent of the voter is not clear, if there is good reason to suspect fraud, or if the voter has failed to fulfill his obligations under law, then we are obligated to apply a stricter standard to that ballot than would otherwise have been the case.

ACTUAL COUNTING OF VOTES ABOVE REPROACH

The recount itself was conducted by GAO auditors under the supervision of James H. Shumway, the Arizona State elections officer. Mr. Shumway was recommended by the Republicans and concurred in by the Democrats. The entire recount was conducted in the presence of staff from both sides of the aisles, representatives from each candidate, the press, and the public. I do not believe it is possible to conduct a more open recount. I have heard nothing but praise for the GAO auditors and for Mr. Shumway. It is very definitely my view that the job they did was truly exceptional and beyond reproach.

UNNOTARIZED ABSENTEE BALLOTS

In Indiana there are three classes of absentee ballots. There are military absentees, absentee ballots delivered to confined voters by election officials, and what I will call regular absentee ballots issued to nonmilitary, unconfirmed, registered voters who will be unable to be present at the polls on election day.

Under Indiana law those absentee ballots delivered by election officials to those who are confined are witnessed by two election officials after they are voted. In the event the ballot has been improperly witnessed, that is the initials of two election officials are not on the ballot envelope, then the ballot is deemed invalid and not counted. When the ballot is returned to the county clerk the ballot envelope is checked to ensure it is properly witnessed. If so the ballot is forwarded to the precinct on election day, removed from the ballot envelope, and counted with all the other valid ballots. If the ballot has been improperly witnessed it is retained by the county clerk, not sent to the precinct, and is never counted.

During the course of the recount several improperly initialed, confined absentee ballot envelopes were found at the precinct level, indicating that invalid, confined absentee ballots had been counted on election night. Since it is impossible to distinguish those ballots from other ballots and therefore impossible to know which candidate received those votes no adjustment was made to the vote totals.

In addition, two confined absentee ballot envelopes containing ballots (that is ballots that had never been counted) were found in two precincts. It was determined that these envelopes would be opened and the ballots counted. There are two underlying reasons for this decision. First, the ballots had been sent to the precincts and therefore, with the exception of not having been counted, had been treated in a fashion identical to other

valid ballots. Second, each ballot was defective because the envelope contained only one set of initials instead of two. Pursuant to the view that failures of election officials should not disenfranchise voters where the intent of the voter is clear and not questioned, I felt these ballots should be counted. However, since our counting rules provided only for counting "otherwise valid ballots" there was a rationale for not counting those ballots. Both ballots were counted for Rick McIntyre.

Besides the confined absentee envelopes that were found to have been incorrectly sent to the precincts, opened unnotarized regular absentee ballot envelopes were also found at the precincts. Under Indiana law, after indicating his preferences on a regular absentee ballot the voter is required to obtain notarization of the ballot envelope to help insure that the person who applied to vote absentee is also the person who voted. When the ballot is returned to the county clerk the ballot envelope is checked for notarization. If the envelope has been notarized it is sent to the precinct where the voter is registered on election day and it is counted with all other valid ballots. If the ballot envelope has not been notarized the ballot is to be retained by the county clerk, never forwarded to the precincts, and never counted. The presence of the opened unnotarized ballot envelopes indicated that regular absentee ballots, which should not have been counted, had been counted on election night. However, since it was impossible to distinguish those ballots from legitimate ballots and therefore impossible to know who those ballots were counted for, no adjustment was made to the vote totals.

Besides finding opened unnotarized absentee envelopes at the precincts, nine unopened, unnotarized absentee ballot envelopes and one opened but uncounted, unnotarized ballot envelope were found. It was argued by one member of the task force that, since we had counted improperly witnessed confined absentee ballots, we should also count unnotarized regular absentee ballots. My view was that we should not count those ballots. Whereas an improperly witnessed ballot is due to failure on the part of election officials, it is the responsibility of the voter to ensure that regular absentee ballots are notarized. In my view it is entirely appropriate to apply a stricter standard where the action of the voter has placed the ballot in question than where the action of a second party has jeopardized the ballot. Where the ability to ensure the ballot would be valid lies wholly with the voter, the voter should be held accountable for his actions. Those illegal ballots counted on election night should never have been counted in the first instance. I did not feel we should compound that error by counting additional ballots of this kind. In addition, our counting rules only provided for counting otherwise valid ballots.

On this issue I was overruled. It was evident that other unnotarized absentee ballots sent to the precincts had been counted. While the unnotarized, unopened absentee ballots had not been counted, they had in every other way been treated in an identical fashion to other valid ballots. It was decided by a majority of the task force that the 10 uncounted, unnotarized absentee ballots that had been found at the precincts would be counted. As a result of counting those ballots Rick McIntyre received six votes, Frank McCloskey received three votes and one was a "no" vote.

It was then proposed that we count unnotarized absentee ballots that had been retained by the county clerks. Having been against counting the uncounted, unnotarized absentee ballots found at the precincts, I opposed counting those unnotarized absentee ballots retained by the county clerks. These ballots had never been counted before, either on election night or during the recount. No one had previously contended that these ballots should be counted. While I do not feel that mistakes made by an election official

should disenfranchise the voter, mistakes made by the voter are another matter. It was unfortunate that any unnotarized absentee ballots had been counted. To count more of them merely compounded the problem. Finally, and most importantly, never having been sent to the precincts, these ballots had not been treated in a fashion similar to other valid ballots. They most certainly were not subjected to the same ballot security. On that basis, it was decided by a 2-to-1 margin that unnotarized absentee ballots retained by the county clerks would not be counted.

MILITARY BALLOTS

At the last task force hearing held in Indiana it was proposed that those absentee military ballots that had been received after election day should be counted. The subject had not been raised before. By a 2-to-1-margin the task force voted not to count those ballots. While the debate for counting these ballots was not very extensive, the argument for counting them rested on the premise that through no fault of their own, military personnel stationed overseas could have their ballots unduly delayed in the mails and thereby be disenfranchised. If this is true it is even more true of other Americans abroad as they must rely upon foreign mail systems as their point of entry into our mail system. No one, however, has suggested that an exception be made for these ballots. All absentee voters are informed that ballots that have not been received in time to transfer the ballot to the precinct on election day will not be counted. When one registers to vote absentee one assumes the obligation of ensuring that one's ballot is mailed early enough to ensure it arrives in time to be counted. Elections must have a conclusion. It would be unreasonable for an elected official to have to give up an office because 4 months later three more military ballots finally come in which change the outcome of the election. For these reasons I voted to not count absentee military ballots received after election day.

RECONCILIATION

As a part of their duty of counting the votes the GAO auditors were asked to track and compare the number of voters who signed the poll books with the number of votes registered in the precinct. Where these numbers did not agree, Mr. Shumway, the recount supervisor, was asked to try to ascertain why this was the case. In a perfect world the number of voters registered as having voted would correspond exactly with the number of votes counted. In some precincts in the Eighth District this actually occurred. However, this is not a perfect world. In some precincts the number of voters registered as having voted was greater than the number of votes that were registered. This can be explained by the fact that not every voter voted in every race. In rare cases a voter may have signed the poll books, received a ballot, and then, deciding not to vote, walked off with the ballot. In any case, I know of no methods for adding votes to a total where one can find no evidence of the actual vote ever having been cast.

In other precincts there were more votes counted than the number of voters registered as having voted. In fact, in a total of 50 precincts there was a total of 103 more votes than voters registered as having voted. Thirty-three of those precincts were off by one vote, nine precincts were off by only two votes, and two precincts were off by only three votes. In other words, in 44 precincts there was a discrepancy of three votes or less. While there are many possible explanations for such discrepancies, by far the most likely is human error. In two precincts there was a discrepancy of four votes. Again, I think the error is very probably the result of less than divine diligence on the part of the poll clerks.

However, I would note that Mr. McIntyre carried both precincts by margins of 55 and 56 percent. In one precinct there was a discrepancy of five votes. Mr. McIntyre won 59 percent of the votes in that precinct. In another precinct the discrepancy is six votes. Mr. McIntyre also won that precinct by 59 percent. In two other precincts, both in Spencer County, there were discrepancies of 12 and 15 votes. In these precincts it may be possible that the voting machines malfunctioned. If that is the case, it is impossible to know who those votes were counted for. It is known that Mr. McIntyre carried both of those precincts by margins of 60 and 56 percent, respectively. One can imagine the cries of injustice if we had sought to proportionately reduce the vote in those precincts. Seventy percent of the overvotes occurred in precincts carried by Mr. McIntyre.

We did not disallow votes based on discrepancies between votes cast and voters registered as having voted. This is an imperfect world and in every election of this size these kinds of errors will occur. By far the most probable explanation for these discrepancies is carelessness on the part of poll workers. Some voters apparently were given ballots without signing the poll book. I do not believe that such discrepancies discredit the vote totals. However, had we sought to adjust the vote totals on the basis of these discrepancies Mr. McCloskey would have a larger margin of victory than we, in fact, reported.

SEAT MCCLOSKEY

Mr. Speaker, your task force has conducted its recount in the open and on the record. Based upon that record, I do not believe that it can be said that the rules we adopted sought to provide undue advantage to either candidate. For myself, while I do not pretend to be disappointed by the results of the recount, my decisions on the issues which arose during the course of the recount were not motivated by a desire to reach that end. My single guiding principle was to ascertain as accurately as possible the will of the citizens of the Eighth Congressional District of Indiana as expressed by their votes. In my opinion the task force has achieved that end.

There are those who from the beginning have indicated they would not accept any decision that did not result in the seating of their candidate. These individuals have largely ignored factual issues surrounding this election. Instead they have contented themselves with dogmatic assertions and bald-faced accusations that the election was being stolen. I believe that if the College of Cardinals had conducted the recount and found for someone not to their liking, they would accuse God of stealing the election. Partisan politics taken to such extremes serves neither Mr. McIntyre nor Mr. McCloskey, the Republican Party nor the Democratic Party, this body nor the country. If there is to be dispute, let it be based on the facts.

A close election night result is a good reason to conduct a recount. A close result in a recount is not justification for a new election. Our recount rules were reasonable and were applied uniformly. Mr. McCloskey won this election by four votes. In my opinion, Mr. McCloskey deserves to be seated.

Mr. SHARP. Mr. Speaker, the problem arises of course, because we have one of the closest elections n the history of this country, but it is also no coincidence that the last major election dispute in this country arose in Indiana in 1960.

The reason for that is because, unfortunately, in my State, we have a very arcane and archaic election law, as virtually everyone who has observed this election independently, and without a partisan eye, has come to the conclusion.

Editorial writers in my own district and throughout the State in the past have called for election reform and they are calling for it with renewed intensity.

Indeed, a Republican newspaper in my own district not only on April 26 called for the seating of Frank McCloskey, the Democrat, it also called on April 30, using the words Congressman TOM FOLEY here, for dramatic election reform in the State of Indiana.

Mr. Speaker, the House sent to Indiana a task force which operated in the open, through great difficulty to all three members of the task force. They went to Indiana to make sure ballots were opened, counted, discussed in front of the public and the news media of that State, and I appreciate that effort that they made.

I think that independent observers in Indiana and outside of Indiana know that an honest and an honorable job was done in what was an extremely difficult situation. Basically, the principle followed was that they sought to count every ballot that was at the polling place on election night last fall. So long as they could consider the intent of that ballot, they counted it. And the only ballots that are in question and being raised here that were not counted were those that ever reached the polling places on election night in Indiana because they were illegal from the outset and they are illegal now, and everyone basically knows that who is willing to examine the facts.

My colleague from Indiana [Mr. JACOBS] raised the question: But weren't 10 ballots that went to the polling places that were not counted on election night in Indiana but subsequently counted because of the task force, weren't they illegal and wasn't that an error?

I think possibly that was an error to have counted those in. But, again, we all know the outcome that those 10 ballots had. Those 10 ballots, if counted in error, inured to the benefit of Mr. McIntyre, not Mr. McCloskey.

Had they been excluded, had that error that some of us believe was made not been made, Mr. McCloskey's return in the end would not have been just four votes, it would have been seven votes.

So if you believe that an error was made, then you can feel more comfortable with the outcome that this task force engaged in, because the return was actually higher than four votes.

Let us proceed to a conclusion and let Indiana fight this out in the next election.

Mr. FRENZEL. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Texas [Mr. BARTON].

Mr. BARTON of Texas. Mr. Speaker, we began on January 3 by refusing to seat the certified winner in the Indiana Eighth Congressional District election race. Instead, we decided to appoint a task force to investigate that election because the original election was neither timely nor regular and there were serious doubts about its fairness. Since that time we have been engaged in a debate, in some semblance of a procedure to determine the true outcome in the Eighth Congressional District race. The task force that was appointed, instead of investigating the original election, decided to hold its own recount. The guiding principle of that task force, as it was enunciated at the time, was to count all the ballots. Now, when they said "Count all the ballots," that is a little bit different than counting the ballots that were counted in either the recount or the original election results; in other words, count every ballot. In doing that, it resulted in 345 ballots being counted that had never been counted before. By definition, under Indiana election law, those were illegal ballots. They had not been counted on election day, they had not been counted in the State-certified recount. But 345 ballots were counted, 345 additional ballots were counted by the task force.

Now, of those 345 ballots, all but 78 of them were counted by the GAO auditors, but 78 had to be counted by Mr. PANETTA, Mr. CLAY, and Mr. THOMAS, of those 78, 54 were

agreed upon by the 3 members of the task force, but 19 Mr. THOMAS refused to vote on and they were determined by Mr. PANETTA and Mr. CLAY.

Now, we have got an election outcome of four votes. There are 345 additional, 78 determined by the task force, of which at least 19 were determined on a straight party line vote. I ask the question: Is this the result that can be considered reasonable and fair? I think not. I think we should vote not to seat Mr. McCloskey and let the people of Indiana determine who the true winner is.

Mr. FRENZEL. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from Kansas [Mr. ROBERTS], a member of the Committee on House Administration.

Mr. [Charles] ROBERTS [of Kansas]. Mr. Speaker, I rise today to speak not about the issue at hand; that is already a foregone conclusion; you have won the Eighth District of Indiana. Rather, I wish to share with my colleagues a keen sadness I feel regarding the effect of this business upon this House as an institution—more important, what we want it to be both as individual Members and as Democrat and Republican partisans.

We all ran through partisan gauntlets of sorts to gain the privilege of being here. You cannot find a more Republican Member than this one from the standpoint of personal heritage and commitment.

Yet the special fabric that binds this institution in purpose and achievement is bipartisan. I am the first to admit that no political party has an exclusive patent on common sense or can lay claim to what is right. And, personally, I try very hard to work with my good Democrat friends. We on the Agriculture Committee are bound together with a special kind of commitment in behalf of our farmers and ranchers. That's just the way it is in farm country. To be sure we have our differences, but for the most part we work together and try on the other fellow's boots—they pinch but we get the foot to fit.

So, I try to be the best Member I know how to be—tempered by 18 years as a staff member and Member of this body. That, I say to my friends in the majority, is the rub. Part of what we are is what you allow us to be. And you folks have had us on short rein this session.

Each time around the track we get nicked—a piece of flesh on committee assignments, on funding, on what legislation is considered, and how, and when, and who gets the credit—or blame.

But I knew that when I climbed into the ring. As a Member of the minority in this House, I am accustomed to being treated unfairly by some of you in the majority. That's part of the penance. The other half of that is that others in the majority do allow me the privilege of being a full partner in my duties—so the privilege is worth the penance.

But I know this: On this issue you have torn that special fabric that holds us together as a House of Representatives. Let me make it clear I do not point the finger of blame or place the charge of conspiracy at the doorstep of Mr. PANETTA and Mr. CLAY. I stood yesterday and applauded when the majority leader said LEON PANETTA was a man of integrity. He is you in the leadership put him in that box. And when the command is column left and you are the lieutenant, you march—as best you can.

We ought to stand today, Mr. Speaker, and give the same due credit to my friend and colleague, Mr. THOMAS, whose aggressive defense of what we think is right, and factual, and correct was both fair and tough. It is one thing to climb between the ropes and do battle against great odds but yet another to suffer the subsequent agony of defeat when you enter into the fray knowing the fight has been fixed.

What we are talking about is the kind of majority rule that has led to resentment, frustration, anger, and retirement. We will lose good Members because of this issue.

But, never mind—on to business as usual. After all, what alternative do we have. This next vote is a fait accomplished; just a little formal salt in the wound. What am I to do as an individual Member? Disrupt the House? Abdicate my responsibilities to my people? No; I will continue to work with my Democrat friends. After all, it was just moments after the vote yesterday and after personally watching the press conference by Rick McIntyre that one of my Democrat colleagues, with a big smile on his face, said: "When are you guys going to get us a farm bill?" I guess I am a "you guys" Member. One of the back—rail troops, a committee person if you will, not a floor expert in virtually every policy area according to the Republican or Democrat holy grail.

But I can tell you this. This wound will not heal without a terrible price and a scar that will be with this House for many years. It would appear, Mr. Speaker, there are two kinds of Members within your majority. We have those who listen and work with the minority and those who do not believe we are full—fledged partners in this House. In baseball terms, they are the ones who call for their pitcher to stick it in the batter's ear. The unmitigated gall occurs when once you make us hit the dirt, you take offense when we come up swinging.

Yesterday I stood to underscore my belief that LEON PANETTA is an honorable man, only to be lectured by the majority leader that somehow my additional expression of frustration, and anger, and outrage was beneath the dignity of this body. I say this to the majority leader—you folks dish it out daily, but you sure can't take it. Oh, I know the majority leader and those that make up the cabal that is responsible for this whole business will respond that we shouldn't feel that way. They have argued their version of the facts. But regardless of that attitude, we feel this case was handled unfairly for the reasons so eloquently stated in the House debate.

And, it is that sense of unfairness that will live long after this dispute is over. Yes; Mr. Speaker, I will take off my "Thou shall not steal" button. A slogan too harsh? I think not. I am going back to work.

But for me and for my colleagues, this House is not the same. The collective sense of unfairness symbolized by this button remains in our hearts.

The sad, sad thing is that we did not have to go down this road.

Mr. [Robert] MICHEL [of Illinois]. Mr. Speaker, yesterday, my good friend, the distinguished majority leader, gave one of his eloquent and articulate speeches on this controversial topic.

While I admire his gift of oratory, I must say I disagree with much of his emphasis.

He devoted a great deal of his remarks to real or alleged breaches of House etiquette on the part of certain Members of the minority.

This is what is known as blaming the victim.

The issue here is not whether Members on our side have lost their temper. It is whether Rick McIntyre has lost his seat.

The issue isn't whether during heated debate Members on both sides have said things that Miss Manners would blush at hearing. The issue is that Republicans and concerned Democrats feel, in the words of a Democrat, that this race is tainted and has a cloud over it.

So let's not play the old game of blame the victim. If there is any indignation on our side, it arises from a universal sense of frustration, anger, and yes, bitterness over the way this has been handled by the majority from beginning to end.

The distinguished majority leader also said that the Republican leadership, in a meeting in the Speaker's office, said we wouldn't be asking for a reelection if McIntyre had won by four votes.

Yes, if Rick had won by four votes or one vote, we wouldn't be asking for a rerun and we'd do the same with McCloskey—if we thought the vote count was fair.

But we don't think it was fair. That's the central point of the controversy.

So it is not accurate to come here and tell people we wouldn't call for a rerun if McIntyre had won by four votes.

If the evidence showed—that he won by the device of having cast aside legitimate ballots, I would give the other side a fair shot at it with a rerun.

There is one ironic aspect to all this and I have to comment on it.

Mr. Speaker, I mentioned yesterday that the issue here was not one seat in Congress. It was one of fairness. It remains one of fairness.

It is also an issue that strikes at the heart of the balance between those powers given to the States and those given to the Federal Government. The balance has been tipped—in the wrong direction.

It is an issue of representative government and the difference between democratic and autocratic rule in this House. We are fighting for the rights of the minority and millions of Americans whose rights have been entrusted to us. That is why this fight will go on. That is why this cause will not die. That is why we will not return to business as usual. The Rick McIntyre issue is more than an election. It is unfair rules, unfair ratios, unfair staffing, excessive spending and a hundred other abuses of this House and our democratic processes.

The majority leadership seems incapable of understanding—the deep feelings on this side. We are not angry because we lost.

We are angry because of the way we lost. We are not sore losers.

Yes, we are sore. But we are sore winners. We won this thing and it's been taken away.

The distinguished majority leader said that his side is not so hard up that they would deprive Republicans of an extra seat by devious means.

I say to the majority leader—we are not so hard up that we will take any bone you choose to throw us.

We can't take this thing lying down, nor can we surrender because we've just begun to fight.

Mr. [William] GOODLING [of Pennsylvania]. Mr. Speaker, we know the facts, January 3, 1985, the Democrats in the House of Representatives exercised their power of majority and refused to sit a duly authorized winner of the race for Congress in Indiana's Eighth District. We now know that the creation of a task force to decide the winner was another exercise of their majority party status, the task force reversed the nearly quarter—million voters decision in Indiana and declared Democrat, Frank McCloskey the winner.

Since Mr. McCloskey does not appear to be embarrassed to win in this manner and speak out against such political maneuvering, the fight for the rights of these voters must continue. If we do not stand firm at this point, the Democrats sensing the public mood toward the Republican Party will surely turn around many more seats after the election in 1986.

It is a shame that this power play is not looked at by the media, who are always seeking to fight for right, seem to be unaware of the corrupt methods being used to determine the winner of this election. Is that indicative of their distinctive bias?

I also find it puzzling as to why the more junior members of the Democrat Party, who obviously understand the dangerous road being taken by the Speaker and other leaders

of their party, do not stand up against what they know to be wrong. They have come here in all probability to represent a newer attitude within the voters of America, and they are hiding behind the party demagogy with fear. In the long run, the people will vindicate the winner, Mr. Rick McIntyre, but what the Democrats are doing to the Constitution of the United States cannot be vindicated, excused, or condoned. I believe the people will seek more honest Representatives in the future. If Mr. McCloskey accepts the, title Representative of the Eighth District of Indiana he does so without honor.

Mr. [Norman] SHUMWAY [of California]. Mr. Speaker, I am vehemently opposed to this resolution, just as I have been opposed to and appalled by the outrageous circumstances which have led up to it. By its actions, the House has abrogated the States rights of Indiana; it has trampled the voters' right in Indiana's Eighth District, and, today, it is literally stealing a congressional seat away from the duly elected choice of the people. Worst of all, we are establishing a dangerous precedent—what is to prevent the majority party in the House from stepping in and seizing every close race in the future?

It is true that the race between Messrs. McIntyre and McCloskey last November was a close one—but it is also true that McCloskey lost. He was not the individual certified by the Indiana secretary of state as the winner of the election. The House majority chose to ignore that validation, a slap in the face to Indiana. It chose to allow Mr. McCloskey to claim a congressional seat without using the avenues of recourse available to him within his State. It chose to leave the people of Indiana's Eighth District without representation for months, and it chose to ignore two separate vote counts, both of which made it clear that McIntyre had won.

We do not tolerate this type of election charade when it takes place in emerging nations, nor should we. For us to sit by and allow an election to be manipulated by our own membership is a travesty. If the House majority leadership is to be permitted to wield this arrogant and unresponsive abuse of power, what is the point of having elections at all?

Mr. FRENZEL. Mr. Speaker, I yield my remaining time to myself.

Mr. Speaker, I yield to the gentleman from California [Mr. PASHAYAN].

Mr. [Charles] PASHAYAN [of California]. Mr. Speaker, what the task force did in Indiana stabs the very heart of the Constitution. Article I, section 2, says: "The House of Representatives shall be composed of Members chosen * * * by the People * * * and the Electors of each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature," and in article I, section 4, the Constitution says, "The Times, Places and Manner of holding Elections for * * * Representatives, shall be prescribed in each State by the Legislature thereof * * *," unless Congress shall by law regulate elections.

When the task force refused to count 32 absentee ballots that were the same as other absentee ballots which they did count, it acted in a manner repugnant and obnoxious to article I. It certainly acted contrary to what the Supreme Court in a whole series of cases has held, of which there is perhaps no more a clear and brilliant articulation by the Court than its pronouncement in 1941 in U.S. versus Classic:

> Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at congressional elections. This court has consistently held that this is a right secured by the Constitution * * *. And since the constitutional command is without restriction or limitation the right * * * is secured against the action of individuals as well as of states.

The task force acted under its own rules, not under Federal law passed under article I, section 4. What is worse, they applied their own rules inconsistently. In the task force's

counting rules, No. 9, the task force provides that it will count ballots that * * * a may not have been properly sealed election night." Likewise, rule 21 provides for the counting of ballots that "* * * may have been improperly sealed election night." In other words, rules 9 and 21 contemplate counting votes that were not necessarily perfectly secured.

Why then, but for latent political reasons, did the majority of the task force refuse to count 32 absentee ballots that 4 Indiana county clerks swore under perjury had been secured? There is no consistency in the proceedings of a task force whose written rule proclaims counting unsecured ballots and whose later ad hoc rule proclaims not counting secured ballots.

Even worse, there is every likelihood that the task force acted in violation of the tenets of the Voting Rights Act of 1965. Perhaps section 11(a) of the act meant to echo the lofty articulation of Classic in providing: "No person acting under color of law shall fail or refuse to permit any person to vote who * * * is * * * qualified to vote, or willfully fail to refuse to tabulate, count and report such person's vote." I find a cruel irony indeed that the majority of the task force composed of the majority party of this Chamber refused to follow the dictates and spirit of the law that its party fought so hard for so many years to realize. I find it a cruel irony that the very party that was responsible for passing this legislation is responsible for violating its most precious tenants: that of denying the right to vote of people equally situated as the same class of voters.

I wonder how grievously disappointed that the people in America whom the Voting Rights Act was designed to protect will be when they shall come to understand that it was members of the Democratic Party who violated the very tenet of the Voting Rights Act: "Equal people, equal votes."

Article I, section 5, says, "Each House shall be the judge of the Elections, Returns, and Qualifications of its own Members * * *," but is the power absolute? In Powell versus MacCormack, the case of Adam Clayton Powell, the Supreme Court in 1969 said that the House's power to be the judge the qualification of its Members was not absolute but rather qualified by other provisions of the Constitution, and I agree. I think it unconstitutional for a committee or for even the House itself sitting as a judge of the election not to be bound by other provisions of the Constitution. Should the House have the power to judge elections unchecked by the broad principles incorporated in the due process clause, the equal protection clause, the privileges and immunities clause, and especially article I, section 2, of the Constitution? Should the House have the power to ignore these great constitutional principles? The Democratic Party claims it does, and so it claims an absolutist doctrine: that the ultimate power to elect the Members of the House lies not in the people, but in the majority party's caucus.

As a constitutional doctrine, the Democratic Party's claim would absolutely permit the majority party, on January 3, 1987, absolutely to determine the results of any House election. It would absolutely permit them to refuse to accept the certification of the secretary of state of any State, to order another task force to recount the ballots, to have the task force issue written rules, within the proceedings to have the task force issue ad hoc rules inconsistent with the written, and then to unseat a properly elected Member of the minority party by recounting only arbitrarily selected ballots. Surely our Constitution cannot mean: "The House of Representatives shall be composed of Members chosen by the majority party."

The grand principle of the Constitution is that the people shall choose. Once the task force decided to supplant Indiana law by counting votes that would not be counted under Indiana law, it was bound to do so evenly. To preclude 32 absentee ballots from being

counted while actually counting other absentee ballots exactly alike but for a supposedly lesser degree of security is fatuous in face of rules 9 and 21 that contemplates counting ballots not necessarily secured.

The refusal to count all like ballots of the same substantive class is arbitrary and unreasoned.

If this House shall act to seat McCloskey, then this House will endorse a dark absolute power to determine elections, and the entire Constitution will fall under a despotic shadow. Let us take the only enlightened course: Let us order another election, open, clean, and unbloodied by politics.

Mr. FRENZEL. Mr. Speaker, I wish that the gentleman from Kansas [Mr. ROBERTS] could have closed the debate for our side, because I think he speaks eloquently for every Republican in the House of Representatives. We, who have been the ground beneath the tyrant's heel, have become used to that kind of treatment. Perhaps our spirit has been broken too much; I think perhaps we have spoiled our friends in the majority by not being outraged nearly enough. I hope that you will forgive us if we raise our voices once in a century, when the peoples' right to determine who will represent them has been taken away from them by a willful caucus, willing to exercise ruthlessly whatever power it has by its sheer numbers.

Before I get overcome with the bitterness of past defeats, Mr. Speaker, I do want to call particular attention to the service of the committee chairman, our good friend, the gentleman from Illinois [Mr. FRANK ANNUNZIO]. I believe he has handled himself and his committee in the best traditions of the House and has been very helpful in moving this process along in the best way that the House can possibly move on any question this difficult.

Mr. Speaker, when the time has run its course for this debate, I shall move to recommit House Resolution 146 to the Committee on House Administration with instructions to that committee to count the otherwise valid, unauthorized absentee ballots in the four counties often discussed on the floor here so that we will have some measure of rough justice.

As you will recall, the Democrat task force, by party line votes, refused to count the remainder of the ballots after it had counted 52 ballots that had been counted during the general election, and 10 which have not. It refused to count 32 which could be identified as having been carried under the same security as the ballots which have been counted.

The task force, which is the real thrust of the Republican attack here, simply found enough votes to elect its man, McCloskey, and then stopped counting, leaving those 32 voters disenfranchised. We heard tons of speeches on this floor that, by golly, we were going to save those disenfranchised voters. Those bad, bad Indiana clerks, and that bad Indiana law kept people from voting. This task force is going to let those people vote.

Well, it did. It let 10 of the 42 we know of, but would not let the other 32. Why not? Because they were afraid to risk losing the four-vote advantage. Now, remember: McIntyre won the election. The only way that McCloskey could win it was under a new set of rules. When the new set of rules were drawn, we stopped counting under those new rules. We abandoned them and we said: "Oh, my goodness, we are going to go back to Indiana law; those 32 ballots are uncountable."

Well, we could not find Indiana law because the task force threw it in the trash can when it established its counting rules.

Now, I want to talk about the count a little bit. I hope that the motion to recommit will be supported. The district court in southern Indiana has granted a temporary injunction to protect the ballots, so you need not worry whether they will be there or not. They did that yesterday in response to a request.

Let me talk about the ballots. I have been led, or I think many people have been led, to believe that for some reason mistabs have decided who got elected here. Let me first tell you that mistabs gave candidate McIntyre 75 more votes and candidate McCloskey 79 more votes. That is a four-vote increase for McCloskey. He did not gain back 34 votes that he had on election night by mistabs.

Where he gained back his votes were on ballots not counted; those 142 ballots that our valiant committee has saved to enfranchised otherwise disenfranchised voters, even though their ballots did not satisfy Indiana law. There his friends on the task force found 22 more votes for McCloskey than they did for McIntyre. Actually, McCloskey won the whole election by picking up 12 extra votes on hanging chads.

Do you know what hanging chads are? When you have a punchcard that does not go through, you get the little punch out and it is hanging there. Nobody knows who they voted for. You have to be Harry Houdini or the Almighty to know what the score is, but somehow our task force was able to determine that 12 more of those went for McCloskey and they found out who won.

I believe that McIntyre was beaten clearly and unmistakably by the rules. He was beaten by subjective judgments of his Democrat cronies. I did not say McCloskey won; I said McIntyre was defeated.

When the press asked me when I came in here today what the House was going to do, I said: "I think the Democrat Caucus is going to seat the loser." And the basis for the seating is that the king can do no wrong; king caucus decided on January 3 that it was going to impose its will. King Democrat caucus was going to impose its will on the people of Indiana. I do not think that any other description can disguise the shame that our whole representative process feels because this decision was made unilaterally in that caucus, throwing aside the votes of more than 230,000 Indianans.

We have heard a lot about honor in the last couple of days, and I am all for honor. I believe everyone here is just dripping with honor. I remember William Shakespeare spoke through Mark Anthony to say that Brutus was an honorable man, but he was not above sticking a broadsword between the ribs of Julius Caesar into some of his more tender parts. I feel a little bit like Julius Caesar today too. I have felt the sting of the Democrat broadsword.

I remember, too, a couple of lines from Tennyson, which go like this:

> His honor rooted in dishonor stood,
> And faith unfaithful held him falsely true.

Now, if there is anyone being held falsely true because he believes that to be a good Democrat you have to disenfranchise Indianans, I beg you, you have only two more chances. You have a chance to give the election process back to the people of Indiana. You have a chance to go with the certification process. You have a chance to prove that king caucus is not a ruthless wielder of brutal political power that overwhelms the votes of the people of Indiana.

You have a chance to prove that you really believe in the Constitution and the election processes of the United States of America. If you do not, you will simply exacerbate the difficulties that we have gone through in the last few weeks. You will have proved to the United States of America that it does not make any difference who the people elect if king caucus, king Democrat caucus decides that it wants to elect one of its cronies.

Your best way to prove that this House means something, that your love of the institution and the processes are more improtant than your love of the party, is to vote to recommit House Resolution 146.

Mr. PANETTA. Mr. Speaker, I yield myself the balance of my time.

Mr. [Ronald] COLEMAN of Texas. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Texas.

Mr. COLEMAN of Texas. I thank the gentleman for yielding. As one of those Members who has read every page of this document, I rise in support of this resolution.

Mr. Speaker, today, the House of Representatives will be voting to seat Frank McCloskey as the duly elected Representative of the Eighth Congressional District of Indiana. The resolution before this body is premised upon the recount sponsored by the House which shows Mr. McCloskey with a four-vote margin over his Republican challenger, Mr. McIntyre.

I believe that all of us present today understand the seriousness of the task force before us in deciding what our respective position will be relative to the resolution now before this body. While there has been a swirl of partisan feelings and emotions surrounding this issue which have, on some occasions, obscured rational thought on the part of some Members, I feel confident that the information now available from proponents of both sides of this issue adequately provide a basis from which an informed decision can be made.

I am going to vote in favor of accepting the recommendation of the Committee on House Administration to seat Frank McCloskey, not on the basis of my political affiliation, but upon a reasoned and indepth analysis of the premises advanced by the committee in support of its recommendation to this Chamber.

To begin with, let us not lose sight of the fact that the House has the ultimate responsibility as well as primary jurisdiction, under article I, section 5 of the U.S. Constitution, to judge elections. Pursuant to this power, the House adopted a resolution, on January 3, 1985, to investigate the McCloskey-McIntyre election. While I will not review the unfolding of events from election night, 1984, through the present, I believe that all of us can agree that the many irregularities and inconsistencies in the Eighth Congressional District of Indiana's election process certainly justified this action by the House.

Given the inconsistencies which characterized the counting of the ballots in Indiana that evening within the Eighth Congressional District, the goals of the task force were to follow counting rules which disenfranchised the smallest possible number of voters and to apply uniform standards which would cover all counties and precincts. These counting rules were adopted so that technical errors made by election officials, as opposed to those made by voters, would not invalidate a ballot.

What I will attempt to do is to isolate for my colleagues what I have come to view as the crucial issues upon which I have made my decision to support the committee's recommendation.

One point which I find critical in determining the "winner" is that the key difference between the State's certified election result of 34 votes and the House recount process is directly related to tabulation errors discovered by the task force auditors on the part of election clerks in Indiana. It is important to note that these changes in vote tabulations resulted not from the counting rules adopted by the task force, but from this discovery of tabulation errors in the initial counting which took place election night.

The true crux of this controversy surrounds the nebulous nature of the unnotarized absentee ballots. Under Indiana law, absentee ballots must be signed by the voter, notarized, and returned to the appropriate county clerk by election day. On election day, the clerk then forward the absentee ballots for each precinct out to the appropriate precinct, where the absentees are opened and counted along with the ballots cast in a normal

manner that day. Also under Indiana law, any absentee ballots that are not signed and notarized are supposed to be immediately rejected and not forwarded to the precinct—these ballots are per se invalid.

The unfortunate fact discovered by the GAO auditors hired by the task force to count the ballots was that some of these unnotarized ballots had been sent out to the precincts. Of these absentees sent to the precincts through clerical error, some were recognized by precinct workers as invalid and were not opened up or counted while others were opened as well as counted. The task force was then confronted with absentee ballots, clearly invalid, which were inadvertently forwarded to precinct workers and counted; absentee ballots, clearly invalid, which were sent to the precincts but not counted; and, absentee ballots, clearly invalid, which were recognized as such and retained by the various county clerks and not forwarded to the precincts. Of those invalid absentee ballots which were erroneously sent to the precincts, counted, and then mixed in with the other ballots, there was no way for the task force to be able to distinguish them and thus not count them. Of the second category, those absentee ballots which were inadvertently sent to the precincts and not counted, these were clearly able to be segregated by the task force. Of the third category, those absentees which were retained by the county clerks, it was easy for the task force to be able to identify and segregate.

Since it was not possible for the task force to identify and segregate those invalid absentee ballots counted erroneously, the question became how to treat these ballots in an equitable manner. In the House, there is no precedent for counting unnotarized and unwitnessed absentee ballots. What precedent there is provides that when it is possible to differentiate between valid absentee ballots and invalid absentee ballots, the preferred method is to proportionately reduce the vote totals for each candidate. In this instance—and given the tabulation errors uncovered by the GAO auditors which benefited Mr. McCloskey—had this proportional reduction formula been followed, Mr. McIntyre would lose more votes than Mr. McCloskey.

Despite the existence of this precedent, and at the request of the Republican member of the task force, it was agreed that those ballots already counted should remain in the active count. Regarding those absentee ballots which, while clearly invalid, were forwarded to the precincts yet not counted or integrated with the other ballots, task force Chairman PANETTA agree with the Republican member to count this group as well which increase Mr. McIntyre's vote total. Relative to the third group of absentee ballots—those recognized as invalid by the county clerks and withheld from the precincts—the task force, along party lines, decided not to count them.

Despite my personal misgivings about the decision of the task force chairman to count the second category of ballots, or to count the first category and not proportionately reduce each candidate's totals, neither decision would have changed the result of who actually won this election.

I believe it significant to note that not one member of the task force ever suggested that unnotarized or unwitnessed absentee ballots ever be counted. It was not until the last meeting of the task force, on April 18, after it was apparent that Mr. McIntyre was losing by four votes, that the Republican task force member first suggested that those invalid ballots retained by the county clerks should be treated in a manner similar to valid ballots.

In another desperate attempt to erase Mr. McIntyre's four-vote deficit, and in direct contravention of Indiana law, the Republican task force member also requested that military absentee ballots that had arrived after election day be counted. The task force voted not to count late-arriving military or other absentee ballots received after the election.

Mr. Speaker, Frank McCloskey, albeit narrowly, won this election based upon what I sincerely believe was a credible counting of the ballots by GAO auditors under the supervision of the task force. While I disagree with the decision made by the task force to count those invalid absentee ballots which were not comingled with other valid ballots—a total of 10 ballots in all which gave McIntyre the majority—it is apparent that either through the means adopted by the task force or the concept of proportional reduction or both, McCloskey would still be the victor.

On the matter of a special election, several things disturb me about the recent momentum for such an event. First of all, it is the Republicans, after realizing that they had possibly lost the election on the recount, who are demanding a special election. This is a new claim raised by them at the 11th hour and lacks a sound premise. Moreover, and despite Mr. McCloskey's small margin of victory, closeness alone while it could justify a recount, does not now, nor has it ever, constituted an adequate legal basis to call for a special election. Absent a showing of irregularities which go to the heart of the final result, there is no precedent for demanding such a special election.

For the foregoing reasons, Mr. Speaker, I believe it legal and proper to now seat Mr. McCloskey as the representative from the Eighth Congressional District of Indiana and I would hope that the House can now return its attention to the national issues pending before it.

Mr. [William] FORD of Michigan. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Michigan.

Mr. FORD of Michigan. I thank the gentleman for yielding.

Mr. Speaker, after an exhaustive and painstaking recount of last November's election in Indiana's Eighth Congressional District, I don't believe that any fair-minded person can deny that incumbent Frank McCloskey is the winner.

The recount was federally supervised under a careful procedure that ensured the utmost integrity and fairness. The results are now before us. And they are conclusive.

There is little doubt that this was the closest congressional election of this century, with the final outcome decided by only a handful of votes.

The narrowness of Mr. McCloskey's victory, however, is not the issue before us. Rather, it is whether, after one of the most careful and diligent recount procedures in our history, he emerges as the undisputed winner. On this score the record is now clear. And it matters not whether he won by 4 or 400 votes.

While the central issue is indeed who won that photo-finish race, it is not, in my mind, the most important consideration before us. That, instead, is whether the recount procedure established by the House to resolve this prickly dilemma can stand the test of harsh scrutiny for openness, honesty, and fairness. I am convinced it can.

It was a far more valid recount than the one ordered by the State of Indiana. Why? Because it examined all the ballots and did not selectively throw some out for minor technical reasons. If the intent of the voter was clear—and it mattered not for whom the ballot was cast—the vote was counted. Indiana, on the other hand, excluded nearly 5,000 ballots because of technical, not substantive, reasons, thereby willy-nilly disenfranchising thousands of voters.

The federally supervised recount was conducted by teams of independent auditors from the General Accounting Office whose integrity and professionalism is beyond reproach. These teams of auditors laboriously counted the ballots on site by hand, leaving nothing to chance.

Moreover, the task force appointed by the House bent over backward to ensure fairness to both sides and fidelity to the Constitution and the people of Indiana's Eighth District.

It has been charged, unfairly, that the composition of the task force guaranteed an outcome favorable to Mr. McCloskey. Nothing could be further from the truth. First of all, as I said earlier, it established a procedure for counting all the ballots, which were not disqualified through voter error, the only democratic way to determine the winner.

I would like to remind my colleagues that, under the Constitution, Congress is the sole judge when it comes to deciding the outcome of the election of its Members.

To have relied on the results of the Indiana recount would have been a patent abdication of our constitutional duty as elected Members of this body. There were more than 15 separate recount commissions in Indiana evaluating the results with 15 separate and irregular procedures. One group, for example, accepted ballots that another group operating only a few miles away threw out for technical reasons. The task force, on the other hand, applied uniform rules to bring order out of chaos. To charge now, as some of my colleagues on the other side of the aisle have done, that we have attempted to "steal" this election is to ignore the facts for political gain.

From the very outset of this case the House has acted in a prudent and cautious manner to protect the parties involved and the integrity of the system. Quite properly it refused to seat either Mr. McCloskey or his challenger, Mr. McIntyre, until all the facts were known. To have done otherwise would have flown in the face of electoral justice and constitutional responsibility.

It was only fitting and proper for us to withhold a final judgment pending the results of this thorough and eminently open recount process—a procedure open to both sides and the media every step of the way. For us to have acted hastily before all the facts were on the table would have demeaned the process and created distrust in the public mind.

But now we are in possession of all the facts. Nothing remains hidden from public view. And now that we do have the facts, it is our duty to act upon them fairly and decisively. And the only fair and honest way to do that is by seating Mr. McCloskey according to the will of the majority of the voters of Indiana's Eighth District.

Mr. [William] ALEXANDER [of Arkansas]. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. I yield to the gentleman from Arkansas.

Mr. ALEXANDER. I thank the gentleman for yielding and I will not take any time, although I would like to. I would like to compliment the chairman and the task force for an excellent job and an excellent report.

Mr. Speaker, the rhetoric and parliamentary antics of the other side have reached an absurd, juvenile level in the past few weeks. Obviously, this reflects the increasing role of the extremist element in Republican policymaking.

Sadly, many senior Members on the Republican side have recently been quoted publicly and privately as saying that they are planning to leave this body—either through early retirement or seeking other offices—because of the frustrations and embarrassment caused by this extremist element which paralyzes those Republicans who legitimately seek constructive solutions to our Nation's problems.

Mr. Speaker, today the Republican side plans to walk out of the Chamber to protest the seating of the rightful winner of Eighth Congressional District of Indiana. Judging from the assembling of the media around the capitol, I can only conclude this planned walk out is more for the purposes of good press, than good government. I suppose they will use this opportunity to once again attack the leaders of the Democratic Party as slime and thieves, and repeat their threats of civil disobedience and, indeed, physical assaults to prevent the House from swearing in the rightful Congressman from the Eighth District.

Mr. Speaker, I know at this point the extremists on the Republican side are not interested in substance. That quality was abandoned in their speeches weeks ago. However, I would suggest to them that they take a look at the position of the Reagan administration on this matter. I think they will discover the shaky legal ground upon which they have been making their allegations of criminal and immoral behavior. Frankly, it seems to me that the brief filed in the Supreme Court by the Reagan administration on the Indiana question actually justifies the action of the House in how it has proceeded on this matter.

On the Republican allegation that the House does not have the right to assume jurisdiction over the Indiana race, the Reagan administration argues—and I quote:

> This cannot be right * * *. The House should be left to continue its recount and judge the elections and returns of its own Members.

On the Republican allegation that there is no evidence of fraud, the Administration said the absence of specific allegations of election fraud or irregularity—and I again:

> That * * * is beside the point. The election was extremely close and the question the House must determine is, what was the vote?

On the charge by the Republican side that the House should have honored the dubious certificate of election, the administration argues that the validity of the certificate is "really up to each House as the judge of its election returns."

And on the allegation by the Republican side that the House is unfairly and illegally denying the people of Indiana their constitutional right to representation, the Reagan administration quoted the case of Barry versus the United States which said:

> (There is no) merit In the suggestion that the effect of the refusal * * * to seat (a member) pending investigation was to deprive the State of its equal representation. The temporary deprivation of equal representation which results from the refusal * * * to seat a member pending inquiry as to his election or qualifications is the necessary consequence of the exercise of a constitutional power, and no more deprives the State of its ''equal suffrage'' in the constitutional sense than would a vote * * * vacating the seat of a sitting member or a vote of expulsion.

Mr. Speaker, there are many issues in this case upon which reasonable people might disagree. However, the other side has repeatedly taken the issues of this case pounded and pounded again their own interpretation of them to the point that they are no longer willing to listen to reason.

While I know they will not listen to my arguments or those of the Members who have so professionally and astutely guided this procedure, I urge them to look at the arguments or President Reagan's own Justice Department on this matter.

[In the Supreme Court of the United States, October Term, 1984, No. 102, Original]

STATE OF INDIANA, PLAINTIFF *v.* United States of America, et al.

(On Motion for Leave To File Original Bill of Complaint)

BRIEF FOR THE UNITED STATES IN OPPOSITION

JURISDICTION

> The jurisdiction of this Court is invoked under Article III, §12, Cl. 2, of the Constitution of the United States and 28 U.S.C. 1251(b)(2). The question of jurisdiction is further dicussed in the Argument, *infra*.

STATEMENT

1. The State of Indiana—in its own right and as parens patriae—has filed a motion for leave to file an original complaint in this Court, seeking an order requiring the seating (at least provisionally) of Richard McIntyre as Representative for the Eighth Congressional District of Indiana. The claim is that refusal to seat McIntyre in the Ninety-Ninth Congress deprives Indiana and its citizens of constitutional rights relating to representation and control over the election of Representatives from the State. Named as defendants are the United States, the House of Representatives, the Speaker, and various officers of the House. The House and its officers are represented by the Counsel to the Clerk of the House of Representatives, who is filing a separate response to Indiana's Motion for Leave. The present brief is submitted on behalf of the United States only.

2. In the general election of November 6, 1984, the seat for Representative from Indiana's Eighth Congressional District was closely contested between Richard D. McIntyre and Francis X. McCloskey. For some five weeks, state officials withheld certification of either candidate. Then, on December 13, the Indiana Secretary of State and the Governor certified McIntyre as the winner. Nevertheless, when the House of Representatives convened on January 3, 1985, it passed a resolution declining to seat either candidate and referring the question to its Committee on House Administration. That Committee is conducting a recount and has not yet reported, though it appears to be close to doing so; the result, whoever wins, will be extremely narrow. In the meantime, both claimants have been tendered the salary of Representative.

3. Some weeks before Indiana filed the present Motion in this Court, Richard McIntyre and a voter from his District commenced an action against the Speaker of the House in the United States District Court for the District of Columbia. *McIntyre* v. *O'Neill*, Civ. No. 85–0528. The relief sought there was essentially the same as in this original action. On March 1, the suit was dismissed on grounds of non-justiciability, and an appeal from that ruling is now pending on an expedited basis in the Court of Appeals for the District of Columbia Circuit, No. 85–5212, where briefing has been completed.

ARGUMENT

There are perhaps special objections to the joinder of the United States as a defendant to this action.[1]

[1] It is arguable, first, that the United States—as distinguished from the House of Representatives and its officers—is not a ''proper'' party, having no separate interest in the case. Presumably, *Powell* v. *McCormack* 395 U.S. 486 (1969), establishes that the United States is not an indispensable party, without whose joinder the suit could not proceed. On the other hand, it is difficult to assert that the United States is ever an improper party where any federal governmental matter is in controversy. See, e.g., 28 U.S.C. 2322 (review of I.C.C. orders); 28 U.S.C. 2344 (orders of Hobbs Act agencies); 28 U.S.C. 2403 (constitutionality of Act of Congress drawn into question); 25 U.S.C. 201 (qui tam action for penalties in Indian cases); 40 U.S.C. 270b(b) (suit on behalf of laborers or materialmen on public works contracts); 42 U.S.C. 1973h(b) (challenge to state poll taxes). There is, indeed, much to be said for affording the Department of Justice an opportunity to participate in such litigation. In sum, we see no ground for objecting to the joinder of the United States as improper.

It is perhaps a more serious question whether sovereign immunity prevents the suit against the United States. The basic rule, of course, is that absent congressional consent, a suit for injunctive relief can be maintained only against its officers if they are charged with acting ultra vires or unconstitutionally. See *Block* v. *North Dakota*, 461 U.S. 273, 280–282 (1983). Here, the only arguably relevant statutory provision effecting the requisite waiver for joining the sovereign itself is 5 U.S.C. 702, which permits joinder of the United States whenever ''agency'' action is subject to judicial review and nonmonetary relief is sought. However, assuming that it applies to original actions in this Court (cf. *California* v. *Arizona*, 440 U.S. 59 (1979)), the provision expressly excludes ''Congress'' as an ''agency.'' Accordingly, the question is whether the officers of one House are nevertheless covered. It is not apparent why Congress should have wished to bar joinder of the United States in such a case if the suit otherwise can be prosecuted against the officials.

We do not stop to examine any such obstacles, however, because, given that the United States is not an indispensable party, its dismissal would not prevent continuation of the suit against some or all of the other defendants. Cf. Fed. R. Civ. P. 19 and 21. For like reasons, there is no need to determine whether the joinder of the Speaker is barred by the Speech and Debate Clauses: that would not affect prosecution of the action against

the other officers of the House. See *Powell* v. *McCormack,* 395 U.S. 486, 501–506 (1969). And, finally, we accept without quibble that the case, if justiciable in any federal court, falls within this Court's nonexclusive original jurisdiction as a controversy to which a state is a proper party.[2]

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[2] Notwithstanding the failure of the Judicial Code to so provide (28 U.S.C. 1251) and contrary indications in some of the Court's opinions (e.g., *California* v. *Southern Pacific Co.*, 157 U.S. 229, 261–262 (1895); *New Mexico* v. *Lane*, 243 U.S. 82, 58 (1917); *Texas* v. *Interstate Commerce Commission,* 258 U.S. 158. 163 (1922)), we deem it clear that this Court enjoys concurrent original jurisdiction of all cases within the federal judicial power, not barred by sovereign immunity, where a state is a party, including a suit founded on federal law by a state against its own citizens. See *United States* v. Texas, 143 U.S. 621, 642–645 (1892); *Monaco* v. *Mississippi*, 292 U.S. 313, 321, 329–330 (1934). An independent basis for invoking the original jurisdiction of this Court is that the suit is brought by a state against citizens of other states. 28 U.S.C. 1251(b)(3). See *South Carolina* v. *Katzenbach,* 383 U.S. 301, 307 (1966); *Oregon* v. *Mitchell,* 400 U.S. 112, 117 n.1, 152–153 n.1, 230–231 (1970). And if the United States is permissibly joined, original jurisdiction also lies on the ground that the suit is between a state and the United States. 28 U.S.C. 1251(b)(2). See California *ex rel. State Lands Commission* v. *United States*, 457 U.S. 273, 277 n.6 (1982). Whichever of the three bases is invoked, this Court's original jurisdiction is only concurrent—given that a federal question is presented. Compare *Ohio* v. *Wyandotte Chemicals Corp.*, 401 U.S. 493, 498 n.3 (1971). Accordingly, it would not affect this Court's jurisdiction if the United States were dismissed as a party.

It may be questioned whether Indiana, acting merely as parens patriae, can maintain an original action against the United States or its officers. See *Massachusetts* v. *Mellon,* 262 U.S. 447, 485–486 (1923); *South Carolina* v. *Katzenbach,* 383 U.S. at 324. But the Court's precedents indicate that Indiana here has sufficiently alleged injury to the State in its sovereign capacity. *South Carolina* v. *Kazenbach*, *supra; Oregon* v. *Mitchell*, *supra; South Carolina* v. *Regan*, No. 94, Orig. (Feb. 22, 1984). See also *Hodel* v. *Indiana*, 452 U.S. 314 (1981); *FERC* v. *Mississippi*, 456 U.S. 742 (1982).

We confine ourselves here to two submissions: (1) The case presents only a nonjusticiable ''political question'' which no federal court can entertain; and (2) in any event, this Court ought not exercise its original jurisdiction, but should deny leave to file as a matter of discretion.

1. This matter is nonjusticiable, because it presents a political question. There is no exception for cases otherwise within the Court's original jurisdiction. ''The effect of [Art. III, §2, Cl. 3] is not to confer jurisdiction upon the Court merely because the State is a party, but only where it is a party to a proceeding of judicial cognizance. Proceedings not of a justiciable character are outside the contemplation of the constitutional grant.'' *Massachusetts* v. *Mellon,* 262 U.S. 447, 480 (1923). It would be difficult to overstate the degree to which this controversy presents the defining instance of a political question. The classic characteristics of textual commitment to another branch and conspicuous separation of powers problems are present and pronounced. Unsurprisingly, the Court's opinions in this area strongly suggest that this precise controversy would be held nonjusticiable on political question grounds.

a. There is, in the present context, ''a textually demonstrable constitutional commitment of the issue to a coordinate political department * * *.'' *Baker* v. *Carr,* 369 U.S. 186, 217 (1962). See *Gilligan* v. *Morgan,* 413 U.S. 1, 6–7 (1973). Article I, §15 of the Constitution begins: ''Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *.'' This is specific and more directed to the matter at hand than Article I, §4, on which plaintiff relies. See *Roudebush* v. *Hartke*, 405 U.S. 15, 25–26 (1972). The House of Commons and the legislatures of the colonies judged their own elections, and jealously protected their right to do so against other governmental entities. H. Remick, The Powers of Congress in Respect to Membership and Elections 1–62 (1929); M. Clarke, Parliamentary Privilege in the American Colonies 9–10, 132–172 (1971). So, also, the American Senate and House have been deciding election questions involving their members for nearly 200 years—sometimes responsibly, sometimes not, but never with judicial review, despite repeated requests. In light of this history and the express provision of Article I, §5, it seems obvious the political question doctrine applies here—all the more so given that judicial review has been deemed barred where the commitment of the issue's resolution to another entity is only implicit, e.g., *Coleman* v. *Miller,* 307 U.S. 433, 450 (1938); *Goldwater* v. *Carter,* 444 U.S. 996, 1003 (1979) (Rehnquist, J., concurring, joined by Burger, C.J., and Stewart and Stevens, JJ.).

It is no answer that courts regularly review other exercises of power ''textually committed'' to Congress. The commitment made by Article I, § 5, is different not only in degrees, but in kind. The Commerce Clause, for example, makes a grant of lawmaking power, and it is entirely unremarkable that there should be judicial review of the exercise of that authority. Here, however, the grant is itself of an adjudicative sort, and review by the judiciary is redundant and intrusive. Article I, § 5 entails making specific decisions about particular disputes—not setting broad, prospective policy. The Constitution charges the legislature in this special instance with doing what courts usually do—and, logically, excluding courts from that process.[3]

[3] See *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597, 613 (1029): ''Generally, the Senate is a legislative body, exercising in connection with the House only the power to make laws. But is has had conferred on it by the Constitution certain powers which are not legislative but judicial in character. Among these is the power to judge of the elections, returns and qualifications of its own members. Art. I, § 5, cl. 1.'' See also 279 U.S. at 616: ''In exercising the power to judge the elections, returns and qualifications of its members, the Senate acts as a judicial tribunal * * *.''

The Court again alluded to this special function in *Buckley* v. *Valeo*, 424 U.S. 1. 133 (1976): ''[Article I,] Section 5 confers * * * a power 'judicial in character' upon each House of the Congress [citation to *Barry* v. *Cunningham* omitted].''

Finally, in *Reed* v. *County Comm'rs*, 277 U.S. 376, 388 (1928), the Court concluded that, given the Senate's own established powers to compel production of evidence in election disputes, it was unlikely that the statute in question allowed the Senators there to ask the courts to do so: ''[The Senate] is the judge of the elections, returns, and qualifications of its members. Art. I, § 5. It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department.''

b. This underscores some of the other criteria for political questions set out in *Baker* v. *Carr*. Judicial review in this case would repeat precisely the job which has been committed to the House of Representatives in the first instance, thereby ''expressing lack of respect due coordinate branches of government * * *'' 369 U.S. at 217. For the same reason, judicial review here necessarily contains ''the potentiality of embarrassment from multifarious pronouncements by various departments on one question.'' *Ibid*. As the Court in *Baker* v. *Carr* pointed out, the earmark of a classic political question is the presence of pronounced separation of powers problems. 369 U.S. at 210.

Those separation of powers concerns are further dramatized here by the remedies plaintiff seeks. They include forcing the Speaker of the House to administer an oath of office, compelling the House of Representatives to seat Mr. McIntyre, and requiring the officers of the House to provide him all the ''rights, privileges, powers, emoluments, and services'' of a Member. To say that the enforcement of such a decree would express ''lack of respect'' for the House and create a ''potentiality for embarrassment'' is a gross understatement. The extent to which judicial relief would necessitate unseemly judicial interference in the business of the political branches is of course a valid consideration in justiciability matters generally. Cf. *Allen* v. *Wright*, No. 81–757 (July 3, 1984), slip op. 22–23.

c. Plaintiff relies heavily on *Powell* v. *McCormack*, 395 U.S. 486 (1969), for the general proposition that the political question doctrine is inapplicable here. But the fact is that the Court there expressly reserved the question whether a complaint seeking the sort of coercive relief now sought would be justiciable. *Id*. At 517–518, 550. Moreover, the Court also observed; ''[F]ederal courts might still be barred by the political question doctrine from reviewing the House's factual determination that a member did not meet one of the standing qualifications. This is an issue not presented in this case and we express no view as to its resolution.'' *Id*. at 521 n.42. The same plainly applies to the House's review of ''Elections'' and ''Returns'' as well, listed together with ''Qualifications'' in Article I, § 5.[4]

[4] In this concurrence in Powell, Justice Douglas wrote that had the dispute there been over whether an elected candidate met one of the qualifications set out in the Constitution, then ''the House is the sole judge.'' 395 U.S. at 552, citing *Baker* v. *Carr*, 369 U.S. at 242 n.2 Again, presumably the same would be true for ''Elections'' and ''Returns.''

What *Powell* did deal with was whether the Court could define what the Constitution meant in Article I, § 5, when it said ''Qualifications.'' There is no like question in this case about the meaning of ''Elections'' and ''Returns.''

The other case relied upon by plaintiffs is *Barry* v. *United States ex rel. Cunningham,* 279 U.S. 597 (1929). There again, however, it was *not* ruled that scrutiny by a house of Congress of election returns was judicially reviewable, On the contrary: the Court indicated repeatedly in dicta that it would not be. In ruling that the Senate could subpoena witnesses in the course of investigating an election, the Court said that the judiciary could intervene in such cases only upon a clear showing that due process was being denied—and stated that the Senate's *ultimate* judgment on elections was ''beyond the authority of any other tribunal to review.'' *Id.* at 613. Similarly, the Court wrote that, when a member-elect to the Senate presented himself there (*Id.* At 614): ''the jurisdiction of the Senate to determine the rightfulness of the claim was invoked and its power to adjudicate such right attached by virtue of section 5 of Article I of the Constitution. Whether, pending this adjudication, the credentials should be accepted, the oath administered, and the full right accorded to participate in the business of the Senate, was a matter within the discretion of the Senate.''

The Court went on to give one example, ''[a]mong the typical cases in the House, where that body refused to seat members in advance of the investigation although presenting credentials unimpeachable in form * * *'' *Id.* at 615 n.*. Finally, the Court stated that ''the Senate [has] *sole* authority under the Constitution to judge of the elections, returns, and qualifications of its members * * *.'' *Id.* at 619 (emphasis added).

The Court made a similar statement, although again in dicta, in *Roudebush* v. *Hartke,* 405 U.S. 15, 19 (1972) (citation omitted): ''Which candidate [of the two in the disputed election] is entitled to be seated in the Senate is, to be sure, a nonjusticiable political question—a question that would not have been the business of this Court even before the Senate voted. [Citation to *Powell* v. *McCormack* omitted.]'' *Hartke* presented the mirror image of this case: the apparently victorious candidate was seeking to prevent a recount by *invoking* the Senate's Article I, §5 power, and arguing that a recount *by the State* would undercut the Senate's authority. In allowing the recount, the Court acknowledged that the ''State's verification of the accuracy of election results pursuant to its Art. I, §4 powers is not totally separate from the Senate's power to judge elections and returns,'' but made clear that the Senate could review those returns, as the House is doing in the instant matter: ''The Senate is free to accept or reject the apparent winner * * *, and, if it chooses, to conduct its own recount'' (405 U.S. at 25–26) (footnote omitted). The Court pointed out that ''[t]he Senate itself has recounted the votes in close elections in States where there was not recount. Procedure'' (*Id.* at 26 n.24) (citation omitted).[5]

[5] Justices Douglas and Brennan dissented in part, on the ground that the Court should have enjoined the state's recount so that the Senate could be sure that the ballots were reviewed in pristine form. The partial dissent stated (405 U.S. at 30), that '[t]he parties before the Court are apparently in agreement that * * * there has been a ''textually demonstrable constitutional commitment'' (*Baker* v. *Carr,* 369 U.S. 186, 217; *Powell* v. *McCormack,* 395 U.S. 486, 518–549) to the Senate of the decision [who] * * * I received more votes. Our case law agrees.'' The dissent then went on to discuss *Barry* v. *Cunningham, supra,* and *Reed* v. *County Comm'rs,* 277 U.S. 376 (1928), concluding that ''where all that is at stake is a determination of which candidates attracted the greater number of ballots, each [house] has supreme authority to resolve such controversies'' (*Id.* at 32) (citation omitted).

d. Indiana is asking more than that the House's determination of the election be overturned; it seems to be praying that the House be precluded even from reviewing the State of Indiana's determination of that election. The assertion is apparently that the House must accept the State's certification of the election returns, or it will violate Indiana's constitutional right to determine the ''Times, Places, and Manner of holding Elections for Senators and Representatives * * *.'' Art. I, §4, Cl. 1. This cannot be right, for it would contradict the more specific constitutional provision that ''[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *.'' See *Roudebush* v. *Hartke,* 405 U.S. at 25–26. The Court said in *Barry* v. *United States,* 279 U.S. at 613, that in ''exercising this power [of reviewing elections], the Senate may, of course, devolve upon a committee of its members the authority to investigate and report; and this is the general, if not the uniform, practice.[6]

[6] With regard to plaintiff's claim that it is being deprived of Its right to representation, Barry is also relevant (279 U.S. at 615–616): ''Not is there merit in the suggestion that the effect of the refusal of the Senate to seat (a member) pending investigation was to deprive the state of its equal representation in the Senate * * * The temporary deprivation of equal representation which results from the refusal of the Senate to seat a

member pending inquiry as to his election or qualifications is the necessary consequence of the exercise of a constitutional power, and no more deprives the state of its ''equal suffrage'' in the constitutional sense than would a vote of the Senate vacating the seat of a sitting member or a vote of expulsion.''

Plaintiff insists that the state certification be afforded a ''presumption of validity,'' But that is really up to each house, as the judge of its election returns. In any event, the House may well be affording just such a presumption, albeit it is unwilling to risk seating and then unseating the Representative from the Eighth Congressional District of Indiana. Plaintiff also stresses that there have been no allegations of election fraud or irregularity. That, however, is beside the point: everyone agrees that the election was extremely close, and the question which the House must determine is, what was the vote? It is implicit that there is a chance for honest or dishonest error. Such presumptions, in any event, are two-edged; as the Court said in *Barry* v. *United States, supra,* ''[T]he presumption in favor of regularity, which applies to the proceedings of courts, cannot be denied to the proceedings of the Houses of Congress, when acting upon matters within their constitutional authority.'' 279 U.S. at 619.

The clarity with which this controversy presents a political question is remarkable. The House should be left to continue its recount and judge the elections and returns of its own Members.

2. The political question issue aside, the Court should exercise its discretion in favor of declining to hear the case. The Court's jurisdiction here is neither exclusive, 28 U.S.C. 1251(b)(2), nor mandatory. It has consistently been the Court's philosophy that its original jurisdiction should be exercised ''sparingly.'' See, e.g., *Arizona* v. *New Mexico*, 425 U.S. 794, 796 (1976); *United States* v. *Nevada,* 412 U.S. 534, 538 (1973); *Illinois* v. *City of Milwaukee,* 406 U.S. 91, 93 (1972); *Ohio* v. *Wyandotte Chemical Corp.*, 401 U.S. 493, 501 (1971); *Utah* v. *United States,* 394 U.S. 89, 95 (1969); and *Massachusetts* v. *Missouri,* 308 U.S. 1, 18–20 (1939). The Court exercises this discretion in the light of Its increasing appellate docket—*Illinois* v. *City of Milwaukee,* 406 U.S. at 93–94; *Washington* v. *General Motors Corp.*, 406 U.S. 109, 113 (1972); *Arizona* v. *New Mexico*, 425 U.S. at 797 and, more generally, ''with an eye to promoting the most effective functioning of this Court within the overall federal system.'' *Texas* v. *New Mexico*, 462 U.S. 554, 570 (1983).

The Court noted in *Illinois* v. *City of Milwaukee,* 406 U.S. at 93, that what is ''appropriate'' for the Court to hear in the exercise of its original jurisdiction involves both ''the seriousness and dignity of the claim'' and ''the availability of another forum where there is jurisdiction over the named parties, where the issues may be litigated, and where appropriate relief may be had.'' See *Maryland* v. *Louisiana,* 451 U.S. 725, 739–740 (1981); *Arizona* v. *New Mexico*, 425 U.S. at 796–797. This case fails to meet either criterion. The immediacy of the claim—an important part of its ''seriousness''—is undermined by the fact that the House is now in the process of recounting the ballots, and it is very much in doubt what the outcome will be. The Court cited similar ripeness problems in declining to assert its original jurisdiction in *United States* v. *Nevada,* 412 U.S. at 540.

There are available, moreover, other judicial forums for this dispute. It is, in fact, already being litigated in the District of Columbia Circuit, where it has been heard by the District Court on an expedited basis, and has now been briefed for the appellate court on an expedited schedule. *McIntyre* v. *O'Neill,* dismissed, Civ. No. 85–0528 (D.D.C. Mar. 1, 1985), appeal docketed, No. 85–5212 (D.C. Cir. Mar. 1, 1985). One plaintiff in that case is suing as a voter from the Eighth District. Also, relief against the House essentially identical to that sought here is asked for. Indiana itself is not precluded from bringing an action in another forum; nor does it appear to have been prevented from joining the action now in progress in the District of Columbia Circuit. This Court could properly decline to exercise its jurisdiction, in any event, so long as the ''issues'' are being litigated in another forum and Indiana's ''interests'' will be ''represented'' there. See *Arizona* v. *New Mexico*, 425 U.S. at 797; *Maryland* v. *Louisiana*, 451 U.S. at 743. Given the relief sought and the parties represented, that is the situation here.

As the Court said in *United States* v. *Nevada,* 412 U.S. at 538, ''We seek to exercise our original jurisdiction sparingly and are particularly reluctant to take jurisdiction of a suit where the plaintiff has another adequate forum in which to settle his claim.'' See *Maryland* v. *Louisiana,* 451 U.S. at 744; *Illinois* v. *City of Milwaukee,* 406 U.S. at 93; *Washington* v. *General Motors Corp.*, 406 U.S. at 114; *Massachusetts* v. *Missouri,* 308 U.S. at 19–20. In sum, the State of Indiana has wholly failed to establish the ''practical necessity'' required for invoking this Court's original jurisdiction. *Texas* v. *New Mexico*, 462 U.S. 554, 570 (1983).

Conclusion

The motion for leave to file an original complaint in this Court should be denied.

Respectfully submitted.

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APRIL 1985.

Mr. PANETTA. Mr. Speaker, I regret that there are obviously larger issues that go beyond the Eighth District that are involved here that relate to abuse of the minority and the feeling that that is the case. Unfortunately, I think that poisons the atmosphere in terms of being able to weigh the facts that are presented here in a fair and objective way. I regret that, but that is the case.

Nevertheless, I urge Members to please look at the report and please look at the facts that are involved here.

The issue that is raised on the recommittal will relate to the ballot issue, the illegal ballots that were not counted. Let me speak to that.

At no time—at no time—did the task force intend to count illegal votes. At no time, under House precedent or under any other rule. Our basic approach was not to count illegal votes. Absentee ballots that are not authorized and not signed are illegal votes. We never intended to count those votes.

What happened was, we found a mistake, an error, not by the task force, not by the majority, but by the election officials in Indiana who, by mistake, sent some 62 of those illegal ballots out to the precincts. Fifty-two of those were counted. That was a mistake. It should not have happened. Once those 52 were counted, they were intermingled with other valid ballots. There was no way to go back and correct that mistake. Ten were out there that were also at the precinct level. One of those was open and not counted.

It was our feeling and, frankly, the gentleman from California [Mr. THOMAS], agreed with us, that there is the potential for mischief when a precinct worker can look at the name on that absentee ballot and decide whether or not that individual will be counted. In particular, when an envelope is opened and that particular vote has not been counted.

Mr. [Charles] PASHAYAN [of California]. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. Please let me finish my statement.

Mr. Speaker, as a result of that, it was our feeling that a mistake had been made. Unfortunately, there were additional ballots at the precinct level that were subject to mischief and, therefore, that those votes ought to also be counted, and as you know, they counted six, three, and one in favor of Mr. McIntyre.

The role of the task force, it seems to me, is to limit mistakes, not compound mistakes. Those clerks were to serve—

Mr. THOMAS of California. Mr. Speaker, will the gentleman yield on a point of error? On a point of error?

Mr. PANETTA. Allow me to complete my statement, please.

The clerks were supposed to act as a dam to prevent those illegal ballots from going out to the precincts. A few of those ballots seeped through the dam, and now what the Republicans argue is that we ought to blow up the dam and let the rest of the illegal ballots that were retained by the clerks be counted.

It is my view that we ought to respect the performance of those clerks who held those illegal ballots and did not forward them on to the precincts.

Yes, there were judgments made here. Let us make no question about it. Every time you deal with an election, there are judgments that have to be made on a variety of issues and we did that over 9 weeks. The GAO auditors went to 233,000 ballots. They had to make judgments. The teams had to make judgments. We on the task force had to make judgments.

Some of the ballots were counted, some were not, based on those judgments. The question you have to ask as Members of this House is: Were those judgments justified, reasonable, and supported by House precedent? The House precedent, when it comes to counting illegal votes, is that you do a proportional reduction on the ones that are counted. That is what the House precedent is, if you want to know what the law is with regard to those ballots. And if we did a proportional reduction or took those 10 votes out, who would be the winner? McCloskey would be the winner, because those ballots inured to the benefit of Mr. McIntyre.

So for that reason, my view was that we do not do a proportional reduction because I know what the attack would have been. "That is a very inexact tool, and you hurt our candidate." So we did not use that tool. In terms of the proportional reduction, we counted the 10 and drew the line at that class with regard to the ballots that were at the precinct, and that is supported by House precedent and, incidentally, it is supported by Mr. Shumway. There have been comments here that Mr. Shumway would support a recount. Let me read to you from a letter that he sent to me yesterday stating:

> There have been remarks that I would have counted those absentee ballots. I would like to have the record accurately reflect my position. I would say invalid ballots, whether absentee or otherwise, should not be counted.

That is Mr. Shumway's position with regard to this issue.

One final reflection: If Mr. McIntyre had won this race, none of this would have been an issue. Make no mistake about it. This would not be an issue that would have been raised at this time. Had we counted these illegal votes and McIntyre was not ahead, do you think they would have stopped there? They would have argued that we continue to count illegal votes, the deceased votes, the late-arriving ballots, until Mr. McIntyre had somehow won.

The fact is that in looking at this election, the argument that now we ought to count these illegal ballots, do we want this election to turn on counting illegal votes? Would Mr. McCloskey or Mr. McIntyre want this election to count based on counting illegal votes? Is that something we want to justify? I do not think so.

The 10 votes made no difference. As I said, McCloskey, if we took those 10 votes out, would still be the winner. Please look at the facts. That is all I ask as chairman of this task force.

The decisions were justified. They were supported, and they were right, and Mr. McCloskey ought to be seated.

Mr. Speaker, I yield back the balance of my time.

Mr. Speaker, I move the previous question on the resolution.

MOTION TO RECOMMIT OFFERED BY MR. FRENZEL

Mr. FRENZEL. Mr. Speaker, I offer a motion to recommit with instructions.

The SPEAKER pro tempore. Is the gentleman opposed to the resolution?

Mr. FRENZEL. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

> Mr. FRENZEL moves to recommit H. Res. 146 to the Committee on House Administration with instructions that the Committee be directed to count the otherwise valid unnotorized absentee ballots identified by the Task Force on the Indiana Eighth Congressional District in Orange, Lawrence, Daviess and Greene Counties and when that count is completed the Committee will certify the winner and report their findings immediately to the House.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 183, nays 246, not voting 4, as follows:

[Roll No. 90] . . .

Mr. MURPHY and Mr. MICA changed their votes from "yea" to "nay."

Mr. SCHAEFER changed his vote from "nay" to "yea."

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER. The question is on the resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. FRENZEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 236, nays 190, answered "present" 2, not voting 5, as follows:

[Roll No. 91] . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MOTION TO ADJOURN

The SPEAKER.[16] For what purpose does the gentleman from Illinois [Mr. MICHEL] rise?

16. Thomas O'Neill (MA).

Mr. MICHEL. Mr. Speaker, in view of that vote, the last vote, I move that we adjourn.

The SPEAKER. Would the gentleman withhold until the Chair has had an opportunity to swear in Mr. McCloskey?

Mr. MICHEL. No, Mr. Speaker. Our purpose is to adjourn immediately in keeping with the precedent of the Democratic Party back in 1890.

The SPEAKER. The gentleman appreciates the fact that the motion is not debatable.

Mr. MICHEL. I understand, Mr. Speaker.

The SPEAKER. The question is on the motion to adjourn offered by the gentleman from Illinois [Mr. MICHEL].

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. MICHEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 179, nays 248, not voting 6, as follows:

[Roll No. 92] . . .

Mr. CONTE changed his vote from "nay" to "yea."

Mr. SMITH of Iowa and Mr. BREAUX changed their votes from "yea" to "nay."

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

SWEARING IN OF THE HONORABLE FRANK MCCLOSKEY OF INDIANA AS A MEMBER OF THE HOUSE

The SPEAKER. It is the intention at this particular time to have the Indiana delegation present to the House the elected candidate.

Mr. MCCLOSKEY appeared at the bar of the House and took the oath of office.

The SPEAKER. The gentleman is a Member of the Congress of the United States.

§ 20.2 Won Pat v Blaz

The general election for the office of Delegate to the House of Representatives from Guam was conducted on November 6, 1984.[17] The general election candidates were Antonio B. Won Pat (the Democratic candidate), and Ben Blaz (the Republican candidate). The initial vote count by the Guam Election Commission (GEC) indicated that Mr. Blaz had received 15,725 votes, and that Mr. Won Pat had received 15,402 votes—a margin of 323 votes. After the GEC ordered a computer recount, and then a hand count of paper ballots, the margin had increased to 355 votes. The GEC certified Mr. Blaz as the winner of the election on November 21, 1984.

On December 21, 1984, Mr. Won Pat (hereafter "contestant") submitted a notice of contest to the Clerk of the House, which was referred to the

17. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 99–220, 99th Cong. 1st Sess.

Committee on House Administration for disposition. The contestant argued that Mr. Blaz (hereafter "contestee") did not receive a majority of votes cast, as required by statute.[18] Further, contestant argued that the GEC had failed to issue absentee ballots in a timely manner, thus constructively disenfranchising eligible voters.

On January 21, 1985, contestee filed a motion to dismiss the case. Thereafter, on March 29, 1985, contestant filed a response in opposition to the motion to dismiss, and contestee, on June 5, 1985, filed a reply to the response.

The Committee on House Administration formed a task force of three Members to review the various pleadings in the case. On June 5, 1985, the task force met to hear oral arguments on the motion to dismiss. On June 27, 1985, the task force voted to recommend that the contestee's motion to dismiss be granted.

In its committee report, the Committee on House Administration noted that a Federal statute provides that the Delegate to the House of Representatives from Guam must be elected "by a majority of the votes cast."[19] Contestant argued that "overvotes" (*i.e.*, ballots cast for more than one candidate) and blank ballots (in which no candidate was selected) should be included in the denominator for determining "a majority" of the total number of votes cast. The committee, however, found that the GEC's decision not to count such ballots in the vote total was consistent with both prior practice and House precedents, and was thus "reasonable and proper."[20]

The committee was also not persuaded by the contestant's second claim that the late issuance of absentee ballots disenfranchised voters. The committee argued that the late issuance of absentee ballots was a known pre–election issue, and thus should have been addressed before the election took place. The committee further noted that most absentee ballots were returned on time to be counted, and that there was no evidence presented that counting late ballots would have changed the result of the election. Further, contestant's remedy that late-arriving ballots be counted as part of the total votes cast, but not for any candidate, was considered by the committee to be "illogical."[21] On this basis, the committee recommended dismissal of the contest.

On July 24, 1985,[22] the committee called up House Resolution 229 (dismissing the contest) as a privileged matter, and the House agreed to the resolution by voice vote:

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18. 48 U.S.C. § 1712.

19. *Id.*

20. H. Rept. 99–220, 99th Cong. 1st Sess. p. 5.

21. *Id.* at p. 6.

22. 131 CONG. REC. 20180–81, 99th Cong. 1st Sess.

DISMISSING THE ELECTION CONTEST AGAINST BEN BLAZ

Mr. [Ed] JONES of Tennessee. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 229) dismissing the election contest against BEN BLAZ, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 229

Resolved, That the election contest of Antonio Borja Won Pat, contestant, against Ben Blaz, contestee, relating to the office of Delegate from Guam, is dismissed.

The SPEAKER.[23] The gentleman from Tennessee [Mr. JONES] is recognized for 1 hour.

Mr. JONES of Tennessee. Mr. Speaker, I yield 30 minutes, for the purpose of debate only, to the gentlewoman from Nevada [Mrs.VUCANOVICH], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 229 is a resolution to dismiss the election contest regarding the position of Delegate from the Territory of Guam.

Under the U.S. Constitution and the rules of the House, the Committee on House Administration is charged with the responsibility for investigating contested elections.

On July 10 the Committee on House Administration, by unanimous voice vote, directed me to bring to the floor this resolution dismissing the election contest of Antonio Won Pat against BEN BLAZ.

Pursuant to the Rules of the committee, Chairman ANNUNZIO established a task force to examine the documentary record, and to receive oral arguments from contestant and contestee. I chaired the task force, serving with me were Mr. GEJDENSON and Mr. BADHAM.

After presentation of oral arguments, and examination of the record, the task force determined that the contestant did not meet his burden of presenting sufficient documentary and other evidence to warrant further proceedings. The task force then unanimously recommended dismissal of the contest, and the committee also by unanimous vote, ordered this dismissal resolution reported to the House.

Although contestant Won Pat raised a number of issues regarding the administration of the election, which the committee hopes will be addressed by the Guam Election Commission before the next election, the committee concluded that the issues raised were not sufficient to overturn the outcome of the election. The initial count of ballots, and two subsequent recounts, provided contesteeBLAZ with a winning margin of approximately 350 votes out of 31,000 cast.

The two principal issues raised by contestant were the late mailing of absentee ballots, and an interpretation by the Guam Election Commission of the election statute. Let me first address the absentee ballot question.

The task force found that no absentee ballots were sent out until October 16, 1984. Thereafter they were sent out as applications were received, right up to the week before the election.

The voters were instructed to return the absentee ballots as soon as possible, and were also instructed that absentee ballots received after election day would not be counted. Nearly two-thirds of the ballots sent out were returned by election day, and were included in the final tally. Late arriving ballots were not counted.

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23. Thomas O'Neill (MA).

Given the late date on which absentee ballots were sent out, 21 days before the election compared to the 45 days recommended by the Voting Assistance Office of the Pentagon, some voters may not have been able to timely return their ballots. The committee hopes that the Guam Election Commission will establish procedures for future elections which allow substantially more transit time than was provided in the last general election, so as to avoid the possible disenfranchisement of overseas voters. Nevertheless, the committee does not believe contestant's claim requires that the election be invalidated. Invalidating an election is a radical step. There is no reason for believing that delay in sending out the absentee ballots had an impact on the result of the election. If there were a problem the contestant should have sought relief before the election.

The contestant's second contention is that blank ballots and over votes should be included in the total number of "votes cast." That would deprive contestee of the absolute majority, required by the Guam statute.

In interpreting a similar statutory provision governing elections in the Virgin Islands, a Federal court of appeals rejected the argument that such ballots should be included in the total of votes cast. The committee found the court's reasoning to be persuasive and affirmed the decision of the Guam Election Commission.

The committee reviewed the other arguments put forth by contestant, but found that the various issues raised were not, individually or collectively, sufficient to change the result of the election.

Consequently the committee recommends that the House adopt the resolution dismissing the election contest.

Mr. [Robert] BADHAM [of California]. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the resolution. As was stated by the gentleman from Tennessee, the task force met and heard oral arguments from the counsels for both parties and in a later meeting voted unanimously to dismiss the contest.

Briefly, Mr. Speaker, the contestant's allegations were that the rights of absentee voters were deprived by acts of election officials and that the contestee did not receive a majority of the votes cast in this election. Additionally, the contestant raised certain other allegations of irregularities in the Guam election process.

First, the allegation was made that the low rate of return of the ballots was because the first ballots were not mailed to the absentee voters until October 16 and that the mailing of the absentee ballots were not completed until October 31. Therefore, there was not enough time to complete and return the ballots in a timely manner. Counsel for the contestee presented the task force with an affidavit from the employee of the Guam Election Commission who spoke with the Postal Service representative who had advised her that if the absentee ballots were sent out by October 21 and if they were expeditiously returned by the voter the ballots should be back in time to be counted in the general election. In addition, Mr. Speaker, the absentee voter was advised several times within the absentee mailing to return the ballot immediately.

The contestant's second allegation that the contestee did not receive a majority of the votes cast. They contend that the "majority" must be computed to include ballots cast that were marked for both candidates—over-votes—or neither candidate—blank ballots. Further, the contestant believes that the absentee ballots which were postmarked prior to November 6, but received after the close of the polls are "votes cast."

Mr. Speaker, there was a similar case decided in 1982 in an election for Governor and Lieutenant Governor of the Virgin Islands. The court was faced with the issue of whether

blank and spoiled ballots should be counted in determining the majority of the votes cast. In the Totman versus Boschulte opinion, the Court quoted an earlier decision (*Euwema* v. *Todman,* 8 V.I.224 (D.V.I. 1971)) which stated that "The proper basis for computing a majority" was that "voters not attending the election or not voting on the matter submitted are presumed to assent to the expressed will of those attending and voting and are not to be taken into consideration in determining the result." Additionally, the Guam Election Commission legal counsel advised the commission of a legal opinion written 2 years ago that blank ballots and those with voted too many should not be counted.

Mr. Speaker, I don't believe it is necessary to take any more of the House's time on the resolution and would urge its adoption.

Mr. JONES of Tennessee. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

GENERAL LEAVE

Mr. JONES of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore (Mr. [Kenneth] GRAY of Illinois). Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 20.3 Hansen v Stallings

The general election for the office of Representative to Congress from the Second District of Idaho was conducted on November 6, 1984.[24] The general election candidates were Richard H. Stallings (the Democratic candidate), and George V. Hansen (the Republican candidate). The official canvass of votes by the State Board of Governors showed that Mr. Stallings had received 101,266 votes, and that Mr. Hansen had received 101,133 votes—a margin of 133 votes. On November 21, 1984, a certificate of election was issued by the State Board of Governors to Mr. Stallings. Mr. Stallings' credentials were presented to the House of Representatives, and he appeared on January 3, 1985, to be administered the oath of office. Another Member–elect (Rep. John Myers of Indiana) objected to the seating of Mr. Stallings, and Mr. Stallings did not take the oath of office with other Members–elect *en masse*. However, the Majority Leader (Rep. Jim Wright of Texas) offered a privileged resolution authorizing the Speaker to administer the oath of office to Mr. Stallings. That resolution was agreed to unanimously (407 yeas,

24. This summary is derived from the report filed by the Committee on House Administration relating to this election contest. See H. Rept. 99–290, 99th Cong. 1st Sess.

zero nays, one voting "present," and 18 Members not voting). Mr. Stallings was then administered the oath of office by the Speaker.(25)

A partial recount was conducted by state election officials pursuant to a request by Mr. Hansen under state law. The results of the partial recount showed an increase in Mr. Stallings' margin of victory to 170 votes. Mr. Hansen requested that the Attorney General of Idaho conduct a full recount at state expense, but the Attorney General declined, citing Idaho law that required "sufficient material differences"(26) between the initial count and the partial recount. This decision was affirmed by the Idaho Supreme Court.

On December 21, 1984, Mr. Hansen (hereafter "contestant") filed a notice of contest with the Clerk of the House, which was forwarded to the Committee on House Administration for its review. In response, Mr. Stallings (hereafter "contestee") filed a motion to dismiss the case. The committee established a task force of three Members to review the pleadings in the case. On June 7, 1985, the task force met to hear oral arguments from the parties.

Contestant argued that illegal votes had been cast by individuals who were not eligible to vote. Contestant further contended that state officials had misrepresented the results of the recount. With regard to the first claim, the task force examined Idaho election laws, and concluded that state voter registration requirements were complied with. Contestant produced no evidence to suggest that improperly registered voters had voted in the election. The committee also cited House and Idaho precedents for the proposition that mere technical errors by local election officials (*e.g.*, negligently accepting incomplete voter registration cards) should not be the basis for invalidating votes or overturning the results of an election.

With regard to the second claim, the committee relied on the decisions of state officials and courts in making the decision not to conduct a full recount under its own auspices. The committee noted that the contestant had failed to avail himself of opportunities under state law to expand the partial recount to include more precincts. Given that the FCEA was designed, in part, to exclude "[w]asteful investigations of meritless claims,"(27) the committee concluded that the contestant had not undertaken the required effort to develop the necessary evidentiary record that would allow him to prevail against a motion to dismiss. Absent such a record, there was no basis on which the committee could conclude that any irregularities had occurred—either with the election itself or the partial recount.

Contestant also argued (subsequent to the filing of the notice of contest) that an impoundment order issued by the Idaho Secretary of State prevented local election administrators from properly verifying vote totals. The

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25. For the *Congressional Record* depiction of the challenge to the seating of Mr. Stallings, and the subsequent offering of the resolution authorizing the administration of the oath of office, see Precedents (Wickham) Ch. 2 §§ 4.1, 4.2.

26. H. Rept. 99–290, 99th Cong. 1st Sess. p. 5.

27. *Id.* at p. 6.

committee, however, found that claim to be "without merit" and that the "claimed impact on the election is merely speculative."(28)

Finally, the committee affirmed the House's inherent authority to dismiss cases even where the contestee fails to file a motion to dismiss, or where contestee's motion to dismiss is untimely. Whether or not the contestee's motion to dismiss was timely under the statute is immaterial to the issue of whether the contestant met his burdens under the statute. The committee concluded that the contestant had not met the substantial burden imposed by the FCEA, and therefore recommended that the House dismiss the case.

On October 2, 1985,(29) the committee called up House Resolution 272 (dismissing the contest) as a privileged matter, and the House agreed to the resolution by voice vote:

DISMISSING THE ELECTION CONTEST AGAINST RICHARD HOWARD STALLINGS

Mr. [Jim] BATES [of California]. Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 272) dismissing the election contest against RICHARD HOWARD STALLINGS, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 272

Resolved, That the election contest of George Vernon Hansen, contestant, against Richard Howard Stallings, contestee, relating to the office of Representative from the Second Congressional District of Idaho, is dismissed.

The SPEAKER pro tempore.(30) The gentleman from California [Mr. BATES] is recognized for 1 hour.

Mr. BATES. Mr. Speaker, I yield 30 minutes, for the purpose of debate only, to the gentleman from Kansas [Mr. ROBERTS], and pending that, I yield myself such time as I may consume.

Mr. Speaker, House Resolution 272 is a resolution to dismiss the election contest regarding the seat of the Representative from the Second Congressional District of Idaho.

Under the U.S. Constitution, title 2 of the United States Code, and the Rules of the House of Representatives, the Committee on House Administration is charged with the responsibility of hearing contested election cases and recommending disposition of such cases to the House.

Pursuant to the rules of the Committee on House Administration, Chairman FRANK ANNUNZIO established a task force to examine the documentary record, and to receive oral arguments from contestant and contestee. I chaired the task force. Serving with me were Mr. SWIFT and Mr. ROBERTS.

SUMMARY OF PROCEEDINGS

After presentation of oral arguments, and examination of the record, the task force determined that the contestant did not meet his burden of presenting sufficient documentary and other evidence to warrant further proceedings. The task force then recommended dismissal of the contest to the Committee on House Administration. On July

28. *Id.* at p. 8.

29. 131 CONG. REC. 25664–70, 99th Cong. 1st Sess.

30. Chester Atkins (MA).

24, the Committee on House Administration, by a vote of 12 ayes and 1 nay, directed me to bring to the floor this resolution dismissing the election contest of George Hansen against RICHARD STALLINGS.

Although contestant Hansen raised a number of issues regarding the administration of the election, which the State of Idaho has addressed for future elections, the committee concluded that the issues raised were not adequately supported by documentary or other materials as required by House precedent, and were in any case insufficient to overturn the outcome of the election. The election night canvass of the ballots, and a subsequent partial recount at contestant Hansen's request, gave STALLINGS an initial winning margin of 133 votes, which was increased to 170 votes after the recount.

SUMMARY OF PRIMARY GROUNDS

There were two primary grounds upon which the contest was based. First, Hansen claimed that a number of illegal votes were cast for Mr. STALLINGS which, if removed, would change the outcome of the election. The essence of this claim is that these allegedly illegal votes were cast by voters who were not properly registered.

The second ground for the contest was that the results of a partial recount, which was conducted at contestant Hansen's request, required the House of Representatives to conduct a full recount. Contestant Hansen also raised during oral argument, various ancillary claims of irregularity, which I will address later, even though they were not a part of contestant's original notice of contest. For example, after filing the notice of contest, contestant Hansen suggested that the canvass of votes by the State on election night was not conducted in accordance with Idaho law, and that an impoundment order, protecting the balloting materials, was not properly issued by the secretary of state.

The committee reviewed these and other arguments put forth by contestant, but found that the various issues raised were not, individually, or collectively, sufficient to change the result of the election, and were not supported by an evidentiary showing.

Consequently the task force, and the committee recommend that the House adopt the resolution dismissing the election contest.

ILLEGAL VOTES

Mr. Hansen's first claim was that a number of illegal votes were cast for Mr. STALLINGS, which, if invalidated, would change the outcome of the election. The task force found that the claim was without foundation.

Contestant Hansen claimed that approximately 2,500 voters were illegally registered. Contestant based his claim on an interpretation of an Idaho statute which specifies the information to be gathered by State registrars in registering voters. In Idaho, the State election official completes a voter registration form based upon information provided to the election official by the prospective voter. Based on that information, and any additional information provided by the prospective voter, the election official then makes a determination as to whether or not the applicant is qualified to register and to vote.

In some instances, State election officials registered voters whose addresses were listed as post office boxes, or were incomplete or missing. Contestant Hansen argued that since these registration forms, filled out by State election officials, lacked some or all of the elements of a conventional address; for example, street numbers and street names, that these citizens should be declared ineligible to vote.

Election officials from urban and suburban areas can, by and large, specifically locate eligible voters by street name and street address. However citizens living in remote or

rural areas seldom live on a block or in a subdivision, and may live where there are no streets, or where rural access roads are unpaved, unnamed and unnumbered. These voters may receive their mail through a post box, or by rural free delivery. The lack of a street address is not a basis for depriving an otherwise eligible citizen of the State of Idaho his or her opportunity and right to vote.

In this instance, contestant Hansen's complaint relates largely to the rural areas of Blaine County, where many people live in areas remote from any town. The election officials registering these voters made determinations about their eligibility, even in the absence of a street name or number. In making that determination, that the applicants were residents and citizens qualified to vote in the election, the election officials satisfied themselves as to the fact. But notwithstanding the determinations made by the State election officials, contestant Hansen complained that these 2,500 voters should be disenfranchised, and their votes thrown out.

Contestant Hansen did not challenge these voters on election day as Idaho law provides. Rather he raised this complaint only after the election result was announced. He sought investigations by the county prosecutor, the State attorney general, the Justice Department and the FBI. He also asked the State court to rule that the results of the election were invalid, because of the registration practices complained about.

The State attorney general's office, and the Blaine County magistrate conducted independent investigations. At the conclusion of the investigations, public reports were issued. The results were that not a single voter was found to have been unqualified to vote. These investigations fully supported the declared result of the election.

Based on the results of these investigations, the task force found that contestant's claim of a right to the seat, due to registration irregularities, was without merit.

RESULTS OF PARTIAL

Contestant Hansen's second ground for contesting the election was based upon a partial recount. Contestant availed himself of an Idaho statute which allows a disappointed candidate to obtain a full or partial recount. The disappointed candidate posts a $100 bond for each precinct he chooses to have recounted. Obviously he has multiple incentives to pick those precincts which he believes will best support his position or claim. If the results of the candidate-initiated recount demonstrate to the State officials that a full recount is justified, then the State takes over and conducts a district-wide recount at State expense, and refunds to the disappointed candidate the entire bond posted in support of the partial recount.

In this instance, contestant Hansen picked 45 precincts, posted the necessary bond, and a partial recount was conducted. As a result, contestant lost ground to contestee STALLINGS by an additional 37 votes. Although this unfavorable trend did not support contestant Hansen's position that he was entitled to the seat, at the conclusion of the recount of the 45 precincts, contestant Hansen petitioned the State attorney general for a full State-paid recount, citing the results of the partial recount. The State attorney general concluded that a full State-paid recount was not justified by the results, and rejected Hansen's request for a full State-paid recount, whereupon contestant Hansen appealed the decision of the attorney general to the Idaho Supreme Court. The Idaho Supreme Court reviewed the arguments of contestant Hansen and the Idaho Attorney General, and rejected contestant Hansen's argument that the results of the partial recount justified a full recount at State expense. After a review of the written and oral arguments presented by contestant Hansen, both the task force and the Committee on House Administration came to the same conclusion. Contestant Hansen's second claim was determined to be without merit, and the committee, like the Idaho Attorney General and the Idaho Supreme Court, rejected it.

CONCLUSION REGARDING PRIMARY GROUNDS

Hence, contestant's two principal claims, raised in his notice of contest, were determined to be inadequate to change the result of the election, or to justify a full recount by the State of Idaho or the House of Representatives.

ANCILLARY GROUNDS

During the course of oral arguments, contestant raised some additional issues which he suggested might serve as a basis for throwing out the results of the election. For example, contestant Hansen suggested that an impoundment order, issued after the election night canvass, was not proper or in accordance with State law, and that the proceedings prevented local election officials from performing their duties in verifying the election totals. Contestant made this claim unsuccessfully in the State court. However, he did not make this claim in his notice of contest. He raised it only after his claim of illegal voting had been investigated and found to be without merit. Contestant's claim identifies no errors, nor did contestant identify the types of errors he believed may have occurred. He merely alleges irregularity, and speculates as to the impact. Under House precedent, bare allegations of irregularity do not overcome the presumption that State election officials have acted in accordance with law, nor do such allegations serve as a basis for imputing errors. Contestant was unable to convince the courts of Idaho that the election night canvass was in any sense defective, and the task force and the committee found contestant Hansen's arguments similarly unpersuasive.

Contestant raised various other matters which were not contained in the notice of contest. But the task force and the committee found that, both individually and collectively, these claims were not sufficient nor specific enough to put into serious question the propriety or accuracy of the canvass. This committee found no reason to believe that there was anything illegal or improper in the conduct of the canvass, and that these ancillary claims do not provide a basis for changing the result of the election.

DISMISSAL RECOMMENDATION

For the reasons given and upon recommendation of the task force, the Committee on House Administration, by a vote of 12 ayes and 1 nay, recommended to the House that the election contest be dismissed.

Mr. [Charles] ROBERTS [of Kansas]. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we are here today to perform a most solemn responsibility-judging the qualifications, returns and election of one of our colleagues. The questions presented by this case are not easy ones—especially in light of the precedent set in this House earlier this year and in light of recent events.

The task force to determine the outcome of this election was made up of myself, Mr. BATES and Mr. SWIFT. I While I do not agree with the conclusion of the task force, I do wish to thank both gentlemen for their demeanor during the proceedings.

As I stated, the questions presented by this case are not easy ones and I would like to call to the attention of my colleagues the four basic issues that we feel are both primary and pertinent to this case.

First, there is the canvassing issue. The impoundment order issued by the Secretary of State of Idaho resulted in the ballots being impounded but it also resulted in an inconsistent and defective canvass of the votes. The board of canvassers in the largest county

in Idaho, Bonneville County, was unable to verify the accuracy of the count. They have so certified by means of an affidavit filed with the notice of contest. In addition to having no access to the ballots, the county commissioners in 14 of the 26 counties in the congressional district had a best limited access, and in many cases, no access to the precinct poll books and tally books when they conducted their canvass of the vote.

Now, under Idaho law, the impoundment of the ballot boxes is authorized only upon a request for a recount. And, such a request may only be made after the completion of the canvass by the county commissioners. There was no complete canvass. There was no recount. The Secretary of State's impoundment order was premature. It interfered with the ordinary and necessary access to all election materials.

Second, there was a recount of 10 percent of the precincts. Yes, Mr. Hansen lost ground. That recount demonstrated a rate of error in the total count of more than 3 1/2 times the margin of victory. Mr. Hansen was denied a State-sponsored recount of the remaining 90 percent of the precincts. And, I want to stress that now, after the election and the partial recount and the impoundment of ballots, Idaho's law has been changed. After the fact, State law now provides for automatic State-conducted recounts in races as close as this race.

Third, the address of the voters issue. Idaho law requires that in order to be a qualified voter, an individual must include in his or her voter registration application information which definitely locates his or her residence. But, in Blaine County, some 5,400 voters failed to provide this information and approximately 1,000 voters listed only their post office boxes.

More to the point, this requirement was inconsistently applied throughout the election district-13 counties accepted post office box registrations to identify residences and the remaining 13 did not.

Fourth, we do have an important precedent in this case and all election disputes from this date forward.

Mr. Speaker, as I said during that debate earlier this year for me and for my Republican colleagues, this House is not the same. The collective sense of unfairness symbolized by the McIntyre precedent remains in our hearts. There is in fact, a pall hanging over contested election deliberations by the House.

You, in the majority changed the precedents we must follow by your actions in McIntyre. As majority leader, Mr. WRIGHT, stated on the floor of this House on January 3, 1985, the results of an election are called into question when "the very ability of the State election procedures to determine the outcome accurately is put into serious question."

The majority in the McIntyre election dispute decided to ignore State law and adopt House mandated rules. But, in this case you have decided to rely on State law and the doctrine of the exhaustion of State remedies.

This is an inconsistent application of House precedents and underscores the abuses served on this House and the American people when you seated MR. MCCLOSKEY. Inconsistent application of Indiana law from county to county was alleged to be intolerable in McIntyre-McCloskey while in Hansen-Stallings it is merely viewed as the vagaries of the State system and is considered a virtue. I suggest the record will clearly show you cannot have it both ways. Mr. Hansen desires a recount to determine if the inconsistent application of Idaho law denied him the election. On a similar basis Mr. MCCLOSKEY was granted such a recount.

It appears as if the majority in this House once again is willing to yield to State law, to continue the high threshold of proof heretofore used in election disputes prior to the

McIntyre case. It appears as if like Halley's Comet, the McIntyre precedent was no precedent at all. It has apparently gone. I can assure my colleagues it has not been forgotten. Under the precedent set by the majority in McIntyre, Mr. Hansen should be granted a recount.

Mr. Speaker, I reserve the balance of my time.

Mr. BATES. Mr. Speaker, I yield such time as he may require to the gentleman from Washington [Mr. SWIFT].

Mr. [Allan] SWIFT [of Washington]. Mr. Speaker, the issue is whether this contest should be dismissed. I believe it should, and for the same reason this House has regularly recommended dismissing contests, including most recently the Guam contest. Under our precedents a contestant has a substantial burden. A contestant must allege with specificity irregularities that, if proven, would likely change the result of the election. This is the standard the House has consistently applied. To my mind, the contestant, Mr. Hansen, did not satisfy this test.

A contest is subject to dismissal at any time if the contestant's claims are not sufficiently specific to put into serious question the outcome of the election.

Are contestant's claims sufficiently specific in light of the evidence presented to meet this test? In my opinion they are not. Contestant's primary claim is that substantial illegal voting marred and likely changed the result of the election. Allegedly, nonresidents were allowed to vote. After a full investigation of these charges, Idaho's attorney general found them meritless. Not a single instance in which an unqualified person was permitted to vote was discovered. The attorney general's findings stand unrefuted by contestant. Consequently, I find no merit in contestant's claim of illegal voting.

Do the results of the partial State recount justify, as contestant claims that they do, a full House recount? Again, under our precedents, I believe not. The State recount revealed no material difference in the count. Although the recount was conducted only in those precincts where the contestant felt a mistake favorable to him was most likely, the recount only increased Mr. STALLINGS' margin. Again Mr. Hansen does not dispute the result of the State recount. Nor does he identify specific problems in the count or the recount. His claim rests on no more than mere speculation. If contestant had evidence of significant irregularity, he was obliged to produce it. Without such evidence his claim is to be dismissed.

Lastly, contestant claims that the canvass of votes was not conducted in accordance with State law. Mr. Hansen made this claim unsuccessfully in State court. This claim was not made in Mr. Hansen's notice of contest. I suspect it is only now being raised because all the other claims have proven to be unsupportable. There is no reason to believe that there was anything illegal or improper in the manner that the votes were canvassed.

For these reasons I would recommend that the contest be dismissed.

Mr. ROBERTS. Mr. Speaker, I yield 10 minutes to my distinguished colleague and friend, the gentleman from California [Mr. THOMAS].

Mr. [Williams] THOMAS of California. Mr. Speaker, on election day in November of 1984, there was a very close election, but there was a winner and the State certified that winner. Oh, there was a State official involved in some questionable procedure. It was challenged by county officials. There were election materials that were handled differently in different counties. State election law was not followed precisely in some counties in that congressional district.

Are we back home again in Indiana? No; we are in Idaho's Second District.

But the similarities between those two contests does not end there. This House decided to send to the House Administration Committee and a task force dominated 2 to 1 by Democrats the question of how to resolve those elections.

And so, were there hearings in Idaho's Second District, as there were in Indiana's Eighth District? No. Were there witnesses brought forth to examine the information of individuals who participated in the election, as was done in Indiana? No.

In fact, the motion filed by the Democrat to dismiss under the laws by which he certainly has that privilege was not even filed in a timely fashion. How was that handled? By a 2-to-1 vote.

I recall in the debate on Indiana's Eighth, a number of Democrats pointing out that there was a bill in the Indiana Legislature. It had been introduced, and the contents of that bill that had been introduced has some change suggested in Indiana law which was supportive of the Democrats' position, and on this floor they touted how significant the fact was that the Indiana Legislature was considering a possible change in Indiana State law. It was evidence for them of a clear direction, not just of the voters but of the State government of Indiana. What happened to the bill? It did not even get out of one House.

In Idaho a bill was introduced, passed by the legislature, and signed by the Governor. It is now the law of the State of Idaho, repudiating the action that was taken by State election officials. It is the law of the State of Idaho based upon what occurred in this contest.

Did this task force consider what occurred in Idaho? No.

In Indiana the people elected a candidate in the Eighth Congressional District. His name was Rick McIntyre. The State of Indiana certified him as the winner, once during the election and a second time after the recount. He came to this floor on January 3, like any other Member-elect. He held a valid certificate from the State of Indiana. Was that good enough for the Democratic majority in this House? No.

Did we get to an investigation of Indiana's Eighth Congressional District based upon a motion filed by the loser, FRANK MCCLOSKEY? No. That contest, that motion that was filed has not been handled by the House Administration Committee. Perhaps it is for the reason that the gentleman from Washington gave as to why he believes we should now support the task force and the committee's position, and that the motion is without merit. But that did not stop the majority of Democrats in this House. They sent it to the committee, and as a matter of fact, by a series of 2-to-1 votes, the choice of the people of Indiana was overturned, the Indiana State election laws were trashed, and by a majority of Democrats on the floor of the House FRANK MCCLOSKEY was selected as the Representative from the Eighth District of Indiana.

Now, in Idaho's Second District, we may have an individual who was elected by the people. He was certified by the State. But Idaho's election law was not followed in terms of a canvassing of those votes to determine in fact if the initial count was an accurate count. Idaho State law requires that. It was not done. The presumption is that Mr. STALLINGS holds a valid State certificate.

But did the task force look behind the certificate, as they did in Indiana? Did they examine the irregularities of Idaho law as they did in Indiana? No.

By a series of 2-to-1 votes, they dismissed all of the discrepancies and the inaccuracies and the inadvertent errors in Idaho's Second District.

Now, Mr. and Mrs. America may be a little bit confused by what has gone on over a span of 6 months. Why in the world would we spend the time in Indiana to go behind the State certificate and attempt to overturn and in fact, by a straight Democratic vote

on the floor of the House, overturn that certificate when in Idaho we will not even hold one hearing to question any violation of State law in Idaho? Well Mr. and Mrs. America, let me clarify it for you. In Indiana the holder of the State certificate was a Republican; in Idaho the holder of the State certificate is a Democrat.

So, Mr. and Mrs. America, if the wind shifts westward and you notice a bit of a putrid smell on the wind, let me tell you what that is. That is the House of Representatives writing chapter 2 in their book of political arrogance.

I would ask the Members of this House to simply not participate any longer in these kinds of charades unless and until the Committee on House Administration and this House decide that election contests are at least equal to ethics questions against the Members and we treat election contests as we treat questions of ethics, and that is that there be an equal number of Democrats and an equal number of Republicans deciding what the truth is.

Unless and until that structural procedure is changed, I think we can understand what every case coming to this floor from House Administration and any task force formed by that committee is going to be, and that will be by a series of 2-to-1 votes making sure that the outcome is exactly as the majority wishes.

In Indiana's Eighth, it was to overturn the valid State certificate, deny the election to the Republican and seat the Democrat.

In Idaho, since the Democrat won, the Democratic majority upholds State law, does not examine the changes taken place, and somehow within a period of 6 months, the Democrats are attempting to convince everyone that black is white and then white is black.

You do not believe it and I do not believe it, but it is going to happen. It is going to happen when the majority, through sheer arrogance, exercises the tyranny of the majority. Mr. Speaker, I yield back the balance of my time.

Mr. BATES. Mr. Speaker, I have some final remarks that I would make, and I now reserve the balance of my time.

Mr. ROBERTS. Mr. Speaker, I yield 1 minute to my friend and colleague, the gentleman from Idaho [Mr. CRAIG].

Mr. [Larry] CRAIG [of Idaho]. Mr. Speaker, I would like to associate myself with the remarks of my colleague from Nebraska and my colleague from California as it relates to this issue.

In January when we convened to seat Members, I took the floor hoping to convince my colleagues here in the House to uphold State law, both in the instance of Indiana and in the instance of Idaho. I stood and encouraged this House to seat RICHARD STALLINGS. Although there was a question and a cloud in Idaho as to whether he was officially elected, the State had certified as they had in Indiana.

I am not sure yet whether I erred, but at least I was very ignorant as to what would follow the proceedings in this House. Now we know. The story has unraveled. There is no question as to how the House planned to proceed at that time and then proceeded.

My ignorance was this: What I failed to recognize was that the incumbent in the Indiana race, Mr. MCCLOSKEY, was a Democrat, and the incumbent in the Idaho race, Mr. Hansen, was a Republican. In that rests the whole question and, of course, in that is the result of the outcome.

Mr. ROBERTS. Mr. Speaker, I yield 3 minutes to my friend and colleague, the gentleman from Indiana [Mr. MYERS].

Mr. [John] MYERS of Indiana. Mr. Speaker, I rise for clarification. I thought I understood what was happening until I came to the floor today. I have looked for the committee hearings. Were the committee hearings printed, I ask the gentleman from California [Mr. BATES] I have a committee print, but I mean the hearings where they investigated the facts that I have heard discussed here today.

I yield to the gentleman for his response.

Mr. BATES. As the House Administration Committee has done on all contested elections, we have several this year. The task force holds a hearing. If the gentleman is referring to field hearings, there were none held in this case because the evidence was not overwhelming to warrant such hearings.

Mr. MYERS of Indiana. No hearings held in Washington?

Mr. BATES. There were hearings in Washington.

Mr. MYERS of Indiana. Were there any hearings held in Idaho to investigate the allegations and the facts as has been presented here today?

Mr. BATES. Hearings held in Washington, none held in Idaho.

Mr. MYERS of Indiana. There were none held in Idaho?

Mr. BATES. None.

Mr. MYERS of Indiana. Were there any witnesses from Idaho that appeared here to substantiate or to raise any further questions about what happened in Idaho?

Mr. BATES. No. In order to go to the expense and hold those hearings, we handled this the same as all the other contested elections similar to the one in Guam. We did not go to Guam. We did not go to Idaho. We did not go to all these other places. In fact, the McCloskey-McIntyre is the only one in which the additional effort and expense of holding the hearings in the District of Columbia occurred, to my knowledge.

Mr. MYERS of Indiana. Well, the statement was made by the gentleman from California, as I recall, today that the questionable ballots of 2,500, or whatever they were, that they were valid ballots. How does the gentleman know that?

Mr. BATES. How do we know that any-

Mr. MYERS of Indiana. How do we know that people exist who cast those ballots? The gentleman said they lived on rural routes way out so they got their mail at a post office box. How does the gentleman know that without any hearings?

Mr. BATES. An investigation was conducted.

Mr. MYERS of Indiana. By whom?

Mr. BATES. The district attorney in Idaho.

Mr. MYERS of Indiana. Idaho's officials were accepted? Indiana's officials were not valid? Why is Idaho acceptable and Indiana was not?

Mr. BATES. I did not chair the task force.

Mr. MYERS of Indiana. I am asking the gentleman, the gentleman chaired this one.

I yield to the gentleman for the response as to why Idaho's officials were valid and Indiana's were not, the officials of that State.

Mr. BATES. As the gentleman maybe aware, the contested election procedure is under a different statute than the one which the Indiana is under.

Mr. MYERS of Indiana. Indiana, action by this House, had no contested election. There was not one.

Mr. BATES. There were two separate procedures.

Mr. MYERS of Indiana. As it has already been drawn out, the Indiana case was instigated by this House.

Why was it not similar? Why was it handled entirely different? There was a very close examination, in Indiana ballot by ballot, which ignored Indiana law entirely, and yet we have not examined Idaho law. As has been said, Idaho law has been changed because they recognized it was wrong. Indiana examined theirs and said, "We have a valid law. We did not change it."

I am shocked today. I did not agree with what happened in the Indiana case. I did not think the House had the right to come into Indiana and rewrite the election laws. But if that was going to be the precedent, if that was going to be the new rule that this House decided for its membership, so be it.

But today we have gone back and said, "Oh, we're going to abolish all of that."

Inconsistency, and I am shocked at this House and am very disappointed in this task force and the House Administration Committee and the leadership of this House.

Mr. ROBERTS. Mr. Speaker, to close debate on our side, I yield such time as he may consume to my friend and colleague, the gentleman from Minnesota [Mr. FRENZEL].

Mr. [William] FRENZEL [of Minnesota]. Mr. Speaker, there is in this specific case before us no bitterness, no allegation of misconduct by either contestee or contestant or by the people who are promoting either person.

The bitterness that has infected our debate today is a residual of discussions and decisions made with respect to Indiana's Eighth District earlier in the year. The reason that that bitterness floods over, spreads over this whole Chamber today, is that the cases are so similar.

As has already been pointed out, in the case of the Indiana Eighth, the House decided that it had to upset the laws of the State of Indiana. It said that the Indiana laws were no good, that Indiana State officials were incompetent and that the election was therefore invalid. We literally caused another election under rules invented by the elections task force as it went along. Then, those rules were changed on the last day of that subcommittee's work so that it could declare the person it wanted as the winner, even though he had not won the election.

In the Idaho case which is now before us, we have a very similar situation. I recall our distinguished majority leader saying that the laws of Indiana were not carried out in a timely, regular, and fair manner.

What do we have in Idaho? Exactly the same kind of problem. The gentleman from Kansas outlined the difficulty with canvassing, the address problem, the error rate. But did the task force and the committee make a similar decision? No. In this case the committee decided by a 2-to-1 vote that the contestee's complaint was without merit. In a similar case, the committee will back up Idaho law, but it trashed Indiana law.

I submit that the difference between these actions was simply the difference in the way it was handled; that is, the McIntyre-McCloskey matter was not handled under the Federal Contested Elections Act. It was handled under an exercise in pure cronyism.

The Hansen-Stallings matter was handled under the Federal Contested Elections Act. It follows, in my judgment, the precedents of the House; that is, the elections task force said that the State did the best it could under the circumstances. The State ought to be upheld.

The problem is not with Hansen-Stallings. The problem is the atrocity wrought in the case of McIntyre versus McCloskey, the egregious exercise in cronyism that I have already discussed.

The bottom line after all the exclusions, deductions, tax credits, and carry-forwards, the net, net, net in that case, is that we overturned Indiana. We discredited the State, its law and its officials. Here we are going to uphold Idaho, its State law and its officials.

There is clearly something wrong in this House of Representatives. It is not with the matter before us today. It is the matter which was stuffed down the throats of the minority by the Democratic majority in our previous Indiana decision.

Now, my judgment is that the best way that the Republican minority can express its absolute disgust with the previous McIntyre-McCloskey matter and not befoul the matter that is before us is to vote "present" on the rollcall which I expect will follow.

If we are to follow the precedents of the House and good procedures and the Federal Contested Elections Act, many Members would be inclined, as I am inclined, to vote "yes" on the recommendation of the House Administration Committee. It is pretty straightforward. A "yes" vote means that we agree with the State of Idaho.

If we are to follow the McIntyre precedent that you gave us, that our friends in the Democrat majority inflicted on us, we would have to vote "no". A "no" vote would say the State has not done a good job, that it has not done its Job in a timely manner. I do not believe that is the way Republicans should vote, either.

I think our only choice is to vote "present" and leave the Democrat majority with its own mess, the mess of conflict of precedent, and counter-precedent, which they have awarded to themselves. Let them remain hoisted on their own petards, swinging in the wind. They have justly earned that position of embarrassment.

I will remind my Republican friends that we have already voted to seat Congressman STALLINGS. On the previous January 3 vote to seat him, no Republican voted against Mr. STALLINGS. He presented a valid certificate presented to him by his State. We accepted it and we voted to make him a Congressman, like all the rest of us.

It is only Mr. McIntyre who is the victim of partisan cronyism in this House.

I think the good news in this matter is the information that I started with. That is, whatever irregularities we have found in the committee and in the task force, there was no allegation of fraud, no intentional wrong doing. We do not know, as stated before, whether the State did right or not. But, as should have been our precedent in the McIntyre case, the committee decided that the State's laws and its certificate should be upheld.

Mr. Speaker, I urge on my Republican colleagues a "present" vote and on my Democrat colleagues examination of their consciences.

Mr. [Frank] ANNUNZIO [of Illinois]. Mr. Speaker, I want to take this opportunity to compliment the members of the task force for their thorough examination and review of this contested election.

Both majority and minority have expressed differing views as to the conclusion of this contest. However, the hearing and the meeting of the committee at which the matter was considered was conspicuously without the rancor which has characterized deliberations on earlier contests. Icongratulate Mr. BATES who chaired the task force as well as Mr. SWIFT and Mr. ROBERTS who served ably thereon. I congratulate Mr. FRENZEL, the ranking minority of the committee, for his objectivity and candor.

I look forward to a continued constructive relationship with the minority and I believe that we are working in the right direction.

Mr. ROBERTS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BATES. Mr. Speaker, just a few final remarks.

I would for the record want to clarify that there is no similarity between this contested election and the McIntyre-McCloskey issue which was under House Resolution 1 and was under a different set of rules.

This particular resolution is brought up under Federal statute of contested elections, quite similar to the one for the Territory of Guam in which a Republican Delegate from Guam did have his election challenged. He was seated unanimously by the task force, dominated by Democrats and by the full committee which also has a Democratic majority and by the full House.

So I think to make a comparison of the cases requires a comparison of these two cases where we did without incident, without bitterness, without hostility, seat the Member and followed through with the recommendations, as I think we should do on this one.

I might say that the members on the task force and the full committee have conducted themselves quite properly in voting out a 12-to-1 bipartisan vote for approval; so I think we should not add to the hostility and bitterness that has been brought about by previous actions.

I call on the House of Representatives to support this recommendation, House Resolution 272, and vote "aye."

Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken, and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROBERTS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 247, nays 4, answered "present" 169, not voting 14, as follows:

[Roll No. 326] . . .

Mr. MCDADE changed his vote from "yea" to "present."

Mr. SWINDALL changed his vote from "present" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table. . .

PERSONAL EXPLANATION

Mr. [Richard] STALLINGS [of Idaho]. Mr. Speaker, a few moments ago, on rollcall No. 326, relating to the contested-election contest in Idaho, I intended to vote "present." As circumstances developed on the floor, it became apparent that a present vote was developing as a protest vote, one disapproving of the process carried out by the Committee on House Administration. Thus, I voted "aye," not wanting to have my vote thus construed. I reiterate that I intended to vote "present" and that was my desire.

§ 21. One Hundredth Congress, 1987–1988

There were no election contests considered by the House during the 100th Congress.

§ 22. One Hundred First Congress, 1989–1990

There were no election contests considered by the House during the 101st Congress.